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REVIEW OF THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS - REQUEST FOR SUBMISSIONS ON POSITION PAPER

The purpose of this circular is:

1. to advise councils of the progress of the Division of Local Government's review of the *Model Code of Conduct for Local Councils in NSW* (the Model Code),
2. to invite submissions on a position paper prepared by the Division in relation to its reform proposal,
3. to invite registrations from persons interested in participating in regional workshops to be held to discuss the Division's reform proposal, and
4. to advise of other events the Division will be participating in for the purposes of seeking stakeholder feedback.

Progress of the review

The original version of the Model Code commenced operation on 1 January 2005. A revised version of the Model Code subsequently came into force on 27 June 2008 and operates to this day.

The Division sees the Model Code as an evolving document. While the framework for managing complaints about council officials has vastly improved over the six years the Model Code has been in operation, the Division agrees that there remains scope for further refinement and improvement.

Over the three years in which the revised Model Code has been in operation, the Division has identified or has had brought to its attention a number of areas where the Model Code has not operated in the manner in which it was intended or where its operation could be improved. The Division therefore considered it timely to undertake a further comprehensive review of the Model Code.

The Division commenced the review process earlier this year. A discussion paper was issued in June 2011 outlining issues raised about the operation of the current version of the Model Code. The discussion paper sought views about any other areas where the Model Code required improvement and asked for suggestions on how best to make those improvements. The discussion paper also sought submissions on possible options for improving the Model Code to address the issues that had been raised with the Division.

A total of 122 submissions were received in response to the discussion paper from a range of sources including councils, individual council officials, conduct reviewers, unions and industry bodies, Members of Parliament, NSW Government agencies such as the ICAC and the Ombudsman and members of the community.

The submissions received reflected the diversity of the local government sector, the different contexts that councils operate in and the range of stakeholders' interests that the sector impacts upon. As a result, submissions expressed a broad diversity of views on the Model Code and how it might be improved.

The position paper

Based on the Division's consideration of submissions, a reform proposal has been prepared with respect to the Model Code and the misbehaviour provisions of the *Local Government Act 1993* (the Act). The Division now seeks stakeholders' views in relation to the reform proposal.

To this end, the Division has prepared a position paper outlining its reform proposal. This may be found on the 'Publications' page of the Division's website at www.dlg.nsw.gov.au.

The Division is currently only seeking views on the general direction of the proposed changes. Once the broad direction of the proposed changes has been determined, the Division will be seeking stakeholders' further views on the technical detail that will underpin and give effect to the proposed changes. To this end, the Division will issue a draft of the revised Model Code and associated procedures and any ancillary proposals for the purposes of seeking comment on the technical detail of the proposed changes.

The Division requests that general managers bring the position paper to the attention of their councillors and staff. Councils may also wish to notify their communities of the position paper on their own websites or by other means.

The Division requests that submissions be made in writing to the following postal address:

Division of Local Government
Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

Alternatively, submissions may be made by email to dlg@dlg.nsw.gov.au.

The Division requests that submissions be received by **5 December 2011**.

Regional workshops

To assist in hearing the views of stakeholders involved in the administration of the code of conduct on the proposed reforms, the Division will be holding a series of workshops in a number of locations around the State.

Workshops are to be held on the following dates and locations:

Thursday, 10 November 2011 at 6pm: Discovery Room, Novotel Sydney Brighton Beach, Cnr The Grand Parade and Princess Street, Brighton le Sands

Monday, 21 November 2011 at 6pm: Tamworth Regional Council Chambers - Ray Walsh House, 4th Floor, 437 Peel Street, Tamworth

Tuesday, 22 November 2011 at 6pm: Dubbo Civic Administration Building – Central Conference Room, Ground Floor, Church Street, Dubbo (entry from Darling Street)

Wednesday, 23 November 2011 at 6.30pm: Wagga Wagga Civic Centre, Cnr Baylis and Morrow Street, Wagga Wagga.

Workshop numbers will be restricted to 40. For this reason, participation in the workshops will be limited to council officials involved in the administration of the code of conduct (including current conduct reviewers). Numbers will be limited to 4 persons per council. However if there are vacancies we may consider allowing additional persons to attend.

Members of the community, or other interested parties who wish to offer their views on the position paper, may do so by way of the written submission process.

Interested parties may register their interest in participating in any of the above workshops via the Division's website at www.dlg.nsw.gov.au before **4 November 2011**.

Other consultation

In addition to these workshops, staff of the Division will also be participating in the following events for the purposes of considering stakeholder feedback on the reform proposal:

- The Division will have a stall at the Local Government Association NSW Conference in Nowra between 23 and 26 October 2011 at which staff of the Division will be available to consider feedback and answer questions.
- Staff of the Division will also be attending the LGMA Governance Network meeting at Rockdale on 11 November 2011 to consider feedback from and discuss the proposal with council governance staff.

Should anyone wish to contact the Division to discuss the position paper or the Model Code of Conduct Review, they may contact Mr John Davies, Model Code of Conduct Review Project Officer, on telephone 02 4428 4139.



Steve Orr
Acting Chief Executive, Local Government
A Division of the Department of Premier and Cabinet

Division of Local Government
Department of Premier and Cabinet

Review of the Model Code of Conduct for Local Councils in NSW



October 2011

Position Paper

1. BACKGROUND

The original version of the Model Code of Conduct for Local Councils in NSW (the Model Code) commenced operation on 1 January 2005. A revised version of the Model Code subsequently came into force on 27 June 2008 and operates to this day.

We see the Model Code as an evolving document. While the framework for managing complaints about council officials has vastly improved over the 6 years the Model Code has been in operation, we agree that there remains scope for further refinement and improvement.

Over the three years in which the revised Model Code has been in operation, we have identified or have had brought to our attention a number of areas where the Model Code has not operated in the manner in which it was intended or where its operation could be improved. We therefore considered that it was timely that we undertook a further comprehensive review of the Model Code.

We commenced the review process earlier this year. We issued a discussion paper in which we outlined the issues that had been raised with us about the operation of the current version of the Model Code. We asked you about any other areas where you considered the Model Code required improvement and asked for your suggestions on how best to make those improvements. We also asked for your views on possible options for improving the Model Code to address the issues that have been raised with us.

We received a total of 122 submissions in response to our discussion paper. We received submissions from a range of sources including councils, individual council officials, conduct reviewers, unions and industry bodies, Members of Parliament, NSW Government agencies such as the ICAC and the Ombudsman and members of the community.

Based on our consideration of your submissions we have now prepared a reform proposal with respect to the Model Code and the misbehaviour provisions of the *Local Government Act 1993* (the Act).

2. WHAT IS THE PURPOSE OF THIS PAPER?

Our reform proposal is outlined in this paper. We ask that you review our proposal and provide us with your views on it.

We are currently only seeking your views on the general direction of the proposed changes. Once we have finalised the broad direction of the proposed changes, we will be seeking your further views on the technical detail that will underpin and give effect to the proposed changes. To this end, we will issue a draft of the revised Model Code and associated procedures and any ancillary proposals for the purposes of seeking your comment on the technical detail of the proposed changes.

We request that submissions be made in writing and sent to the following postal address:

Division of Local Government
Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

Alternatively, submissions may be emailed to dlg@dlg.nsw.gov.au.

We ask that submissions be received by **5 December 2011**.

Should you wish to contact us to discuss this position paper or the Model Code of Conduct Review, you may contact Mr John Davies, Model Code of Conduct Review Project Officer, on telephone 02 4428 4139.

3. WHAT HAVE YOU TOLD US?

The submissions we received reflected the diversity of the local government sector, the different contexts that councils operate in and the range of stakeholders' interests that the sector impacts upon. As a result, your submissions expressed a broad diversity of views on the Model Code and how it can be improved.

In preparing a reform proposal, we have had regard to the following needs identified in the submissions we received in relation to the discussion paper:

- For councils to be ultimately responsible for the management of complaints about the conduct of their officials.
- To put in place a framework for managing such complaints that is rigorous, cost-effective and promotes public confidence.
- To ensure that only those matters that warrant investigation are investigated and that alternative resolution strategies are available for those matters that do not warrant investigation.
- For all councils, regardless of their size and location to be able to access a pool of independent and suitably qualified persons to undertake investigations where they are warranted.
- To provide greater clarity and certainty in relation to the procedural requirements of the code at the same time as allowing flexibility.
- To ensure the code has more “teeth”.
- To ensure that rights are adequately protected and that appropriate checks and balances are in place.
- To put in place adequate protections and disincentives to prevent the misuse of the code.
- To minimise the exposure of councils to costly appeal processes in the Courts.

- To remove the current obstacles to the more effective exercise of the Division's powers under the misbehaviour provisions of the Act and to provide it with more options for managing misbehaviour.
- To make the penalties that may be applied by the Chief Executive and the Pecuniary Interest and Disciplinary Tribunal in relation to misbehaviour more effective in deterring and managing such conduct.

4. WHAT CHANGES ARE WE PROPOSING TO MAKE?

Based on the above considerations, we are proposing to:

- make a number of amendments to the standards of conduct prescribed under the code;
- create a regional framework for the administration of complaints;
- prescribe the procedural requirements of the code more clearly;
- include provisions designed to protect the integrity of the code which will be administered directly by the Division;
- seek amendments to the misbehaviour provisions of the Act to allow the Division more flexibility to exercise its powers under those provisions and to expand and enhance the sanctions available to it and the Pecuniary Interest and Disciplinary Tribunal with respect to misbehaviour.

We have provided a broad outline of our proposed changes below.

4.1 Proposed changes to the prescribed standards of conduct

We are not proposing to make major changes to the standards of conduct prescribed under the Model Code. The changes being contemplated are outlined below.

4.1.1 Changes to the political donation provisions

We propose to make minor technical amendments to the political donations provisions to align them with subsequent amendments to the *Election Funding and Disclosures Act 1981*.

We propose to expand the scope of the political donations provisions to include donations received by councillors in their capacity as candidates in

State and Federal elections. This will be done by defining the phrase “election campaign” to include “council, State and Federal election campaigns”.

We also propose to expand the scope of the political donations provisions to close a loophole that currently exists in relation to donations received by locally based political groups or parties on behalf of candidates. Currently a donation made to a locally based political party or group is not captured under clause 7.23 because the donation is not “received” by a councillor who is an endorsed candidate of the party or group but by the party or group. This means that even where it can be demonstrated that the councillor’s campaign directly benefitted from the donation, they will not be obliged to declare the donation and leave the meeting as required under clause 7.23 because they did not “receive” the donation.

We propose to close this loophole by removing the requirement under clause 7.23 that a donation be “received” by the councillor.

We also propose to make it unambiguously clear the phrase “related entity” used in clause 7.23 carries the same meaning that it does under the Corporations Law.

4.1.2 Provisions relating to the management of a loss of quorum

There have been a number of cases where councils have lost a quorum as a result of the need for a majority of councillors to comply with a requirement of the Model Code in relation to the disclosure and management of non-pecuniary conflicts of interests or an interest arising from the receipt of a political donation. In most cases, this situation can be addressed by the council by simply delegating the decision to staff. However, where the relevant function is a non-delegable one under section 377 of the Act, this will not be an option.

To address such situations we propose to include a provision in the Model Code to enable councillors to apply to the Chief Executive of the Division of Local Government to be exempted from a requirement to comply with a

provision of the Model Code. Such an exemption will only be granted in the following circumstances:

- Where compliance with an applicable requirement of the council's code of conduct in relation to a matter before council will result in the loss of a quorum, and
- Where the matter before the council relates to a function of the council that cannot be delegated under section 377 of the Act.

Where such an exemption is granted with respect to a requirement to declare and appropriately manage a non-pecuniary conflict of interests in relation to a matter, including any such conflict that arises in connection with the receipt of a political donation, the councillor will still be required to declare the interest or political donation in question at the meeting at which the matter giving rise to the conflict is considered.

4.1.3 Prohibition of binding caucus votes

We propose to include a provision in the Model Code that unambiguously prohibits participation in binding caucus votes in relation to any matter. It should be made clear that the amendment is intended to prohibit participation in binding caucus votes and not caucusing. Councillors will still be permitted to caucus or discuss matters to be dealt with by the council provided they remain free to deal with such matters on their merits.

4.1.4 Expansion of scope of the provision relating to use of council property or facilities for re-election purposes

We propose to expand the scope of clause 10.16 to cover the use of all council property and facilities for the purposes of all election campaigns, Local, State and Federal and regardless of whether the councillor using the property or facilities is the candidate who benefits from the use.

4.1.5 Provisions relating to lobbying

We propose to incorporate into the general conduct provisions, a provision that currently appears in some councils' adopted codes of conduct in relation to lobbying. This will require council officials to, among other things, be alert to the motives and interests of those who seek to lobby, avoid saying or doing anything which could be viewed as granting a lobbyist preferential treatment, keep records of all meetings with lobbyists, where possible have another person attend the meeting or take notes and only hold meetings with lobbyists in appropriate locations, such as the council offices.

4.1.6 Relationships between council officials

We propose to make the following amendments to the provisions relating to relationships between council officials:

- We propose to amend clause 9.2(d) to extend the exemption that allows councillors or administrators to contact the council's external auditors to include the Chair of the council's audit committee.
- We propose to amend clause 9.4 to include a paragraph (e) which will in effect provide that members of staff of council must ensure that any participation in party political activities does not conflict with their primary duty as an employee to serve the council in a politically neutral manner.
- We propose to amend clause 9.7 and in particular paragraphs (a) and (b) to provide that councillors, administrators and council staff and staff organisations should not approach each other to discuss individual staff or industrial issues. The exemptions contained in paragraphs (a) and (b) and clause 9.8 that apply to industrial policy issues will be removed.
- We propose to add another paragraph to clause 9.7 that in effect provides that councillors should not meet with developers alone to discuss development applications or proposals. We acknowledge that it

will often be necessary for councillors to meet with such persons on site and outside office hours. However, they should not do so alone.

4.1.7 Gifts and benefits

We propose to extend the absolute prohibition on the acceptance of money currently contained in clause 8.3(e) to include any form of credit or cash-like gift, such as, but not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts, regardless of the amount or value.

We also propose to mandate the written disclosure of all offers of gifts and benefits regardless of their value and whether or not the gift or benefit was accepted or refused. Council officials will be required to disclose the following in writing:

- The nature of the gift or benefit
- Its estimated value
- Whether it was accepted or refused
- If it was accepted why it was not refused
- If it was accepted, what was done with it (ie was it surrendered or kept)

4.1.8 Application of the code of conduct to contractors

We propose to provide greater guidance on how the code of conduct could be made to apply to volunteers and contractors. The introduction to the Model Code will include a statement to the effect that council contractors should also be required to observe the relevant provisions of the council's code of conduct where they are not "council officials" for the purposes of the code. Councils should require contractors, their employees and subcontractors to comply with relevant provisions of its code of conduct under the terms of the contract they enter into with the council. Councils should also require volunteers to comply with relevant provisions of its code of conduct as a condition of their appointment.

4.2 Proposed changes to the administrative framework

4.2.1 A regional approach to the administration of complaints

We are proposing to prescribe regional arrangements for the administration of complaints made under councils' codes of conduct.

We are proposing to prescribe regional groups of councils for the purpose of establishing regional panels of conduct reviewers. It is likely that these will be based on existing Regional Organisations of Councils (ROCS).

A regional group of councils will be required to establish a regional panel of conduct reviewers. Regional panels of conduct reviewers are to be appointed for a maximum term of four years.

Two or more regional groups of councils may form an alliance for the purpose of sharing the same panel of conduct reviewers.

Individual councils may opt out of the use of a regional panel of conduct reviewers with the consent of the Division. However, to obtain such consent, councils will need to be able to demonstrate to the satisfaction of the Division that they have appropriate arrangements in place for the appointment of their own panel of conduct reviewers and for the performance management and termination of conduct reviewers.

Persons are to be appointed to a regional panel of conduct reviewers pursuant to a competitive expression of interest process. To ensure that persons are selected from the broadest available pool of suitably qualified persons, expressions of interest must, at a minimum, be advertised in one local and one metropolitan newspaper.

We propose to prescribe minimum selection criteria for the appointment of persons to the regional panel of conduct reviewers. Criteria would include, but would not be limited to such things as a capacity to understand the local government context and an understanding of investigative processes, including procedural fairness requirements.

As with the current Model Code, to be eligible to be a member of a panel of conduct reviewers, a person must be independent of the member councils.

Where persons who provided other services to councils under a contract were formerly precluded from serving as conduct reviewers, this restriction will now be removed. This will ensure that the broadest possible pool of service providers is available to councils.

However new safeguards will be put in place. In particular, conduct reviewers will be obliged to refuse to accept the referral of a matter where:

- they have a conflict of interests in relation to a matter referred to them, or
- a reasonable apprehension of bias arises in connection with their consideration of a matter referred to them

Examples of situations where a conduct reviewer may have a conflict of interests in relation to a matter referred to them would be where:

- they or their employer have entered into one or more contracts with the council the complaint relates to in the two years preceding the referral and have received cumulative payments under the contract or contracts of \$150K or over, or
- at the time of referral, they or their employer are members of a panel of legal service providers appointed by the council the complaint relates to.

A person may be a member of more than one regional panel of conduct reviewers.

4.2.2 The management of the performance of conduct reviewers

A regional group of councils will be required to nominate a person other than a councillor or general manager of a member council to act as a “regional panel coordinator” to ensure conduct reviewers meet the eligibility

requirements for membership of the regional panel of conduct reviewers and to address issues of unsatisfactory performance by a conduct reviewer.

A regional panel coordinator will be able to remove a conduct reviewer from a regional panel on grounds that they have failed to exercise their role in a satisfactory manner or that they no longer meet the eligibility requirements for membership of the panel. We propose to prescribe a process for doing so that ensures compliance with procedural fairness requirements.

Prior to removing a conduct reviewer from a regional panel of conduct reviewers, the regional panel coordinator must also obtain the consent of the Chief Executive of the Division of Local Government.

4.2.3 The appointment of complaints coordinators

Under our proposed amendments, the general manager will be required to nominate a senior and suitably qualified member of staff of the council to serve as a “complaints coordinator”. The general manager may not perform the role of complaints coordinator.

The role of a complaints coordinator will be an administrative one. The role of a complaints coordinator will be to:

- Coordinate the management of complaints made under the council’s code of conduct, and
- Provide administrative and other support to a complaints assessor or conduct reviewer, and
- To act as a point of liaison between a complaints assessor, conduct reviewer and the Division of Local Government and the council a complaint relates to, and
- To arrange the annual reporting of code of conduct complaint statistics.

4.2.4 The appointment of complaints assessors

Councils will be required to nominate by resolution the general manager of another council in the regional group of councils or any allied regional group of councils to serve as the council's "complaints assessor" and one or more others as an alternate to that role.

The role of the complaints assessor will be to make a preliminary assessment of complaints.

The use of general managers of other councils within a region to undertake the preliminary assessment role offers the following advantages:

- He or she will be independent of the council the complaint relates to
- He or she will have a practical understanding of how councils operate
- He or she will understand the local context, and
- The use of neighbouring general managers to make preliminary assessments is more cost effective than the use of contractors.

A complaints assessor must not consider a matter referred to them where they have a conflict of interests in relation to the matter or a reasonable apprehension of bias may arise in connection with their consideration of the matter.

The alternates to the complaints assessor are to be used where the substantive holder of that role is unavailable or otherwise precluded from performing that role in relation to a particular matter.

4.3 Proposed changes to procedural requirements

4.3.1 Separation of procedural requirements from the Model Code

To remove the ambiguities of the current version of the Model Code, we are proposing to make the procedural requirements of the code more prescriptive. This will necessarily result in a larger, denser document.

We are concerned that this may have the effect of making it less user-friendly to council officials and members of the community seeking to identify the standards of conduct council officials are required to comply with. To overcome this we are proposing to split the Model Code into two instruments:

- A Model Code of Conduct for Local Councils in NSW (comprising solely of the prescribed standards of conduct), and
- Procedures for the Administration of the Model Code (comprising of the procedural requirements of the Code) (referred to below as the “Model Code procedures”).

Councils will be required to adopt a code of conduct and procedures for the administration of their code of conduct that incorporate the provisions of the Model Code and the Model Code procedures respectively.

As is currently the case, councils may include in their adopted codes of conduct and procedures, supplementary provisions to those prescribed under the Model Code and Model Code procedures. However, as is currently the case, a council’s code of conduct and procedures will have no effect to the extent that they are inconsistent with the prescribed Model Code and Model Code procedures.

As is currently the case, a provision of a council’s code of conduct will not be inconsistent with the prescribed Model Code merely because the provision makes a requirement of the prescribed Model Code more onerous. However this exemption will not apply to the prescribed Model Code procedures.

4.3.2 How will complaints be made?

All complaints under a council’s code of conduct other than those relating to the general manager are to be made at first instance to the general manager of the council concerned in writing. Complaints about the general manager are to be made at first instance to the Mayor in writing.

The general manager and the Mayor (in the case of the general manager's conduct) will also be permitted to initiate the consideration of matters under the code of conduct without a complaint.

Complaints must be made or initiated within two years of the occurrence of the alleged conduct the subject of the complaint. It should be noted that the discretion to decline complaints received after this time on grounds that the conduct occurred too long ago will remain.

The general manager will continue to be responsible for the management of code of conduct complaints about staff, delegates and community members of council committees. We propose to retain the provisions relating to the management of such complaints. However, the general manager will be required to refer complaints about a conduct reviewer to the regional panel coordinator.

The role of general managers and Mayors in relation to complaints about councillors and the general manager will be restricted simply to the receipt of such complaints. Such complaints about councillors will be managed as follows:

- The following complaints about councillors and, where appropriate, the general manager are to be referred to the Division of Local Government:
 - Complaints alleging a breach of the pecuniary interest provisions of the Act
 - Complaints alleging a failure by a councillor to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interests arising from the receipt of a political donation
 - Complaints alleging a breach by a councillor of the provisions of the code of conduct relating to the misuse of the code of conduct (see below)

- All other complaints about councillors or the general manager made under the code of conduct are to be referred to the complaints coordinator.

The complaints coordinator will in turn refer all complaints about councillors or the general manager submitted to them to a complaints assessor appointed by the council for preliminary assessment.

4.3.3 Preliminary assessment by the complaints assessor

We propose to retain the complaint assessment criteria currently prescribed under clause 13.1 of the current version of the Model Code. However we propose to add the following criteria to the matters a complaints assessor is required to consider:

- whether the substantive issues giving rise to the conduct complained of have been previously addressed
- whether there were mitigating circumstances giving rise to the conduct complained of
- whether the conduct or the consequences of the conduct complained of can be resolved by alternative means such as but not limited to counselling, training, mediation, informal discussion, negotiation or apology.

We also propose to amend the criteria currently specified at clause 13.1(f) to provide “whether there is *or was* an alternative and satisfactory means of redress”

We propose to largely retain the current options available at the preliminary assessment stage for dealing with complaints prescribed under clauses 12.9 and 12.11 of the Model Code of Conduct. These are as follows with the following amendments:

- To take no action

- To refer the matter to the general manager of the council concerned, 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 counselling, training, mediation, informal discussion, negotiation or apology.
- To refer the matter to an external agency or body (such as ICAC, the NSW Ombudsman, the Division of Local Government or the Police)
- To refer the matter to a conduct reviewer.

However, we propose to provide that the complaints assessor may exercise one or more of these options (ie that they are not mutually exclusive). This means that it would be open to a complaints assessor, having unsuccessfully referred a matter to the general manager or Mayor for resolution by alternative means to then refer the matter to a conduct reviewer, or alternatively, to take no further action.

We propose to allow the complaints assessor to make limited enquiries to assist in their preliminary assessment of a matter. However, the complaints assessor should not seek to exercise an investigative role in relation to the matter exercisable by a conduct reviewer under the Model Code procedures.

Where a complaints assessor determines that a complaint is one that may be resolved by alternative means, they will be required to write to the general manager of the council concerned or, in the case of a complaint about the general manager, the Mayor, recommending the means by which the complaint may be resolved. The complaints assessor is to consult with the general manager or Mayor prior to doing so. The general manager, or in the case of a complaint about the general manager, the Mayor, will be responsible for implementing or overseeing the implementation of the complaints assessor's recommendation. The general manager or Mayor may decline to accept the complaints assessor's recommendation.

Where the complaints assessor has recommended that the matter be resolved by alternative means, the general manager, or in the case of a

complaint about the general manager, the Mayor, will advise the complainant in writing of the steps taken by the council to implement the complaints assessor's recommendation once these steps have been completed.

4.3.4 Referral of a matter to a conduct reviewer

To minimise the costs associated with the consideration of matters by conduct reviewers, we propose to remove the option of referring a matter to conduct review committees of three or more persons. Under our proposed amendments, the Model Code procedures will only provide for the referral of matters to sole conduct reviewers.

Where a complaints assessor determines to refer a matter to a conduct reviewer, they will be responsible for appointing one from the regional panel of conduct reviewers. This will ensure that not only will the conduct reviewer be independent of the council the complaint relates to, but they will also be appointed by a person independent of that council.

In selecting a suitable conduct reviewer, the complaints assessor may have regard to the qualifications and experience of members of the regional panel of conduct reviewers. Where practical, the complaints assessor will refer the matter to a conduct reviewer that lives outside the local government area of the council the complaint relates to. In selecting a conduct reviewer, the complaints assessor may consult with the regional panel coordinator.

As stated above, as an additional safeguard, a conduct reviewer will be obliged to decline to accept the referral of a matter, where:

- they have a conflict of interests in relation to a matter referred to them,
or
- a reasonable apprehension of bias arises in connection with their consideration of a matter referred to them

Examples of situations where a conduct reviewer may have a conflict of interests in relation to a matter referred to them would be where:

- they or their employer have entered into one or more contracts with the council the complaint relates to in the two years preceding the referral and have received cumulative payments under the contract or contracts of \$150K or over, or
- at the time of referral, they or their employer are members of a panel of legal service providers appointed by the council the complaint relates to.

The onus will be on a conduct reviewer to identify whether there are any issues that may preclude their consideration of a matter referred to them by a complaints assessor. Where they do so, they must decline to accept a matter referred to them and notify both the complaints assessor and the regional panel coordinator in writing of their decision and the grounds for it.

For contractual purposes, the conduct reviewer will be retained by the council the complaint relates to and will be remunerated for their services by that council.

4.3.5 Conduct reviewer's preliminary assessment of a matter

As is the case with the current provisions of the Model Code, conduct reviewers will be required to make a preliminary assessment of a matter referred to them. This is to be done having regard to the complaint assessment criteria currently prescribed under clause 13.1 but as amended as foreshadowed above.

We propose to retain most of the current options available to conduct reviewers at the assessment stage prescribed under clause 12.19 of the Model Code. In the interests of maintaining procedural simplicity, however, we propose to remove the option for a conduct reviewer to engage another appropriately qualified person to make enquiries into the complaint on their behalf. We propose to add the option of referral to the Mayor or general manager for resolution. The options that will be available to a conduct reviewer will be as follows:

- To take no action.
- To resolve the matter by alternative and appropriate strategies such as but not limited to counselling, training, mediation, informal discussion, negotiation or apology.
- To refer the matter to the general manager of the council concerned, 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 counselling, training, mediation, informal discussion, negotiation or apology.
- To refer the matter to another agency or body (such as ICAC, the NSW Ombudsman, the Division of Local Government or the Police).
- To investigate the matter.

However, as with the complaints assessor, we propose to provide that the conduct reviewer may exercise one or more of these options. This means that it would be open to a conduct reviewer, having unsuccessfully attempted to resolve a matter by alternative means to determine either to take no further action or to investigate a matter.

As is the case with complaints assessors, conduct reviewers will be permitted to make limited enquiries to assist in the assessment of a matter referred to them.

To minimise the use of investigations where this may not be warranted, where a conduct reviewer determines to investigate a matter referred to them, in their final investigation report to the council, they will be required to:

- provide reasons for their decision to investigate the matter, and
- explain why the matter was one that could not or should not be resolved by use of alternative means.

The Guidelines to the Model Code of Conduct will provide further guidance on the types of matters that may be suitable for resolution by means other than investigation.

To assist councils where a matter has been referred back to the general manager or Mayor by the complaints assessor or the conduct reviewer for resolution by alternative means, the Guidelines may also include non-mandatory guidelines on the use of mediation.

4.3.6 Investigations by conduct reviewers

We are proposing to make the provisions relating to the procedures conduct reviewers are required to follow in investigating a matter more prescriptive. We are also proposing to provide greater clarity on the procedural fairness requirements that apply to code of conduct investigations.

As with the current provisions of the Model Code, conduct reviewers will only be permitted to investigate the matters referred to them for consideration by the complaints assessor. Where a conduct reviewer identifies further possible breaches of the code of conduct in the course of investigating a matter referred to them, they will be required to report these matters separately to the general manager, or in the case of conduct on the part of the general manager, to the Mayor. The general manager or the Mayor is to deal with such reports as if they were a new complaint under the code of conduct.

Where a conduct reviewer determines to investigate a matter referred to them, they will be required at the outset of their investigation to provide a written “notice of investigation” to the person the subject of the investigation (the subject person). The notice of investigation must:

- disclose the substance of the allegations against the subject person;
- advise of the relevant provisions of the code of conduct that apply to the alleged conduct if proven;
- advise of the process to be followed in investigating the matter;

- invite the subject person to make a written submission in relation to the matter within such reasonable period specified by the conduct reviewer;
- provide the subject person with an opportunity to personally address the conduct reviewer on the matter at a time convenient to both the conduct reviewer and the subject person but within such reasonable period specified by the conduct reviewer.

The subject person may request in writing that the conduct reviewer provide them with any further information necessary to identify the substance of the allegations against them. However, a conduct reviewer will only be obliged to provide such information that the conduct reviewer considers reasonably necessary for the subject person to identify the substance of the allegations against them.

The conduct reviewer will also be required to provide written notice of the investigation to the complainant, the complaints coordinator and the general manager of the council concerned, or, in the case of a complaint about the general manager, the Mayor. This must be issued at the same time the notice of investigation is issued to the subject person. The notice must:

- advise them of the matter that the conduct reviewer is investigating, and
- in the case of the notice to the complainant, invite them to make a written submission in relation to the matter within such reasonable time specified by the conduct reviewer.

Where the subject person or the complainant fails to take the opportunity to make a written submission in relation to the matter within the period specified by the conduct reviewer in their notice of investigation without reasonable excuse, the conduct reviewer may proceed to prepare their draft report without receiving such submissions.

Prior to preparing their draft report, conduct reviewers will be required to provide the subject person with an opportunity to personally address the conduct reviewer on the matter being investigated. The subject person may do so in person or by telephone. Where the subject person fails to take the opportunity to personally address the conduct reviewer within the period specified by the conduct reviewer in their notice of investigation, the conduct reviewer may proceed to prepare their draft report without hearing from the subject person.

Conduct reviewers will be required to consider all written and oral submissions made to them in relation to the matter.

Conduct reviewers will also be required to undertake any such enquiries that may be reasonably necessary to establish the facts of the matter.

Once a conduct reviewer has completed their enquiries and considered any written and oral submissions made to them in relation to the matter, they will be required to prepare a draft of their proposed final report (a draft report). Conduct reviewers will be required to provide their draft report to the subject person and invite them to make a written submission in relation to it within such reasonable period specified by the conduct reviewer. Where a conduct reviewer proposes to make adverse comment about any other person in their report (an affected person) they will also be required to provide that person with relevant extracts of their draft report containing such comment and invite the person to make a written submission in relation to it within such reasonable period specified by the conduct reviewer.

Conduct reviewers will be required to consider written submissions received with respect to the draft report prior to finalising their report.

4.3.7 Referral or resolution of a matter after the commencement of an investigation

At any time after the conduct reviewer has issued a notice of investigation and before they have issued their draft report, the conduct reviewer may determine to:

- resolve the matter by alternative and appropriate strategies such as but not limited to counselling, training, mediation, informal discussion, negotiation or apology;
- refer the matter to the general manager of the council concerned, 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 counselling, training, mediation, informal discussion, negotiation or apology;
- refer the matter to another agency or body (such as ICAC, the NSW Ombudsman, the Division of Local Government or the Police).

Where the conduct reviewer determines to exercise any of these options after they have issued a notice of investigation, they may subsequently discontinue their investigation of the matter. This will serve to finalise their consideration of the matter under the code of conduct and the conduct reviewer will not be obliged to report their findings to the council.

However, where the conduct reviewer does not subsequently discontinue their investigation of the matter, they may, at any time after they determine to exercise any of these options, resume their investigation.

4.3.8 Conduct reviewers' reports

Where a conduct reviewer issues a notice of investigation, they must make findings on whether, in their view, the conduct investigated constitutes a breach of the code of conduct. As stated above we propose to provide an exception to this requirement where, having commenced an investigation, a conduct reviewer successfully exercises the options to resolve the matter by alternative means and discontinues their investigation.

Where a conduct reviewer makes findings they may make any recommendation to the council prescribed under the Model Code procedures. We propose to retain the current list of recommendations available to a conduct reviewer to make under clause 14.9. However, we propose to add to

the list a recommendation that the subject person be required to undertake training or other education relevant to the conduct giving rise to the breach.

Where the conduct reviewer makes findings they must report their findings to the council concerned, the subject person and the complainant. The conduct reviewer will not be permitted to report their findings at any time before they have finalised their consideration of the matter in accordance with the requirements of the Model Code procedures.

We propose to prescribe the matters that must at a minimum be included in a conduct reviewer's final report.

4.3.9 Consideration of conduct reviewers' reports by councils

Grounds currently exist under section 10A(2)(a) of the Act for councils to consider reports about the conduct of a general manager in a closed meeting. However, as councillors are elected officials we believe that they should be publicly accountable for their conduct. Accordingly we consider that reports about the conduct of councillors should continue to be dealt with in open council meetings unless grounds exist under section 10A that would otherwise permit the closure of the meeting to consider the report.

Where the complaints coordinator is concerned on reasonable grounds about the potential exposure of a council to defamation action arising from the publication of a conduct reviewer's report, the complaints coordinator may, with the prior consent of the Division of Local Government, put in place alternative arrangements for making the report available to councillors for their inspection prior to the meeting.

Where the complainant is a councillor they will be required to be absent from the meeting and will not be permitted to take part in any discussion or voting on the matter. The complainant councillor may absent themselves without being required to make any declaration in relation to the matter.

Prior to making a determination in relation to the matter, the council will be required to provide the subject person with an opportunity to make an oral

submission to the council on the conduct reviewer's findings and recommendations. Once the subject person has completed their oral submission, they will be required to absent themselves from the meeting and will not be permitted take part in any discussion or voting on the matter.

The council will be required to make a determination by resolution in relation to each allegation made against the subject person to the effect that the person has either:

- breached the code of conduct, or that
- they have not breached the code of conduct.

Where the council makes a determination in relation to an allegation that is not consistent with the conduct reviewer's findings, the council must state in its resolution the grounds upon which it has made a different determination and the complaints coordinator is to notify the Division of Local Government of the council's determination and the reasons for it.

As with the current Model Code, in order to impose a sanction, the council must first determine by resolution that the subject person has breached the code of conduct.

We propose to retain the current list of sanctions available to a council to impose prescribed under clause 12.25. However, we propose to add the following to the list of available sanctions:

- a requirement that the councillor or general manager undertake training or other education relevant to the conduct giving rise to the breach;
- the council may request that the Director General suspend a councillor for misbehaviour.

4.3.10 Reporting on complaints statistics

The complaints coordinator will be required to arrange for certain prescribed complaints statistics to be reported to the council on an annual basis.

Councils will also be required to provide these to the Division of Local Government.

4.3.11 Provisions to excuse procedural defects

We acknowledge that with a more prescriptive process comes an increased risk of unintended procedural errors. Where such errors are minor or technical in nature we do not believe that they should have the effect of invalidating an otherwise legitimate determination in relation to a matter.

To this end, we propose to include provisions in the Model Code procedures that will have the effect of excusing procedural defects in certain circumstances.

4.4 Measures to ensure the integrity of code of conduct processes

4.4.1 The role of the Division of Local Government

We propose to take a more active role in the oversight of the implementation by councils of their codes of conduct. In the past we have been constrained from doing so by the risk that any intervention in the consideration of a matter under a council's code of conduct would potentially preclude us from subsequently exercising our powers under the misbehaviour provisions of the Act.

The Division has now put in place a new organisational structure that will support this more active role. Under its new structure, the Division will have separate Council Governance and Investigations Units. This will ensure a functional separation of the Division's oversight role in relation to the implementation of the Model Code on the one hand and the exercise its functions under the misbehaviour provisions on the other. The Council Governance Unit will, among other things, be responsible for the oversight of the implementation of the Model Code. The Investigations Unit will be responsible for the exercise of the Division's investigative and enforcement functions under the misbehaviour provisions of the Act.

4.4.2 Rights of review

The current Model Code does not currently provide for any right of appeal or review. However, as a matter of practice, the Division of Local Government has dealt with complaints about the implementation by councils of their codes of conduct.

As a general rule the Division would normally only intervene in a code of conduct matter in circumstances where it is apparent that a council has failed to correctly apply its code of conduct (either because it has failed to correctly follow the prescribed procedures or because it has misinterpreted the prescribed standards of conduct) or where the Division is exercising its powers under the misbehaviour provisions of the Act. In the absence of these circumstances, the Division would not normally comment on the merits of a complaint or a determination made in relation to it under the code of conduct.

It is our intention to formalise this role in the Model Code procedures. We propose to do so by providing the following two avenues of external review:

- Where any person believes that a person responsible for exercising a function under the code of conduct has failed to comply with a procedural requirement they may at any time prior to the council's final determination in relation to the matter, raise their concerns in writing with the Division of Local Government.
- After a council has made a final determination under the Code of Conduct, any person may within 28 days of the determination seek a review by the Division of Local Government of the council's determination. The only grounds upon which a review may be sought are that the council has failed to comply with a procedural requirement or has misapplied the prescribed standards of conduct under the code. A request for a review must be made in writing and specify the grounds upon which the person believes the council has erred in its determination. The Division will undertake a review of the council's determination on the basis of the grounds asserted by the person requesting the review. Such a review will be a "review on the papers".

The Division will not be obliged to conduct a review where the grounds upon which a review is sought are not sufficiently specified.

The Division of Local Government may also intervene in the consideration of a matter under the council's code of conduct without a review request where it considers such intervention to be warranted.

Reviews will be undertaken by the Division's Council Governance Unit. The reviewing officer will notify the person who requested the review and the complaints coordinator of the council concerned of the outcome of their review in writing and reasons for their decision. The complaints coordinator will, be required, where practicable, to arrange for the reviewing officer's advice to be tabled at the next ordinary council meeting.

Where the reviewing officer considers that the council has erred in its determination, the reviewing officer may recommend that the council review its determination. Where the reviewing officer recommends that the council review its previous determination in relation to the matter, the council will do so at the meeting the reviewing officer's advice is tabled.

In reviewing its previous determination in relation to the matter, the council will be required to consider the reviewing officer's written advice. Where the council reaffirms its previous determination in relation to the matter, the council must state in its resolution the grounds upon which it has done so.

4.4.3 Practice Rulings and Practice Directions

We also propose to establish a process to enable the Division to provide greater procedural guidance in relation to the consideration of matters under a council's code of conduct. These include the following:

- Practice rulings in relation to particular matters being dealt with under the code of conduct, and
- Practice directions which have a broader application.

Practice rulings and practice directions will be issued by the Division's Council Governance Unit.

4.4.4 Disclosure of the identity of complainants

It is our intention to include provisions in the Model Code procedures that provide greater guidance on the disclosure of the identity of complainants.

As with the current Model Code of Conduct, we propose to provide that complaints made under the code of conduct that are public interest disclosures for the purposes of the *Public Interest Disclosures Act 1994* are to be managed in accordance with the requirements of that Act and any guidelines issued by the NSW Ombudsman in relation to the management of such complaints.

We also propose to provide that section 22 of the *Public Interest Disclosures Act 1994* will apply to complaints made by all persons other than councillors under the code of conduct. In effect, this will require that no person disclose the identity of a complainant unless:

- the complainant consents in writing to the disclosure, or
- procedural fairness would require the disclosure of the identifying information, or
- a conduct reviewer is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.

This requirement will not apply where the complainant is a councillor unless the complaint made by the councillor is a public interest disclosure for the purposes of the *Public Interest Disclosures Act 1994*. We believe that because of the position councillors occupy, the potential for a councillor to suffer detriment as a result of their having made a complaint is not the same as it is for other persons. We are also concerned that some councillors have exploited the opportunities confidentiality offers to make complaints about political opponents.

4.4.5 Provisions to prevent the misuse of the code

We propose to prescribe new standards of conduct under the Model Code that are designed to prevent the misuse of the code of conduct and the code of conduct process. These include the following:

- It will be a breach of the code of conduct for a council official to make a complaint or to cause a complaint to be made under the code of conduct for a substantially improper purpose. The Code will define what constitutes an “improper purpose”.
- It will also be a breach of the code of conduct to take detrimental action or to cause detrimental action to be taken against any person substantially in reprisal for a complaint they have made under the code of conduct or any action or function they have exercised under the Model Code procedures. The definition of “detrimental action” will align with the definition of that phrase used in the *Public Interest Disclosures Act 1994*.
- As is currently the case, it will be a further breach of the code of conduct for a person who a council has determined to be in breach of the code of conduct to fail to comply with any council resolution requiring the person to take action as a result of that breach without a reasonable excuse.
- It will also be a breach of the code of conduct to fail to comply with a reasonable and lawful request made by a person exercising a function prescribed under the Model Code procedures without a reasonable excuse.
- It will also be a breach of the code of conduct to fail to comply with a practice ruling by the Division (see above) without a reasonable excuse.

- As is currently the case, it will be a breach of the code of conduct to make allegations of suspected breaches of the code of conduct at council meetings or in other public forums.
- It will also be a breach of the code of conduct to publicly disclose information about the consideration of a matter under the code of conduct unless the disclosure is otherwise permitted under the Model Code procedures.

Complaints alleging breaches by councillors of these provisions are to be made directly to the Division of Local Government or referred to it by the general manager. Such complaints will be dealt with by the Division's Investigations Unit under the misbehaviour provisions of the Act. Amendments to these provisions are proposed below to facilitate this expanded role.

Complaints about other council officials alleging breaches of these provisions are to be dealt with by the general manager or, where appropriate, the Mayor in accordance with the provisions that apply to other breaches of the code (see above).

4.5 Proposed amendments to the misbehaviour provisions

We propose to seek amendments to the Act to simplify and streamline the process for taking action under the misbehaviour provisions. We also propose to seek amendments to give the Division more options for managing misbehaviour under the Act. Accordingly the misbehaviour provisions will no longer focus simply on "suspension" as the sole form of action available for misbehaviour but will also refer to a broader range of options known collectively as "disciplinary action".

The amendments will maintain the existing two avenues for seeking disciplinary action to be taken against councillors under the misbehaviour provisions. These are:

- Action by the Chief Executive as delegate of the Director General (referred to below as the Director General).
- Action by the Local Government Pecuniary Interest and Disciplinary Tribunal (referred to below as the Tribunal).

4.5.1 Disciplinary action by the Director General

We propose to seek an amendment to section 440H to allow disciplinary action to be initiated by any of the following means:

- A request made by a council by a resolution communicated to the Director General, in which the council states its belief that grounds may exist that warrant a councillor's suspension, or
- Referral by the general manager where such referral is required under the Act or by an applicable provision of the Model Code procedures, or
- At the Director General's own motion, or
- A request made by the Director General to the council for a report from the council in relation to the councillor's alleged misbehaviour, or
- A report made by the Ombudsman in which the Ombudsman states that the Ombudsman is satisfied that grounds exist that warrant disciplinary action, or
- A report made by the Independent Commission Against Corruption in which the Commission recommends that consideration be given to disciplinary action.

Under the proposed amendments, the misbehaviour process could not be initiated by a request made by a council to the Director General unless the council concerned has first formally censured the councillor for the incident or incidents of misbehaviour referred to the Director General for disciplinary action.

We propose to seek an amendment to section 440I to expand the grounds upon which action may be taken under the misbehaviour provisions. Under our proposed amendments to section 440I, disciplinary action could be taken against a councillor or the councillor suspended simply on the grounds that the councillor's behaviour has involved one or more incidents of misbehaviour.

As is currently the case under section 440J, the preparation of a departmental report will be a prerequisite to a decision by the Director General to take disciplinary action or to suspend the councillor from office. The Director General may authorise a member of the staff of the Division to conduct an investigation into any or all of those matters to assist in the preparation of the departmental report. However, the preparation of a departmental report is not necessary if the Independent Commission Against Corruption or the Ombudsman states in a report that the Commission or Ombudsman is satisfied that grounds exist that warrant disciplinary action or the councillor's suspension.

Under our proposed amendments to the misbehaviour provisions, where the Director General has considered a departmental report and is satisfied that grounds exist that warrant disciplinary action, he or she may by order in writing take one or more of the following disciplinary actions with respect to misbehaviour:

- Counsel the councillor;
- Reprimand the councillor;
- Make public findings of misbehaviour;
- Require the councillor to apologise to any person adversely affected by the behaviour that constitutes an incident of misbehaviour;
- Require the councillor to undertake training specified in the order;
- Require the councillor to reimburse a sum of money specified in the order to a person or organisation specified in the order;

- Require the councillor to take such other action specified in the order;
- Suspend the councillor's right to be paid any fee or other remuneration, to which the councillor would otherwise be entitled as the holder of the civic office, in respect of a period not exceeding 3 months.

A failure by a councillor to comply with a requirement under an order issued by the Director General under the section will constitute grounds for suspension from civic office by the Director General or referral to the Tribunal. To support this, we propose to seek an amendment to section 440F to expand the definition of misbehaviour to include "a failure to comply with an order made by the Director General under this Division".

We propose to retain sections 440K and 440L which relate to the Director General's power to suspend a councillor from civic office. Under the current provisions of section 440K, the Director General may by order suspend a councillor from civic office where he or she has considered a departmental report into the matters concerned and is satisfied that grounds exist that warrant the councillor's suspension (or the ICAC or Ombudsman is satisfied in the case of reports by those agencies).

However the period for which the Director General may suspend a councillor from civic office will be increased from one to three months.

The rights of appeal to the Tribunal under section 440M that apply to orders for suspension will be retained. We propose to also provide a right of appeal to the Tribunal under section 440M against orders for disciplinary action.

As is currently the case, under section 440O, the Director General may, after considering a request, referral or report made under section 440H and any relevant departmental report prepared under section 440J, decide to take no further action on the request or report, whether or not a departmental investigation or departmental report has been authorised, started or completed, if satisfied that no further action is warranted.

As is also currently the case, the Director General may, instead of taking disciplinary action or referring the matter to the Pecuniary Interest and Disciplinary Tribunal, refer the matter to the council with recommendations as to how the council might resolve the matter, by alternative dispute resolution or otherwise.

4.5.2 Disciplinary action by the Tribunal

The Director General's powers to refer a matter under section 440N will remain largely unchanged. However we propose to remove the requirement under subsection (2) that a matter that is the subject of a request by a council may not be referred to the Tribunal unless the councillor concerned has previously been suspended for misbehaviour. Under our proposed amendments, the Director General will be able to refer such matters to the Tribunal even though the councillor had not been previously suspended.

We propose to seek an amendment to section 482A which relates to the Tribunal's powers to impose sanctions in relation to misbehaviour matters to align it with the powers the Tribunal currently exercises in relation to pecuniary interest matters. This will, in effect, confer on the Tribunal an additional power to disqualify a councillor from holding civic office for a period of up to 5 years for misbehaviour.

Under our proposed amendments, the Tribunal will have the power to impose the following sanctions with respect to misbehaviour if it finds a complaint against a councillor is proved:

- counsel the councillor, or
- reprimand the councillor, or
- suspend the councillor from civic office for a period not exceeding 6 months, or
- disqualify the councillor from holding civic office for a period not exceeding 5 years, or

- disqualify the councillor from holding the office of Mayor for a period not exceeding 5 years, or
- suspend the councillor's right to be paid any fee or other remuneration, to which the councillor would otherwise be entitled as the holder of the civic office, in respect of a period not exceeding 6 months (without suspending the councillor from civic office for that period).

4.5.3 Investigative powers of the Division of Local Government

To enhance the Division's capacity to effectively investigate misbehaviour (and pecuniary interest) matters, we propose to seek an amendment to the Act to empower the Director General or a person authorised by the Director General to investigate a matter to compel a councillor or member of staff of a council to provide information or produce documents.

5. WHAT DO WE WANT FROM YOU?

We want to ensure that the above proposed changes are workable and will provide for the more effective and efficient administration of the code of conduct.

To this end, we would like to hear your views on what we are proposing.

As stated above, we are currently only seeking your views on the general direction of the proposed changes. Once we have finalised the broad direction of the proposed changes, we will be seeking your further views on the technical detail that will underpin and give effect to the proposed changes. To this end, we will issue a draft of the revised Model Code and associated procedures and any ancillary proposals for the purposes of seeking your comment on the technical detail of the proposed changes.

We request that you make your submissions in writing to the following postal address:

Model Code of Conduct Review
Division of Local Government
Locked Bag 3015
NOWRA NSW 2541

Alternatively your submission may be lodged electronically via email to: dlg@dlg.nsw.gov.au .

We ask that submissions be received by **5 December 2011**.

Should you wish to discuss this position paper or the Model Code of Conduct Review, please contact Mr John Davies, Model Code of Conduct Review Project Officer, on telephone 02 4428 4139.

6. WHERE TO FROM HERE?

We will consider your submission in finalising our reform proposal.

In order to give effect to our proposed changes, it will be necessary to do the following:

- draft an amended Model Code,
- draft Model Code procedures,
- seek amendments to Act and Regulation to support the changes.

Prior to doing so, we intend to issue the following for comment:

- the draft amended Model Code,
- the draft Model Code procedures, and
- a summary of the proposed amendments to the Act and Regulation.

This will provide you with a further opportunity to provide comment on the technical detail that will underpin our proposal.

We will consider your comments prior to finalising the Model Code and Model Code procedures and seeking the necessary amendments to the Act and Regulation.

As with previous versions of the Model Code we intend to supplement the new Model Code and procedures with amended Guidelines to assist in their interpretation. We also intend to reissue an updated education package to assist councils to raise awareness among councillors, staff, delegates and committee members of any new requirements under the new Model Code and procedures.