

ADOPTING AND IMPLEMENTING A CODE OF CONDUCT



Summary

Like councils, joint organisations must adopt a code of conduct based on the *Model Code of Conduct for Local Councils in NSW* (the Model Code) and procedures for dealing with code of conduct complaints based on the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* (the Procedures).

Joint organisation board members and staff that are designated persons must also submit returns of their interests.

Adopting a code of conduct and administrative procedures

Like councils, joint organisations must adopt a code of conduct based on the Model Code and administrative procedures for dealing with code of conduct complaints based on the prescribed Procedures. The current Model Code and the Procedures are available on the Office of Local Government's (OLG) website. <https://www.olg.nsw.gov.au/strengthening-local-government/conduct-and-governance/model-code-of-conduct>

Joint organisations' adopted codes of conduct may include provisions that supplement the Model Code. However, a joint organisation's adopted code of conduct will have no effect if it is inconsistent with the Model Code unless, it imposes more onerous requirements than those prescribed under the Model Code.

Similarly, joint organisations' administrative procedures may supplement the provisions contained in the Procedures, but must not be inconsistent with them.

The Model Code and the Procedures are currently under review. The new 2018 versions of both will be adapted to reflect the establishment of joint organisations.

Appointment of a panel of conduct reviewers

Joint organisations must appoint a panel of conduct reviewers. The role of conduct reviewers is to undertake preliminary assessments and investigations of code of conduct complaints about board members of joint organisations (including the chairperson) and the executive officer, where the complaint has not been declined or resolved at the outset.

As panels of conduct reviewers may be shared, joint organisations can adopt a pre-existing panel established by one of their member councils or a

regional panel established by their member councils or a regional organisation of councils.

If establishing a standalone panel, joint organisations must comply with the Procedures by conducting an expression of interest process and appointing appropriately qualified and eligible persons. For more information on these requirements, refer to the Procedures on the OLG website.

Appointing a complaints coordinator

The executive officer must appoint a senior and suitably qualified staff member to act as a complaints coordinator. The executive officer must not undertake the role of complaints coordinator.

If there is no member of staff who can undertake the role of complaints coordinator within the joint organisation, the executive officer may instead appoint a staff member from one of the member councils, with the consent of the general manager of that council. This could be a person who is already carrying out this role for a member council.

The person appointed as complaints coordinator must also be a nominated disclosures coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the *Public Interest Disclosures Act 1994*.

The role of the complaints coordinator is to:

- coordinate the management of complaints
- liaise with and provide administrative support to a conduct reviewer
- liaise with OLG
- arrange the annual reporting of code of conduct complaints statistics.

Regional arrangements for code of conduct complaints management

The new 2018 Procedures will be designed to allow member councils to centralise management of code of conduct complaints through a joint organisation should they choose to do so.

For example, this could be done by establishing a broader internal ombudsman function in joint organisations to service member councils.

In particular:

- joint organisations can appoint and maintain regional panels of conduct reviewers on behalf of their member councils
- a staff member of a joint organisation can be appointed by general managers of member councils as the complaints coordinator for all member councils (in consultation with the executive officer of the joint organisation)
- general managers and mayors of member councils can delegate their complaints management functions under the Procedures to the joint organisation (in consultation with the joint organisation).

This offers a number potential benefits:

- centralisation of these functions through a joint organisation may deliver efficiencies and economies of scale and support development of a body of expertise within the region
- it allows general managers and mayors to divest themselves of the sometimes onerous responsibilities associated with code of conduct complaints management, allowing them to focus on core responsibilities
- it allows all code of conduct complaints about mayors, councillors and general managers to be managed independently of the councils they relate to.

Completion of returns of interests

Board members of joint organisations, executive officers and other persons who have been identified by the joint organisation as designated persons, are all required to complete returns of interests under section 449 of the *Local Government Act 1993* within three months of their appointment.

Designated persons include:

- the executive officer
- senior staff of the joint organisation
- any other person, (including staff, delegates of the joint organisation or members of committees

that are delegates of the joint organisation) who holds a position identified by the joint organisation as the position of a designated person because it involves the exercise of functions (such as regulatory or contractual functions) that could give rise to a conflict of interest.

The executive officer must maintain a register of returns of interests and returns must be tabled at the first meeting of the board of the joint organisation after they are required to be lodged.

Application of the code of conduct to non-voting representatives who are not council officials

Non-voting representatives, who are not council officials for the purposes of section 440 of the *Local Government Act 1993* and the Model Code, will not automatically be subject to the joint organisation's adopted code of conduct. Council officials include councillors and staff and delegates of councils. However, there is nothing to prevent a joint organisation from modifying its code of conduct to extend its application to non-voting representatives.

Where the joint organisation's code of conduct has not been modified to cover non-voting representatives, in exercising their functions as board members of joint organisations, non-voting representatives who are not council officials will be subject to their employers' codes of conduct. Alleged code of conduct breaches by non-voting representatives should be reported and dealt with under the employer's code of conduct.

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