Administrative Procedures for the Code Of Conduct

2020

City of
Wagga Wagga

1881
DIEU ET MON DROIT
COUNCIL CHAMBERS

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Part 1 - Introduction

These procedures ("the Model Code Procedures") are prescribed for the administration of the *Model Code of Conduct for Local Councils in NSW* ("the Model Code of Conduct").

The Model Code of Conduct is made under section 440 of the *Local Government Act 1993* ("the LGA") and the *Local Government (General) Regulation 2005* ("the Regulation"). Section 440 of the LGA requires every council (including county councils) and joint organisation to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct.

The Model Code Procedures are made under section 440AA of the LGA and the Regulation. Section 440AA of the LGA requires every council (including county councils) and joint organisation to adopt procedures for the administration of their code of conduct that incorporate the provisions of the Model Code Procedures.

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

Wagga Wagga City Council's Model Code Procedures also apply to volunteers directly engaged by Council and wholly advisory committees. Complaints in relation to members of wholly advisory committees and volunteers are to be dealt with in the same was as complaints in relation to delegates of council, council advisers and council committee members.

Note: Parts 6, 7, 8 and 11 of these procedures apply only to the management of code of conduct complaints about councillors (including the mayor) or the general manager.

Part 2 - Definitions

In these procedures the following terms have the following meanings:

Administrator	An administrator of a council appointed under the LGA other than an administrator appointed under section 66
Code of Conduct	A code of conduct adopted under section 440 of the LGA
Code of Conduct Complaint	A complaint that is a code of conduct complaint for the purposes of clauses 4.1 and 4.2 of these procedures
Complainant	A person who makes a code of conduct complaint
Complainant Councillor	A councillor who makes a code of conduct complaint
Complaints Coordinator	A person appointed by the general manager 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 general manager
Council	Includes county councils and joint organisations
Council Committee	A committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to and the council's audit, risk and improvement committee
Council Committee Member	A person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee, and a person other than a councillor who is a member of the council's audit, risk and improvement committee
Councillor	Any person elected or appointed to civic office, including the mayor, and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations
Council Official	Any councillor, member of staff of council, administrator, council committee member, delegate of council, volunteers and, for the purposes of clause 4.16 of the Model Code of Conduct, council advisers
Delegate of Council	A person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated
External Agency	A state government agency such as, but not limited to, the Office, the ICAC, the NSW Ombudsman or the police
General Manager	Includes the executive officer of a joint organisation
ICAC	The Independent Commission Against Corruption

Joint Organisation	A joint organisation established under section 400O of the LGA
LGA	Local Government Act 1993
Mayor	Includes the chairperson of a county council or a joint organisation
Members of staff of a Council	Includes members of staff of county councils and joint organisations
The Office	The Office of Local Government
Investigator	A conduct reviewer
The Regulation	The *Local Government (General) Regulation 2005*
Respondent	A person whose conduct is the subject of investigation by a conduct reviewer under these procedures
Volunteers	A volunteer for the purpose of this Code is a person who is engaged directly by council to undertake work without financial gain
Wholly Advisory Committee	A council committee that the council has not delegated any functions to

Part 3 - Administrative Framework

The establishment of a panel of conduct reviewer

3.1 The council must establish a panel of conduct reviewers.

3.2 The council may enter into an arrangement with one or more other councils to share a panel of conduct reviewers including through a joint organisation or another regional body associated with the councils.

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 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 conduct reviewer, 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
  - **ii)** law
  - **iii)** public administration
  - **iv)** public sector ethics
  - **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 eligible to be a conduct reviewer if they are:

- **a)** a councillor, or
- **b)** a nominee for election as a councillor, or
- **c)** an administrator, or
- **d)** an employee of a council, 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 person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.

3.8 An incorporated or other entity may be appointed to a council's panel of conduct reviewers where the council is satisfied that all the persons who will be undertaking the functions of a conduct reviewer on behalf of the entity meet the selection and eligibility criteria prescribed under this Part.

3.9 A panel of conduct reviewers established under this Part is to have a term of up to four years.

3.10 The council may terminate the panel of conduct reviewers at any time. Where a panel of conduct reviewers has been terminated, conduct reviewers who were members of the panel may continue to deal with any matter referred to them under these procedures prior to the termination of the panel until they have finalised their consideration of the matter.

3.11 When the term of the panel of conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.

3.12 A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council if they continue to meet the selection and eligibility criteria for membership of the panel.

The appointment of an internal ombudsman to a panel of conduct reviewers

3.13 Despite clause 3.6(d), an employee of a council who is the nominated internal ombudsman of one or more councils may be appointed to a council's panel of conduct reviewers with the Office's consent.

3.14 To be appointed to a council's panel of conduct reviewers, an internal ombudsman must meet the qualification requirements for conduct reviewers prescribed under clause 3.5 as modified by the operation of clause 3.13.

3.15 An internal ombudsman appointed to a council's panel of conduct reviewers may also exercise the functions of the council's complaints coordinator. For the purposes of clause 6.1, an internal ombudsman who is a council's complaints coordinator and has been appointed to the council's panel of conduct reviewers, may either undertake a preliminary assessment and investigation of a matter referred to them under clauses 5.26 or 5.33 or refer the matter to another conduct reviewer in accordance with clause 6.2.

3.16 Clause 6.4(c) does not apply to an internal ombudsman appointed to a council's panel of conduct reviewers.

The appointment of complaints coordinators

3.17 The general manager must appoint a member of staff of the council or another person (such as, but not limited to, a member of staff of another council or a member of staff of a joint organisation or other regional body associated with the council), to act as a complaints coordinator. Where the complaints coordinator is a member of staff of the council, the complaints coordinator should be a senior and suitably qualified member of staff.

3.18 The general manager may appoint other members of staff of the council or other persons (such as, but not limited to, members of staff of another council or members of staff of a joint organisation or other regional body associated with the council), to act as alternates to the complaints coordinator.

3.19 The general manager must not undertake the role of complaints coordinator.

3.20 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*.

3.21 The role of the complaints coordinator is to:

a) coordinate the management of complaints made under the council's code of conduct

b) liaise with and provide administrative support to a conduct reviewer

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 shows or tends to show conduct on the part of a council official in connection with their role as a council official or the exercise of their functions as a council official that would constitute a breach of the standards of conduct prescribed under the council's code of conduct if proven.

4.2 The following are not "code of conduct complaints" for the purposes of these procedures:

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

4.3 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 the council's routine complaints management processes.

When must a code of conduct complaint be made?

4.4 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.

4.5 A complaint made after 3 months may only be accepted if the general manager or their delegate, or, in the case of a complaint about the general manager, the mayor or their delegate, is satisfied that the allegations are serious and compelling grounds exist 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 general manager be made?

4.6 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing. This clause does not operate to prevent a person from making a complaint to an external agency.

4.7 Where a code of conduct complaint about a council official other than the general manager 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.

4.8 In making a code of conduct complaint about a council official other than the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.

4.9 The general manager or their delegate, 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.

4.10 Notwithstanding clauses 4.6 and 4.7, where the general manager becomes aware of a possible breach of the council's code of conduct, they 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 general manager be made?

4.11 Code of conduct complaints about the general manager are to be made to the mayor in writing. This clause does not operate to prevent a person from making a complaint about the general manager to an external agency.

4.12 Where a code of conduct complaint about the general manager 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.

4.13 In making a code of conduct complaint about the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.

4.14 The mayor or their delegate, 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.

4.15 Notwithstanding clauses 4.11 and 4.12, where the mayor becomes aware of a possible breach of the council's code of conduct by the general manager, they 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?

Delegation by general managers and mayors of their functions under this Part

5.1 A general manager or mayor may delegate their functions under this Part to a member of staff of the council or to a person or persons external to the council other than an external agency. References in this Part to the general manager or mayor are also to be taken to be references to their delegates.

Consideration of complaints by general managers and mayors

5.2 In exercising their functions under this Part, general managers and mayors may consider the complaint assessment criteria prescribed under clause 6.31.

What complaints may be declined at the outset?

5.3 Without limiting any other provision in these procedures, the general manager or, in the case of a complaint about the general manager, the mayor, may decline to deal with a complaint under these procedures where they are satisfied that the complaint:

a) is not a code of conduct complaint, or

b) subject to clause 4.5, is not made within 3 months of the alleged conduct occurring or the complainant becoming aware of the alleged conduct, or

c) is trivial, frivolous, vexatious or not made in good faith, or

d) relates to a matter the substance of which has previously been considered and addressed by the council and does not warrant further action, or

e) is not made in a way that would allow the alleged conduct and any alleged breaches of the council's code of conduct to be readily identified.

How are code of conduct complaints about staff (other than the general manager) to be dealt with?

5.4 The general manager is responsible for the management of code of conduct complaints about members of staff of council (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.

5.5 The general manager must refer code of conduct complaints about members of staff of council alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.

5.6 The general manager may decide to take no action in relation to a code of conduct complaint about a member of staff of council other than one requiring referral to the Office under clause 5.5 where they consider that no action is warranted in relation to the complaint.

5.7 Where the general manager decides to take no action in relation to a code of conduct complaint about a member of staff of council, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.

5.8 Code of conduct complaints about members of staff of council must be managed 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.

5.9 Sanctions for breaches of the code of conduct by 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 volunteers, delegates of council, council advisers and council committee members to be dealt with?

5.10 The general manager is responsible for the management of code of conduct complaints about delegates of council, volunteers and council committee members (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.

5.11 With the exception of members of wholly advisory committees and/or volunteers, the general manager must refer code of conduct complaints about council advisers, delegates of council and council committee members alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.

5.12 The general manager may decide to take no action in relation to a code of conduct complaint about a delegate of council, volunteer or a council committee member other than one requiring referral to the Office under clause 5.11 where they consider that no action is warranted in relation to the complaint.

5.13 Where the general manager decides to take no action in relation to a code of conduct complaint about a delegate of council, volunteer or a council committee member, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.

5.14 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about delegates of council, volunteers or council committee members, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.

5.15 Where the general manager resolves a code of conduct complaint under clause 5.14 to the general manager's satisfaction, the general manager 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.

5.16 Sanctions for breaches of the code of conduct by delegates of council, volunteers and/or council committee members 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 in such a time and form specified by the general manager

c) prosecution for any breach of the law

d) removing or restricting the person's delegation

e) removing the person from membership of the relevant council committee.

5.17 Prior to imposing a sanction against a delegate of council or a council committee member or volunteer under clause 5.16, the general manager or any person making enquiries on behalf of the general manager must comply with the requirements of procedural fairness. In particular:

a) the substance of the allegation (including the relevant provision/s of the 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, and

b) the person must be given an opportunity to respond to the allegation, and

c) the general manager must consider the person's response in deciding whether to impose a sanction under clause 5.16.

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

5.18 The general manager must refer all code of conduct complaints about administrators to the Office for its consideration.

5.19 The general manager must notify the complainant of the referral of their complaint in writing.

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

5.20 The general manager must refer the following code of conduct complaints about councillors to the Office:

a) complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct

b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interest arising from political donations (see section 328B of the LGA)

c) complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct

d) complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.

5.21 Where the general manager refers a complaint to the Office under clause 5.20, the general manager must notify the complainant of the referral in writing.

5.22 The general manager may decide to take no action in relation to a code of conduct complaint about a councillor, other than one requiring referral to the Office under clause 5.20, where they consider that no action is warranted in relation to the complaint.

5.23 Where the general manager decides to take no action in relation to a code of conduct complaint about a councillor, the general manager must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.

5.24 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about councillors, other than those requiring referral to the Office under clause 5.20, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.

5.25 Where the general manager resolves a code of conduct complaint under clause 5.24 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.

5.26 The general manager must refer all code of conduct complaints about councillors, other than those referred to the Office under clause 5.20 or finalised under clause 5.23 or resolved under clause 5.24, to the complaints coordinator.

How are code of conduct complaints about the general manager to be dealt with?

5.27 The mayor must refer the following code of conduct complaints about the general manager to the Office:

a) complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct

b) complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct

c) complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.

5.28 Where the mayor refers a complaint to the Office under clause 5.27, the mayor must notify the complainant of the referral in writing.

5.29 The mayor may decide to take no action in relation to a code of conduct complaint about the general manager, other than one requiring referral to the Office under clause 5.27, where they consider that no action is warranted in relation to the complaint.

5.30 Where the mayor decides to take no action in relation to a code of conduct complaint about the general manager, the mayor must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.

5.31 Where the mayor considers it to be practicable and appropriate to do so, the mayor may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to the Office under clause 5.27, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.

5.32 Where the mayor resolves a code of conduct complaint under clause 5.31 to the mayor's satisfaction, the mayor must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.

5.33 The mayor must refer all code of conduct complaints about the general manager, other than those referred to the Office under clause 5.27 or finalised under clause 5.30 or resolved under clause 5.31, to the complaints coordinator.

How are complaints about both the general manager and the mayor to be dealt with?

5.34 Where the general manager or mayor receives a code of conduct complaint that alleges a breach of the code of conduct by both the general manager and the mayor, the general manager or mayor must either:

a) delegate their functions under this part with respect to the complaint to a member of staff of the council other than the general manager where the allegation is not serious, or to a person external to the council, or

b) refer the matter to the complaints coordinator under clause 5.26 and clause 5.33.

Referral of code of conduct complaints to external agencies

5.35 The general manager, mayor or a conduct reviewer may, at any time, refer a code of conduct complaint to an external agency for its consideration, where they consider such a referral is warranted.

5.36 The general manager, mayor or a conduct reviewer must report to the ICAC any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct.

5.37 Where the general manager, mayor or conduct reviewer refers a complaint to an external agency under clause 5.35, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.

5.38 Referral of a matter to an external agency shall finalise consideration of the matter under these procedures unless the council is subsequently advised otherwise by the referral agency.

Disclosure of the identity of complainants

5.39 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 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.

5.40 Clause 5.39 does not apply to code of conduct complaints made by councillors about other councillors or the general manager.

5.41 Where a councillor makes a code of conduct complaint about another councillor or the general manager, and the complainant councillor 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.

5.42 A request made by a complainant councillor under clause 5.41 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.

5.43 The general manager or mayor, and where the matter is referred to a conduct reviewer, the conduct reviewer, must consider a request made under clause 5.41 before disclosing information that identifies or tends to identify the complainant councillor, but they are not obliged to comply with the request.

5.44 Where a complainant councillor makes a request under clause 5.41, the general manager or mayor or, where the matter is referred to a conduct reviewer, the conduct reviewer, shall 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

5.45 These procedures do not override the provisions of the *Public Interest Disclosures Act 1994*. Code of conduct complaints that are made as public interest disclosures under that Act are to be managed in accordance with the requirements of that Act, the council's internal reporting policy, and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.

5.46 Where a councillor makes a code of conduct complaint about another councillor or the general manager 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.

5.47 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.46, the general manager or the mayor must refer the complaint to the Office for consideration. Such a referral must be made under section 26 of the *Public Interest Disclosures Act 1994.*

Special complaints management arrangements

5.48 The general manager may request in writing that the Office enter into a special complaints management arrangement with the council in relation to code of conduct complaints made by or about a person or persons.

5.49 Where the Office receives a request under clause 5.48, it may agree to enter into a special complaints management arrangement if 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 the council's administration of its code of conduct, or

b) impeded or disrupted the effective administration by the council of its code of conduct, or

c) impeded or disrupted the effective functioning of the council.

5.50 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 that the arrangement will be in force.

5.51 The Office may, by notice in writing, amend or terminate a special complaints management arrangement at any time.

5.52 While a special complaints management arrangement is in force, an officer of the Office (the assessing OLG officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of Part 6 of these procedures.

5.53 Where, following a preliminary assessment, the assessing OLG officer determines that a code of conduct complaint warrants investigation by a conduct reviewer, the assessing OLG officer shall 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 OLG officer.

5.54 Prior to the expiry of a special complaints management arrangement, the Office may, at the request of the general manager, review the arrangement to determine whether it should be renewed or amended.

5.55 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.54.

Part 6 - Preliminary assessment of code of conduct complaints about councillors or the general manager by conduct reviewers

Referral of code of conduct complaints about councillors or the general manager to conduct reviewers

6.1 The complaints coordinator must refer all code of conduct complaints about councillors or the general manager that have not been referred to an external agency or declined or resolved by the general manager, mayor or their delegate and that have been referred to them under clauses 5.26 or 5.33, to a conduct reviewer within 21 days of receipt of the complaint by the general manager or the 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 the council, or

b) a panel of conduct reviewers established by an organisation approved by 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. Where the conduct reviewer is an incorporated or other entity, the complaints coordinator must also ensure that the person assigned to receive the referral on behalf of the entity meets the selection and eligibility criteria for conduct reviewers prescribed under Part 3 of these procedures.

6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:

a) they have a conflict of interest 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 council (other than contracts relating to the exercise of their functions as a conduct reviewer) 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 value that, when aggregated, exceeds $100,000, or

d) at the time of the referral, they or their employer are the council's legal service provider or are a member of a panel of legal service providers appointed by the council.

6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interest 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 5.2 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 the council, including any information about previous proven breaches and any information that would indicate that the alleged conduct forms part of an ongoing pattern of behaviour.

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.

6.9 Conduct reviewers must comply with these procedures in their consideration of matters that have been referred to them and exercise their functions in a diligent and timely manner.

6.10 The complaints coordinator may at any time terminate the referral of a matter to a conduct reviewer and refer the matter to another conduct reviewer where the complaints coordinator is satisfied that the conduct reviewer has failed to:

a) comply with these procedures in their consideration of the matter, or

b) comply with a lawful and reasonable request by the complaints coordinator, or

c) exercise their functions in a timely or satisfactory manner.

6.11 Where the complaints coordinator terminates a referral to a conduct reviewer under clause 6.10, they must notify the complainant and any other affected person in writing of their decision and the reasons for it and advise them which conduct reviewer the matter has been referred to instead.

Preliminary assessment of code of conduct complaints about councillors or the general manager by a conduct reviewer

6.12 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.

6.13 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 strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour

c) to refer the matter back to the general manager or, in the case of a complaint about the general manager, the mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour

d) to refer the matter to an external agency

e) to investigate the matter.

6.14 In determining how to deal with a matter under clause 6.13, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.31.

6.15 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what options to exercise under clause 6.13.

6.16 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what options to exercise in relation to the matter under clause 6.13. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.

6.17 The conduct reviewer must refer to the Office any complaints referred to them that should have been referred to the Office under clauses 5.20 and 5.27.

6.18 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.

6.19 The resolution of a code of conduct complaint under clause 6.13, paragraphs (b) or (c) is not to be taken as a determination that there has been a breach of the council's code of conduct.

6.20 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.13, 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.

6.21 Where the conduct reviewer refers a complaint to an external agency, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.

6.22 The conduct reviewer may only determine 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 is sufficiently serious to warrant the formal censure of a councillor under section 440G of the LGA or disciplinary action against the general manager under their contract of employment if it were to be proven and

c) that the matter is one that could not or should not be resolved by alternative means.

6.23 In determining whether a matter is sufficiently serious to warrant formal censure of a councillor under section 440G of the LGA or disciplinary action against the general manager under their contract of employment, the conduct reviewer is to consider the following:

a) the harm or cost that the alleged conduct has caused to any affected individuals and/or the council

b) the likely impact of the alleged conduct on the reputation of the council and public confidence in it

c) whether the alleged conduct was deliberate or undertaken with reckless intent or negligence

d) any previous proven breaches by the person whose alleged conduct is the subject of the complaint and/or whether the alleged conduct forms part of an ongoing pattern of behaviour.

6.24 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 and notify the complaints coordinator in writing of the outcome of their assessment.

6.25 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 general manager or mayor for resolution

6.26 Where the conduct reviewer determines to refer a matter back to the general manager or to the mayor to be resolved by alternative and appropriate means, they must write to the general manager or, in the case of a complaint about the general manager, to the mayor, recommending the means by which the complaint may be resolved.

6.27 The conduct reviewer must consult with the general manager or mayor prior to referring a matter back to them under clause 6.13(c).

6.28 The general manager or mayor may decline to accept the conduct reviewer's recommendation. In such cases, the conduct reviewer may determine to deal with the complaint by other means under clause 6.13.

6.29 Where the conduct reviewer refers a matter back to the general manager or mayor under clause 6.13(c), the general manager or, in the case of a complaint about the general

manager, the mayor, is responsible for implementing or overseeing the implementation of the conduct reviewer's recommendation.

6.30 Where the conduct reviewer refers a matter back to the general manager or mayor under clause 6.13(c), the general manager, or, in the case of a complaint about the general manager, the 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

6.31 In undertaking the preliminary assessment of a complaint, the conduct reviewer must have regard to the following considerations:

a) whether the complaint is a code of conduct complaint for the purpose of these procedures

b) whether the complaint has been made in a timely manner in accordance with clause 4.4, and if not, whether the allegations are sufficiently serious for compelling grounds to exist for the matter to be dealt with under the council's code of conduct

c) whether the complaint is trivial, frivolous, vexatious or not made in good faith

d) whether the complaint discloses prima facie evidence of conduct that, if proven, would constitute a breach of the code of conduct

e) whether the complaint raises issues that would be more appropriately dealt with by an external agency

f) whether there is or was an alternative and satisfactory means of redress available in relation to the conduct complained of

g) 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, a voluntary apology or an undertaking not to repeat the offending behaviour

h) whether the issue/s giving rise to the complaint have previously been addressed or resolved

i) any previous proven breaches of the council's code of conduct

j) whether the conduct complained of forms part of an ongoing pattern of behaviour

k) whether there were mitigating circumstances giving rise to the conduct complained of

l) the seriousness of the alleged conduct (having regard to the criteria specified in clause 6.23)

m) the significance of the conduct or the impact of the conduct for the council

n) how much time has passed since the alleged conduct occurred

o) such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.

Part 7 - Investigations of code of conduct complaints about councillors or the general manager

What matters may a conduct reviewer investigate?

7.1 A conduct reviewer (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.

7.2 Where an investigator identifies further separate possible breaches of the code of conduct that are not related to or do not arise from the code of conduct complaint that has been referred to them, they are to report the matters separately in writing to the general manager, or, in the case of alleged conduct on the part of the general manager, to the mayor.

7.3 The general manager or the mayor or their delegate is to deal with a matter reported to them by an investigator under clause 7.2 as if it were a new code of conduct complaint in accordance with these procedures.

How are investigations to be commenced?

7.4 The investigator must at the outset of their investigation provide a written notice of investigation to the respondent. The notice of investigation must:

a) disclose the substance of the allegations against the respondent, 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) advise the respondent of the requirement to maintain confidentiality, and

e) invite the respondent to make a written submission in relation to the matter within a period of not less than 14 days specified by the investigator in the notice, and

f) provide the respondent the opportunity to address the investigator on the matter within such reasonable time specified in the notice.

7.5 The respondent may, within 7 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 respondent to identify the substance of the allegation against them.

7.6 An investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the respondent in relation to the matter referred to them.

7.7 Where an investigator issues an amended notice of investigation, they must provide the respondent with a further opportunity to make a written submission in response to the amended notice of investigation within a period of not less than 14 days specified by the investigator in the amended notice.

7.8 The investigator must also, at the outset of their investigation, provide written notice of the investigation to the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the complainant, the complaints coordinator and the 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, advise them of the requirement to maintain confidentiality, and

c) invite the complainant to make a written submission in relation to the matter within at least 14 days or such other period specified by the investigator in the notice.

Written and oral submissions

7.9 Where the respondent 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.

7.10 The investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.

7.11 Prior to preparing a draft report, the investigator must give the respondent an opportunity to address the investigator on the matter being investigated. The respondent may do so in person or by telephone or other electronic means.

7.12 Where the respondent 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 respondent.

7.13 Where the respondent accepts the opportunity to address the investigator in person, they may have a support person or legal adviser in attendance. The support person or legal adviser will act in an advisory or support role to the respondent only. They must not speak on behalf of the respondent or otherwise interfere with or disrupt proceedings.

7.14 The investigator must consider all written and oral submissions made to them in relation to the matter.

How are investigations to be conducted?

7.15 Investigations are to be undertaken without undue delay.

7.16 Investigations are to be undertaken in the absence of the public and in confidence.

7.17 Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.

7.18 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.

7.19 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

7.20 At any time after an investigator has issued a notice of investigation and before they have issued their final 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, a voluntary apology or an undertaking not to repeat the offending behaviour, or

b) refer the matter to the general manager, or, in the case of a complaint about the general manager, to the mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour, or

c) refer the matter to an external agency.

7.21 Where an investigator determines to exercise any of the options under clause 7.20 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.

7.22 The resolution of a code of conduct complaint under clause 7.20, paragraphs (a) or (b) is not to be taken as a determination that there has been a breach of the council's code of conduct.

7.23 Where an investigator determines to exercise any of the options under clause 7.20 after the commencement of an investigation, they may by written notice to the respondent, the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the respondent, the complainant, the complaints coordinator and the mayor, discontinue their investigation of the matter.

7.24 Where the investigator discontinues their investigation of a matter under clause 7.23, this shall finalise the consideration of the matter under these procedures.

7.25 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 7.20 or to discontinue their investigation except as may be specifically required under these procedures.

Draft investigation reports

7.26 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.

7.27 The investigator must provide their draft report to the respondent and invite them to make a written submission in relation to it within a period of not less than 14 days specified by the investigator.

7.28 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 at least 14 days or such other period specified by the investigator.

7.29 The investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.

7.30 The investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. If, as a result of making further enquiries, the investigator makes any material change to their proposed report that makes new adverse comment about the respondent or an affected person, they must provide the respondent or affected person as the case may be with a further opportunity to make a written submission in relation to the new adverse comment.

7.31 Where the respondent 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.

7.32 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

7.33 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 7.23.

7.34 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.

7.35 The investigator's final report must:

- **a)** a determination that the conduct investigated either,
- **b)** make findings of fact in relation to the matter investigated, and,
  - **i)** make 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.

7.36 At a minimum, the investigator's final report must contain the following information:

- **a)** a description of the allegations against the respondent
- **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 matter warranted investigation (having regard to the criteria specified in clause 6.23)
- **d)** a statement of reasons as to why the matter was one that could not or should not be resolved by alternative means
- **e)** a description of any attempts made to resolve the matter by use of alternative means
- **f)** the steps taken to investigate the matter
- **g)** the facts of the matter
- **h)** the investigator's findings in relation to the facts of the matter and the reasons for those findings
- **i)** the investigator's determination and the reasons for that determination
- **j)** any recommendations.

7.37 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may recommend:

- **a)** in the case of a breach by the general manager, that disciplinary action be taken under the general manager's contract of employment for the breach, or
- **b)** in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA, or
- **c)** in the case of a breach by a councillor, that the council resolves as follows:
  - **i)** that the councillor be formally censured for the breach under section 440G of the LGA, and
  - **ii)** that the matter be referred to the Office for further action under the misconduct provisions of the LGA.

7.38 Where the investigator proposes to make a recommendation under clause 7.37(c), the investigator must first consult with the Office on their proposed findings, determination and recommendation prior to finalising their report, and must take any comments by the Office into consideration when finalising their report.

7.39 Where the investigator has determined that there has been a breach of the code of conduct, the investigator may, in addition to making a recommendation under clause 7.37, recommend that the council revise any of its policies, practices or procedures.

7.40 Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may recommend:

a) that the council revise any of its policies, practices or procedures

b) that a person or persons undertake any training or other education.

7.41 The investigator must provide a copy of their report to the complaints coordinator and the respondent.

7.42 At the time the investigator provides a copy of their report to the complaints coordinator and the respondent, the investigator must provide the complainant with a written statement containing the following information:

a) the investigator's findings in relation to the facts of the matter and the reasons for those findings

b) the investigator's determination and the reasons for that determination

c) any recommendations, and

d) such other additional information that the investigator considers may be relevant.

7.43 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 general manager or, where the report relates to the general manager's conduct, to the mayor, and this will finalise consideration of the matter under these procedures.

7.44 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation under clause 7.37, the complaints coordinator must, where practicable, arrange for the investigator's report to be reported to the next ordinary council meeting for the council's consideration, unless the meeting is to be held within the 4 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.

7.45 Where it is apparent to the complaints coordinator that the council will not be able to form a quorum to consider the investigator's report, the complaints coordinator must refer the investigator's report to the Office for its consideration instead of reporting it to the council under clause 7.44.

Consideration of the final investigation report by council

7.46 The role of the council in relation to a final investigation report is to impose a sanction if the investigator has determined that there has been a breach of the code of conduct and has made a recommendation in their final report under clause 7.37.

7.47 The council is to close its meeting to the public to consider the final investigation report in cases where it is permitted to do so under section 10A of the LGA.

7.48 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 interest in relation to the matter unless otherwise required to do so under the code of conduct.

7.49 Prior to imposing a sanction, the council must provide the respondent with an opportunity to make a submission to the council. A submission may be made orally or in writing. The respondent is to confine their submission to addressing the investigator's recommendation.

7.50 Once the respondent has made their submission they must absent themselves from the meeting and, where they are a councillor, take no part in any discussion or voting on the matter.

7.51 The council must not invite submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.

7.52 Prior to imposing a sanction, the 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 from the Office in relation to the report.

7.53 The 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.

7.54 The investigator may make additional enquiries for the purpose of preparing a supplementary report.

7.55 Where the investigator prepares a supplementary report, they must provide copies to the complaints coordinator who shall provide a copy each to the council and the respondent.

7.56 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.

7.57 The council is only required to provide the respondent a further opportunity to make an oral or written submission on a supplementary report if the supplementary report contains new information that is adverse to them.

7.58 A council may by resolution impose one of the following sanctions on a respondent:

- **a)** in the case of a breach by the general manager, that disciplinary action be taken under the general manager's contract of employment for the breach, or
- **b)** in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA, or
- **c)** in the case of a breach by a councillor:
  - **i.** that the councillor be formally censured for the breach under section 440G of the LGA, and
  - **ii.** that the matter be referred to the Office for further action under the misconduct provisions of the LGA.

7.59 Where the council censures a councillor under section 440G of the LGA, the council must specify in the censure resolution the grounds on which it is satisfied that the councillor should be censured by disclosing in the resolution, the investigator's findings and determination and/or such other grounds that the council considers may be relevant or appropriate.

7.60 The council is not obliged to adopt the investigator's recommendation. Where the council proposes not to adopt the investigator's recommendation, the council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.

7.61 Where the council resolves not to adopt the investigator's recommendation, the complaints coordinator must notify the Office of the council's decision and the reasons for it.

Part 8 - Oversight and rights of review

The Office's powers of review

8.1 The Office may, at any time, whether or not in response to a request, review the consideration of a matter under a council's code of conduct where it is concerned that a person has failed to comply with a requirement prescribed under these procedures or has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct in their consideration of a matter.

8.2 The Office may direct any person, including the council, to defer taking further action in relation to a matter under consideration under the council's code of conduct pending the completion of its review. Any person the subject of a direction must comply with the direction.

8.3 Where the Office undertakes a review of a matter under clause 8.1, it will notify the complaints coordinator and any other affected persons, of the outcome of the review.

Complaints about conduct reviewers

8.4 The general manager or their delegate must refer code of conduct complaints about conduct reviewers to the Office for its consideration.

8.5 The general manager must notify the complainant of the referral of their complaint about the conduct reviewer in writing.

8.6 The general manager must implement any recommendation made by the Office as a result of its consideration of a complaint about a conduct reviewer.

Practice rulings

8.7 Where a respondent 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).

8.8 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.

8.9 Where the Office makes a practice ruling, all parties must comply with it.

8.10 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.

Review of decisions to impose sanctions

8.11 A person who is the subject of a sanction imposed under Part 7 of these procedures other than one imposed under clause 7.58, paragraph (c), may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Office.

8.12 A review under clause 8.11 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 in imposing its sanction, the council has failed to comply with a requirement under these procedures.

8.13 A request for a review made under clause 8.11 must be made in writing and must specify the grounds upon which the person believes the investigator or the council has erred.

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

8.15 The Office may undertake a review of a matter without receiving a request under clause 8.11.

8.16 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.

8.17 Where a person requests a review under clause 8.11, the Office may direct the council to defer any action to implement a sanction. The council must comply with a direction to defer action by the Office.

8.18 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.

8.19 Where the Office considers that the investigator or the council has erred, the Office may recommend that a decision to impose a sanction under these procedures be reviewed. 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 4 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 council must:

i) review its decision to impose the sanction, and

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.

8.20 Where, having reviewed its previous decision in relation to a matter under clause 8.19(b), the council resolves to reaffirm its previous decision, the council must state in its resolution its reasons for doing so.

Part 9 - Procedural Irregularities

9.1 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.

9.2 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 10 - Practice Directions

10.1 The Office may at any time issue a practice direction in relation to the application of these procedures.

10.2 The Office will issue practice directions in writing, by circular to all councils.

10.3 All persons performing a function prescribed under these procedures must consider the Office's practice directions when performing the function.

Part 11 - Reporting statistics on code of conduct complaints about councillors and the general manager

11.1 The complaints coordinator must arrange for the following statistics to be reported to the 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 general manager under the code of conduct in the year to September (the reporting period)

b) the number of code of conduct complaints referred to a conduct reviewer during the reporting period

c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage during the reporting period and the outcome of those complaints

d) the number of code of conduct complaints investigated by a conduct reviewer during the reporting period

e) without identifying particular matters, the outcome of investigations completed under these procedures during the reporting period

f) the number of matters reviewed by the Office during the reporting period and, without identifying particular matters, the outcome of the reviews, and

g) the total cost of dealing with code of conduct complaints made about councillors and the general manager during the reporting period, including staff costs.

11.2 The council is to provide the Office with a report containing the statistics referred to in clause 11.1 within 3 months of the end of September of each year.

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.

12.2 Where a complainant publicly discloses information on one or more occasions about a code of conduct complaint they have made or purported to make, the general manager or their delegate may, with the consent of the Office, determine that the complainant is to receive no further information about their complaint and any future code of conduct complaint they make or purport to make.

12.3 Prior to seeking the Office's consent under clause 12.2, the general manager or their delegate must give the complainant written notice of their intention to seek the Office's consent, invite them to make a written submission within a period of not less than 14 days specified by the general manager or their delegate, and consider any submission made by them.

12.4 In giving its consent under clause 12.2, the Office must consider any submission made by the complainant to the general manager or their delegate.

12.5 The general manager or their delegate must give written notice of a determination made under clause 12.2 to:

a) the complainant

b) the complaints coordinator

c) the Office, and

d) any other person the general manager or their delegate considers should be notified of the determination.

12.6 Any requirement under these procedures that a complainant is to be provided with information about a code of conduct complaint that they have made or purported to make, will not apply to a complainant the subject of a determination made by the general manager or their delegate under clause 12.2.

12.7 Clause 12.6 does not override any entitlement a person may have to access to council information under the *Government Information (Public Access) Act 2009* or to receive information under the *Public Interest Disclosures Act 1994* in relation to a complaint they have made.

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