

Submission to the NSW Government review of the Model Code of Conduct
Prepared for the Western Sydney Regional Organisation of Councils

Mr John Davies
Division of Local Government
Department of Premier and Cabinet
Locked Bag 3015
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Dear Mr Davies

Thank you for the opportunity to make a submission to the NSW Division of Local Government's (DLG) Review of the Model Code of conduct.

The Western Sydney Regional Organisation of Councils (WSROC) Ltd represents the councils of Auburn, Bankstown, Blacktown, Blue Mountains, Fairfield, Hawkesbury, Holroyd, Liverpool, Parramatta and Penrith.

In general, WSROC supports the intentions of the majority of the amendments outlined in the Position Paper however, there are three key issues which WSROC puts forward for your consideration.

Section 4.2.1 proposes an increased role for Regional Organisation of Councils in the administration of complaints (). WSROC does not believe it is appropriate for ROCs to take any substantial role in the monitoring or administration of complaints and complaint resolution, or any conduct issues raised regarding our member councils. Our role is primarily regional advocacy and procurement and ROCs do not have the resources or expertise to become involved in the management of the complaints process.

Secondly, the discussion paper gives insufficient attention to the ongoing problem of vexatious complaints. This is a serious problem for many of our member councils who are forced to waste large amounts of time and resources on managing trivial, malicious or vexatious complaints – often from serial offenders. WSROC would like to see this issue acknowledged in the list of action options available to complaints assessors and conduct reviewers and has included some suggested additions in the relevant section.

Thirdly, WSROC is concerned about changes which add to the existing burden on Councils. While we acknowledge the need to ensure that the highest standards of conduct apply to Local Government, we are concerned that some of the proposals may add to the administrative burden of senior council officers (such as proposals outlined in Section 4.2.3) without any appreciable improvement in levels of accountability.

Following are some specific responses to key points raised in the Position Paper:

4.1 Proposed standards of conduct.

4.1.3 This proposal is not supported. WSROC notes that rules to prohibit elected representatives from taking part in binding caucus votes, does not apply to other tiers of Government (State and Federal) and believes that in the interests of consistency, the same rule should apply across all tiers of Government. Further, in many cases it could be difficult to determine whether strongly argued caucus positions were willingly supported or were actually binding. The prohibition on caucusing on development application is sufficient to protect against inappropriate behaviour.

4.1.5 Lobbying. WSROC supports the need to provide clear guidelines for councillors who may be subject to lobbying from developers or other interest groups. However, greater clarity is required in determining what constitutes a “lobbyist”. Clarification is required as to whether this proposal applies only to professional lobbyists or developer or if any constituent meeting with a councillor to raise his/her concerns on a particular issue, are also covered by this provision. Under what circumstances is it necessary “to have another person attend the meeting or take notes”?

Blacktown Council notes the suggestion of legislating against lobbyist “success fees” similar to those introduced at state government level as a worthwhile proposal that would bring councils into line with other tiers of government.

4.1.6 Meeting alone with developers. WSROC agrees in principle with the intention of this amendment but notes there are several aspects which need to be clarified, including what can and cannot be discussed, and the nature of what is termed a developer – for example, a large multinational is substantially different to a small householder although the potential for misunderstanding or misbehaviour is potentially the same. WSROC considers it unreasonable to prevent a councillor meeting alone with a householder to discuss questions that owner might have about their property.

4.1.7 Declaration of gifts. The proposals are excessive and undiscerning in their application. It will be unnecessarily time consuming in paperwork for very minor gifts (eg. a cup of coffee) or tokens which would in no way compromise a councillor. These proposals could also place councillors in a difficult position where they may offend a constituent by rejecting a minor gift.

WSROC agrees with Blacktown Council that this could be impractical in relation to small gifts by presenters etc, and suggests that a minimum value, eg \$10 be required to be declared, be placed on the gifts. WSROC also notes that some of our member Councils, such as Hawkesbury, have developed their own Gifts and Benefits Policy – Guidelines for Councillors and Staff which is based on guidelines issued by the ICAC. WSROC supports the principle of individual councils developing their own guidelines, based on a minimum declarable amount.

4.2. Proposed Changes to the Administrative Framework

4.2.1 Regional approach to administration of complaints.

WSROC is concerned about the extent to which the DLG expects ROCS to become involved in the administration of complaints made under Councils’ code of conduct

In late 2008, WSROC undertook at our councils' request to put together a list of possible conduct reviewers for our member councils.

WSROC organised the tender and managed the applications, which were considered by a committee of member councillors.

Once finalised, the list was distributed among our member councils, for them to use as a reference and that marked the end of WSROC's direct involvement in the organisation of conduct reviews.

We are aware that several of our member councils, including Blacktown and Fairfield have since used recommended conduct reviewers from the list and have been satisfied with the result.

WSROC believes that this should be the full extent of the involvement of ROCs in the complaint management or enforcing code of conduct issues.

WSROC supports Blacktown Council's contention that use of this list should be optional and that councils retain the right to appoint their own conduct reviewers if they so choose.

However we note and support Hawkesbury's suggestion that it may be appropriate for the DLG to detail the selection criteria for membership of these panels – which would also place them in a better position to administer any issues arising from the use of conduct reviewers who are listed members of the panels.

4.2.2 WSROC does not support plans to make ROCs responsible for the management of the performance of conduct reviewers.

This is not the role of the ROCS which have neither the expertise nor the resources to monitor and manage the performance of the conduct reviewers.

Further the ROCs should not be required to supply a regional panel coordinator, or to be involved in the appointment as this again requires a level of expertise which most ROCs do not have and it implies overall responsibility for the process.

4.23 WSROC agrees that each council should appoint their own complaints co-ordinator to streamline the process and provide a single point of reference. However, we are concerned about the extra costs this will impose on councils and the note that councils may be forced to direct funds away from frontline services to fund this position.

4.2.4 WSROC does not support the idea that each council should nominate the General Manager of another council to act as their complaints assessor, and for staff from that council to provide administrative and support functions to that role. It places undue responsibility on that General Manager and impacts on the time and priorities of the appointed council staff. WSROC also notes that the DLG does not outline any criteria for selecting the nominated General Manager .

As Hawkesbury Council suggests, this role could be undertaken by the Council's own Internal Auditor, who already enjoys a level of independence within the organisation. The Internal Auditors exist in most councils and operate on DLG guidelines so with additional guidance from the DLG their roles in complaints assessment could be defined. Any complainant dissatisfied with the outcome would still have recourse of appeal to the DLG.

4.3 Changes to procedural requirements

4.3.3 Under preliminary assessments of complaints by complaints assessor, WSROC supports the additional clauses as these may help offset the problems some councils experience with vexatious complaints. It could also be added that the complaints assessor be required to take into account the interests of the person who made the complaint, and whether that person has made other complaints in the past.

WSROC supports the increased number of options for action available to the assessor.

4.3.4 The proposal to have matters reviewed by individual conduct reviewers rather than a panel of three is supported as it will mean a saving to councils. The introduction of a right of external appeal or review (4.4.2) will introduce an adequate safeguard to balance this.

4.4 Measures to ensure the integrity of code of conduct processes

4.4.1 WSROC supports the provisions for the DLG to take a more active role in overseeing the implementation of Councils' codes of conduct, and the proposed separation of functions into two new units. The proposed Council Governance Unit and if required the Investigation unit could also be the appropriate vehicle for handling any complaints or issues arising from conduct reviewers (not the ROCs as suggested in 4.2.1). However, as Hawkesbury notes, it is important that the DLG does not become excessively heavy-handed in exercising its new powers, and that the actions of a single or small number of councils create new rules and restrictions to be imposed on all councils.

4.4.4 WSROC notes that the Code of Conduct proposes that councillors who make complaints should not be afforded the same rights to confidentiality as are offered to the general public. The position paper notes that in the past, some councillors have exploited the confidentiality protection to make vexatious complaints about political opponents and in principle WSROC supports measures to reduce the propensity for vexatious complaints, especially those that are politically motivated. However, we believe that in most circumstances councillors should be afforded confidentiality, consistent with other members of the public.

4.4.5 WSROC supports these new standards of conduct in relation to complaints but notes there is not a mechanism to address the issue of trivial or vexatious complaints or those not made in good faith. Some extra provisions could be included in this section as examples of what constitute "improper use" of the Code to help identify and reduce the occurrence of these types of complaints.

4.5 Proposed amendments to the misbehaviour provisions

WSROC supports generally these initiatives as a positive reinforcement of the powers of the DLG in monitoring and managing Councillor behaviour.

4.5.3 Further detail is required about the circumstances under which the Director General might compel a councillor or council employee to produce such documents.

Thank you for the opportunity to put forward our comments to the review. Should you require further information or wish to discuss these matters further, please contact Mrs Esme Evans in the WSROC office on 9671 4333 to arrange a time,

Yours Faithfully

A handwritten signature in black ink that reads "Alison McLaren" followed by a horizontal line.

Clr Alison McLaren
WSROC President