

Warringah Council

CONDUCT REVIEW COMMITTEE CHARTER

Adopted 9 September 2008



1 NAME

- 1.1 The committee will be called the "Conduct Review Committee".

2 PURPOSE

- 2.1 To enquire into allegations of breaches of the Code of Conduct by either the Mayor, Deputy Mayor, Councillors or the General Manager excluding complaints regarding pecuniary interest matters which shall be reported to the Director General of the Department of Local Government.
- 2.2 The Committee members/reviewers shall be bound by the provision of this charter and Council's Code of Conduct.

3 APPOINTMENT

- 3.1 Council appoints persons independent of Council to comprise the members of the Conduct Review Committee and/or to act as Sole Reviewers.
- 3.2 Members shall be appointed for the term of the Council. Should a matter be ongoing, the Committee members involved shall where possible remain on the Committee until such time as the matter is finalised.

4 JURISDICTION

- 4.1 The complaint handling function of the Conduct Review Committee/Reviewer is limited to consideration of, making enquires into, and reporting on complaints made under Clause 11 of the Code of Conduct about the Mayor, Deputy Mayor, Councillors or the General Manager.

5 REPORTS TO

- 5.1 The Conduct Review Committee/Reviewer will report its findings, the reasons for these findings and its recommendations in writing to the Council.
- 5.2 The Conduct Review Committee/Reviewer will report its findings and any recommendations to Council only when it has completed its deliberations.
- 5.3 The Council will then resolve what actions, if any, it will take and report its decision to the complainant and the person the subject of the complaint.

6 MEMBERSHIP

- 6.1 Membership of the Conduct Review Committee shall be at least three (3) independent persons or a single reviewer selected from a pool of appropriately qualified persons of high standing in the community, selected by the Council. These persons do not need to be residents of the Warringah local government area.

7 VOTING

- 7.1 Each person shall have one vote on the Committee. In the event of equality of votes being cast, the chairperson shall have the casting vote.
- 7.2 If the vote on a matter is not unanimous, then this should be noted in any report to Council on its findings.
- 7.3 In relation to any procedural matters relating to the operation of the Conduct Review Committee, the ruling of the chairperson shall be final.

8 COMPLAINT HANDLING PROCEDURES

- 8.1 The Conduct Review Committee shall comply with the operating guidelines outlined in Council's adopted Code of Conduct and the Conduct Review Committee/Reviewer will ensure it deals with all complaints in accordance with the provisions of Section 12 of the Code of Conduct.
- 8.2 All persons who are the subject of complaints that are referred to the Conduct Review Committee/Reviewer will receive written information about the process being undertaken to deal with the matter.
- 8.3 The Conduct Review Committee/Reviewer will only deal with matters that are referred to it by the General Manager or the Mayor.
- 8.4 Where the Conduct Review Committee/Reviewer determines to make enquiries into the matter, such enquiries should be made without undue delay.
- 8.5 In circumstances where the person the subject of the complaint meets with the Conduct Review Committee/Reviewer, they are entitled to bring a support person or legal adviser. That person will act in an advisory and support role to the person affected. They will not speak on behalf of the subject person.

9 PROCEEDINGS

- 9.1 The General Manager or Mayor, in the case of a complaint about the General Manager, will be responsible for convening the initial meeting of the Conduct Review Committee when there is a complaint to be referred to it.
- 9.2 The Conduct Review Committee/Reviewer will conduct business in the absence of the public.
- 9.3 The Conduct Review Committee/Reviewer will keep proper records of deliberations.
- 9.4 The Conduct Review Committee shall determine the procedures governing the conduct of its meetings provided such procedures are consistent with these operating guidelines.

10 REPORTING AN ALLEGED BREACH OF THE CODE OF CONDUCT

- 10.1 Any person may report suspected breaches of the Code of Conduct by the Mayor or Councillor(s) to the General Manager, in writing in the first instance. Councillors shall refrain from making allegations at Council meetings and only report such suspected breaches to the General Manager. Reports about suspected breaches of the Code by the General Manager should be reported to the Mayor in writing.
- 10.2 The General Manager or the Mayor, in the case of a complaint about the General Manager, will assess a complaint alleging a breach of the code of conduct to determine if the matter should be referred to the Conduct Review Committee/Reviewer. In assessing the complaint, the General Manager and Mayor will have regard to the following grounds:
 - a) whether there is any prima facie evidence of a breach of the code of conduct;
 - b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as General Manager;
 - c) whether the complaint is trivial, frivolous, vexatious or not made in good faith;
 - d) whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct;



- e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police;
- f) whether there is an alternative and satisfactory means of redress;
- g) how much time has elapsed since the events the subject of the complaint took place;
- h) how serious the complaint is and the significance it has for Council;
- i) whether the complaint is one of a series indicating a pattern of conduct.

11 COMMITTEE MEETINGS

- 11.1 If the General Manager or the Mayor, after assessing the allegation on the above grounds determines that it should be formally referred to the Conduct Review Committee/reviewer, the complaint shall be referred to the Committee/reviewer within one month of receiving the complaint.
- 11.2 Meetings will be held within two weeks of an allegation being received. Notification will be given by the General Manager or in the case of a complaint regarding the General Manager, the Mayor at least one week in advance together with a copy of the Agenda paper. Meetings will be held in accordance with Council's adopted Code of Meeting Practice.
- 11.3 As a formally constituted Committee of Council, reports are to be submitted to Council. The Committee has no delegated powers from Council.
- 11.4 Complaints that are assessed as not having sufficient grounds to warrant referral to the conduct review committee/reviewer or that are to be referred to a more appropriate person or body can be finalised by the General Manager or the Mayor, in the case of complaints about the General Manager.
- 11.5 Where the General Manager or the Mayor has determined not to report the matter to the Conduct Review Committee, the General Manager or Mayor will, within 2 weeks of making the determination, give the complainant the reason/s in writing.

12 INITIAL ENQUIRES/DETERMINATION

- 12.1 The Conduct Review Committee/Reviewer is responsible for making enquiries into complaints made under clause 11.1 of Council's Code of Conduct alleging breaches of the code of conduct by Councillors and/or the General Manager and must determine either to:
- a) not make enquiries into the complaint and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
 - b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, making recommendations to the General Manager, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
 - c) make enquiries into the complaint, or
 - d) engage another appropriately qualified person to make enquiries into the complaint, or
 - e) not make enquiries or discontinue making enquiries where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing. Despite any other provision of this code, this will constitute finalisation of such matters and no further action is required.

- 12.2 In its initial assessment of the complaint and determination of the course to follow in dealing with the complaint the Conduct Review Committee/Reviewer will have regard to the following grounds:
- a) whether there is any prima facie evidence of a breach of the code of conduct;
 - b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as General Manager;
 - c) whether the complaint is trivial, frivolous, vexatious or not made in good faith;
 - d) whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct;
 - e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police;
 - f) whether there is an alternative and satisfactory means of redress;
 - g) how much time has elapsed since the events the subject of the complaint took place;
 - h) how serious the complaint is and the significance it has for Council;
 - i) whether the complaint is one of a series indicating a pattern of conduct.

13 PROCEDURAL FAIRNESS

- 13.1 In conducting enquiries, the Conduct Review Committee/Reviewer or the person engaged to do so should follow the rules of procedural fairness and must:
- a) provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation;
 - b) provide the person the subject of the complaint with an opportunity to place before the conduct review committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry;
 - c) provide the person the subject of the complaint with an opportunity to address the conduct review committee/reviewer in person;
 - d) hear all parties to a matter and consider submissions before deciding the substance of any complaint;
 - e) make reasonable enquiries before making any recommendations;
 - f) act fairly and without prejudice or bias;
 - g) ensure that no person decides a case in which they have a conflict of interests;
 - h) conduct the enquiries without undue delay.
- 13.2 Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the conduct review committee/reviewer should proceed to finalise the matter.

14 ROLE OF THE GENERAL MANAGER/MAYOR

- 14.1 The General Manager, or in the case of complaints about the General Manager, the Mayor, will undertake the following functions in relation to the conduct review committee/reviewer:
- a) provide procedural advice when requested;

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

14.2 Where the General Manager, or in the case of complaints about the General Manager, the Mayor, is unable to act as advisor to the conduct review committee/reviewer due to a conflict of interests in relation to a complaint, they are to nominate a senior Council officer or Councillor (in the case of complaints about the General Manager) to perform this role.

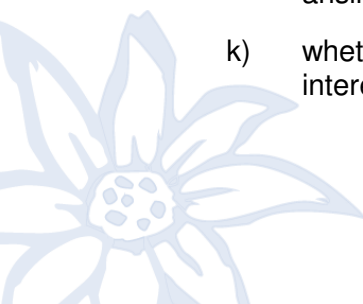
15 FINDINGS AND RECOMMENDATIONS OF THE CONDUCT REVIEW COMMITTEE/REVIEWER

15.1 Where the Conduct Review Committee/Reviewer determines, in its view that the conduct referred to it comprises a breach of this code of conduct it may, in its report to the Council, make recommendations, that the Council take any of the following actions:

- a) censure the Councillor for misbehaviour;
- b) require the Councillor or General Manager to apologise to any person adversely affected by the breach;
- c) counsel the Councillor or General Manager;
- d) make public findings of inappropriate conduct;
- e) prosecute for any breach of the law;
- f) revise any of Council's policies, procedures and/or the code of conduct.

15.2 Before making any such recommendations, the conduct review committee/reviewer shall 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 has remedied or rectified their conduct;
- d) whether the subject has expressed contrition;
- e) whether the breach is technical or trivial only;
- f) whether the breach represents repeated conduct;
- g) the age, physical or mental health or special infirmity of the subject;
- h) the degree of reckless intention or negligence of the subject;
- i) the extent to which the breach has affected other parties or the Council as a whole;
- j) the harm or potential harm to the reputation of local government and of the Council arising from the conduct;
- k) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny;



- l) whether an educative approach would be more appropriate than a punitive approach;
- m) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action;
- n) what action or remedy would be in the public interest;
- o) where to comply with a Councillor's obligations under this code of conduct would have had the effect of depriving the Council of a quorum or otherwise compromise the capacity of Council to exercise its functions.

16 COUNCIL DETERMINATION

16.1 Where the Council has considered a recommendation of the Conduct Review Committee/Reviewer and the Council finds that a Councillor has breached the Code, it may decide by resolution to:

- a) Censure the Councillor or General Manager for misbehaviour in accordance with section 440G of the Act;
- b) Require the Councillor or General Manager to apologise to any person adversely affected by the breach;
- c) Reprimand the Councillor or General Manager;
- d) Counsel the Councillor or General Manager;
- e) Prosecute for any breach of the law.

16.2 Sanctions for the General Manager depend on the severity, scale and importance of the breach and must be in accordance with any staff agreements, awards, industrial agreements and contracts. Sanctions may include:

- a) Counselling the General Manager;
- b) Placing documentation on the personnel file for a period of time depending on the nature of the breach of the Code;
- c) Other appropriate disciplinary action, such as the issuing of a formal warning;
- d) Dismissal from employment;
- e) Reference to an appropriate investigative body;
- f) Initiate prosecution or sanction for any breach of law which could lead to dismissal and recovery of costs/damages suffered by Council and/or imprisonment.

17 QUORUM

17.1 A quorum is the majority of the members of the Committee.

17.2 Business is not to be conducted at any meeting of the Conduct Review Committee unless a quorum is present.

17.3 Business may be conducted by video-conference or teleconference.

18 CHAIRPERSON

18.1 The Chairperson will be elected by the members of the Conduct Review Committee.

19 SECRETARY

- 19.1 A Council staff member nominated by the General Manager will service the Committee for the term of the Committee.

20 COMMITTEE MEETINGS

- 20.1 Meetings will be held within two weeks of an allegation being received. Notification will be given by the General Manager or in the case of a complaint regarding the General Manager, the Mayor at least one week in advance together with a copy of the Agenda paper. Meetings will be held in accordance with Council's adopted Code of Meeting Practice.
- 20.2 As a formally constituted Committee of Council, reports are to be submitted to Council. The Committee has no delegated powers from Council.

21 MEETING PLACE

- 21.1 A suitable meeting place and facilities will be made available by Council for the conduct of Committee meetings but all meetings will generally be held in Council's Committee Rooms.
- 21.2 Business may be conducted by video-conference or teleconference

22 MINUTES

- 22.1 Reports from the Committee will be presented at the next available Ordinary Meeting of the Council.

23 EXPENSES OF COMMITTEE MEMBERS

- 23.1 Independent members shall be paid an allowance similar to that paid to members of the Internal Audit Review Committee.

24 LOCAL GOVERNMENT AMENDMENT (DISCIPLINE) ACT 2004

- 24.1 The ICAC, Ombudsman and Director General of the Department of Local Government retain the power to act on misbehaviour allegations including a breach of the Council's code of conduct regardless of any Council enquiries or findings.

25 PUBLIC REPORTING

- 25.1 The number of complaints referred to the Conduct Committee will be reported to Council on an annual basis.

