



## **SUBMISSION TO THE DIVISION OF LOCAL GOVERNMENT REVIEW OF THE MODEL CODE OF CONDUCT**

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**Submission by David Shoebridge**  
Greens NSW MLC  
Local Government spokesperson

Thank you for the opportunity to make submission to the Division of Local Government Review of the Model Code of Conduct. The existing Model Code of Conduct has led to many practical difficulties in its operation to date. The following submission sets out principles and some commentary on matters pertinent to the Review. These principles have been developed following discussion and feedback from amongst the more than seventy Greens Councillors currently in office in NSW. Please contact my office for further comment or clarification.

### **A. Procedural fairness and accountability**

- 1) The Principles of 'procedural' fairness and/or 'natural justice' should be adhered to and made part of the Code.
- 2) An independent adjudicator should be appointed by the Division of Local Government as the gatekeeper in determining complaints under the Code, rather than the General Manager.

The current position of the General Manager, who has the role of the gatekeeper, leaves open the possibility that a majority of Councillors, who have the capacity to hire and fire general managers, will have undue influence over this crucial process.

- 3) Conduct Review committees must not be dominated by the General Manager and the Mayor. Instead, the Conduct Review Committee should include a locally appointed independent representative.
- 4) Code of Conduct breaches must not be used as a political tool to silence or intimidate minority councillors.

The current system allows for a dominant grouping in Council to use the code of conduct to oppress or intimidate minority members on council. If the process is to be genuinely objective and free from bias, a more neutral panel should be provided for.

- 5) Conduct reviewers should have the training and qualifications to understand and appreciate the democratic nature of local government and the role of elected representatives

This would include some understanding of the requirement for Councillors to be bold and independent advocates for their community. There must not develop an overly constrained or "legalese" approach to the to-and-fro of local democracy.

## **B. Public interest advocacy by councillors**

- 6) The Model Code of Conduct should ensure that the democratic rights and responsibilities of elected Councillors are not subordinate to corporate or management interests.

In particular councillors who take strong positions advocating matters they believe to be in the best interests of the community or a sector of the community must not be in breach of the code of conduct merely because the public position adopted by the Councillor is contrary to the public position adopted by the council or a majority of Councillors.

- 7) The Code must clearly provide that participating in public interest campaigns or activities does not, in itself, create a private interest or the basis for a conflict of interest.
- 8) The Code should protect and facilitate the right of Councillors to provide information to the public and to participate as a citizen in public interest campaigns and activities.

In particular, where a Councillor is also active in a residents' grouping, which may be advocating a particular position in relation to a planning matter, then provided the position is voluntary and based on a public interest campaign, this ought not of itself amount to a conflict of interest when the matter comes before council. It is to be expected that the Councillors will continue to have community leadership positions within their community even when on Council.

## **C. Pecuniary interests and political donations**

- 9) Councillors should declare a pecuniary conflict of interest if a donation from any individual or group who is involved in any matter before Council (e.g. development application, submission, expression of interest for funding, tender etc) has been sent through the party's head office rather than declaring a non- significant, non- pecuniary interest.

- 10) There are important reforms to be made to the way political donations are syphoned through the State Head Office of a political party to a Councillor's campaign fund.
- 11) The requirement for disclosure of donations, conflicts of interests and gifts needs to be clarified and strengthened.
- 12) Donations received by Councillors in their capacity as State and/or Federal candidates should also be considered as providing a conflict of interest if a donor is also a Council applicant.

Under the current provisions, unless a donation has been received directly by a Councillor in the course of the Councillor's election for council, then it does not trigger a pecuniary interest. This allows for the funnelling of donations through a party's head office to avoid the pecuniary interest provisions. Equally the current Code does not consider donations made in a Councillor's alternative political capacity as a state or federal candidate to trigger a pecuniary interest. This is not good practice and the Code should be amended.

#### **D. Caucusing on development matters**

- 13) The Code should explicitly provide that Councillors must not participate in binding caucus votes on matters relating to Development Applications.

Any such provision must not prohibit Councillors from discussing and considering the merits of a development application amongst themselves, or amongst their partisan political colleagues. The prohibition ought to be limited to development applications.

#### **E. Vexatious complaints**

- 14) Protocols should be put in place for an independent assessment of whether a complaint is vexatious or trivial.
- 15) Measures other than the complaints procedure such as mediation and conciliation should be encouraged to resolve non-significant breaches of the Code.

This would likely reduce the cost, both financial and personal, of dealing with modest complaints that rise above the trivial or vexatious.

- 16) Vexatious or trivial complaints should be dealt with quickly and in a summary fashion; however before a complaint is dismissed, the complainant must be given an opportunity to respond.

Councils are currently spending significant resources undertaking detailed investigations into complaints that are vexatious or trivial. This also causes significant distress and uncertainty to Councillors who are the subject of any such complaint. A clearer summary procedure for dealing with such matters, including for determining whether or not a matter is vexatious or trivial, must be established to remedy this difficulty.

#### **F. Weight given to Conduct Review Committee recommendations**

- 17) The ability of Councils to reject or ignore the findings and recommendations of the Conduct Review Committee should be limited.

If the conduct review is genuinely impartial, then there must be established special circumstances for a Council to reject the findings, and a review mechanism should be considered.

#### **G. Open decision-making**

- 18) The use of workshops and other informal meetings of Councillors and Council staff must not be used to circumvent requirements for open and transparent decision making.
- 19) Ensure that the Local Government Act is respected so that confidentiality is only applied to matters that clearly relate to the formal grounds for confidentiality under the Local Government Act, and is not misused to prevent the disclosure of public interest information, including voting by councillors.
- 20) The misuse of confidentiality requirements to withhold information from the public, should be a breach of the Code of Conduct

There has been an increasing tendency for important decisions of Councils to be made in informal gatherings, only to have them "rubber-stamped" with minimal public discussion in a later public meeting. If public participation is to be meaningful, then this practice must be clearly prohibited.

- 21) The provisions governing the handling of commercial-in-confidence information needs to be reformed to ensure that the public right to know is given priority over corporate and administrative interests, including appeals to an independent arbiter.

This concern relates to contracts entered into by council, which should prima facie be made public, including details as to quantum and delivery schedules. Any person seeking to tender with a council and receive public monies should be advised of this requirement in the tendering or contracting documents.

Equally, council reports on tendering processes, including the evaluation of tenderers, should be made public at the time council resolves to accept a tender. This is a practice undertaken by some councils. Others claim that commercial in confidence provisions prevent this. The better course is public accountability.

- 22) The special privileges of Mayors to introduce proposals without notice should be removed.
- 23) All formal meetings should be recorded and made publicly available to residents with a requirement for public webcasting.

This provides clear, inexpensive and public scrutiny of local council decision-making.

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