

Hit the ground running

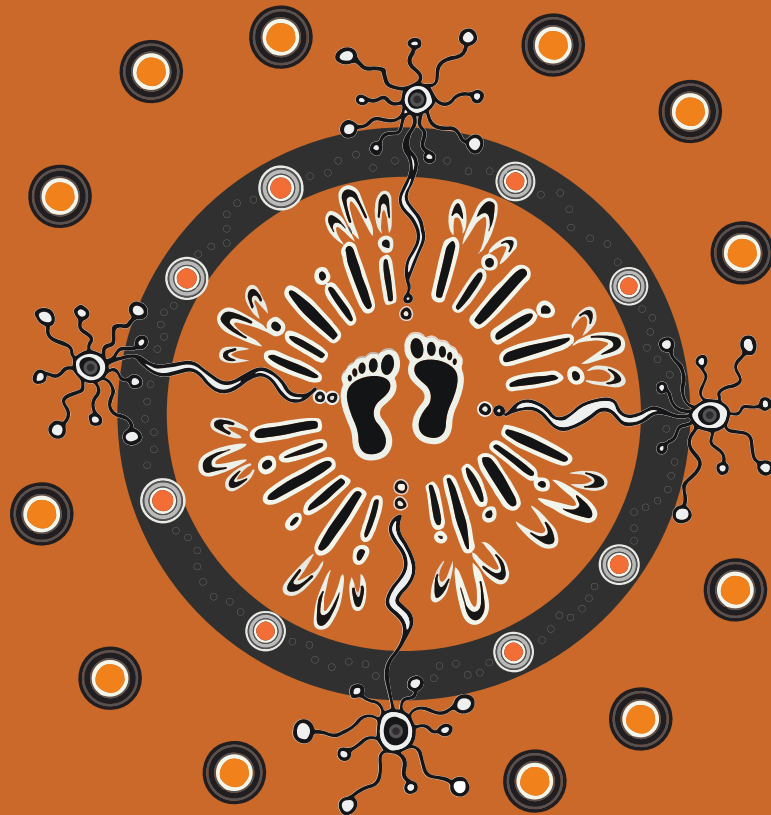
Webinar 6 – Appropriate conduct and ethical decision making

Ally Dench, Executive Director, Local Government

John Davies, Manager, Governance

Welcome

Acknowledgement of Country



Housekeeping

- Cameras on, microphones muted
- Time for questions after presentations
- Post questions in Team chat, or raise hand during question time
- Closed captions available
 - click on the 3 dots at the top of your screen
 - bring up the drop down list of options
 - click on 'Turn on live captions'
- If the sound or video is breaking up
 - exit the webinar and re-join
 - turn off video
- Presentation is being recorded



Wendy Tuckerman, Minister for Local Government



Appropriate Conduct and Ethical Decision Making



Office of
Local Government



Session Overview

General conduct

Behaviour in meetings

Submitting returns of interest

Managing conflicts of interest

Gifts and benefits

Interactions with council staff

Use of council information and resources

Making complaints under the code of conduct





What is the code of conduct?

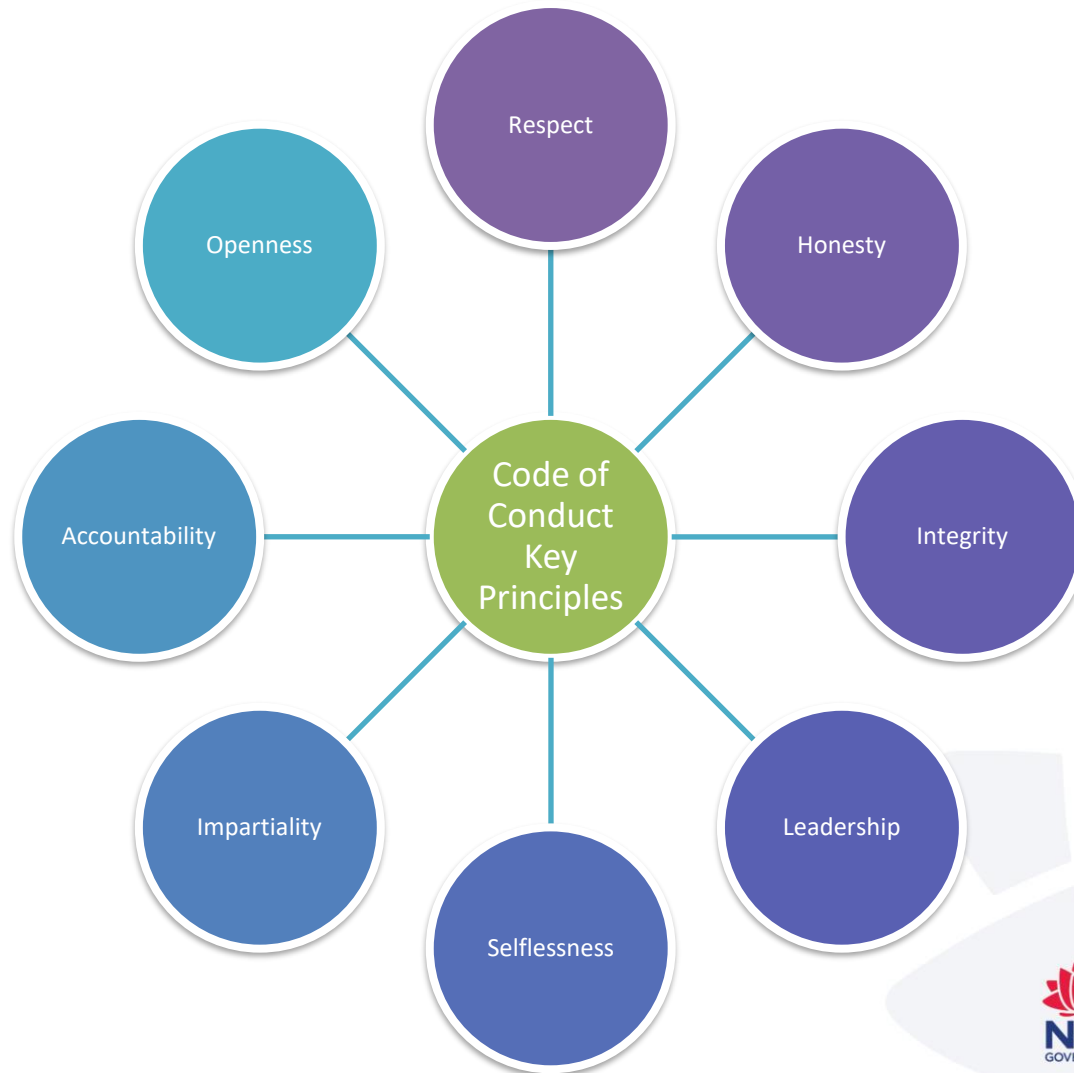
- A council's code of conduct sets the minimum standards of conduct for all council officials.
- Every council and joint organisation must adopt a code of conduct that incorporates the provisions of the Model Code of Conduct.
- It is important that the local community has confidence in the council and you.



Menti Discussion


What kinds of behaviour do people expect from organisations and people who serve the public?

Principles of appropriate conduct and ethical decision making





Your Key Obligations



Make decisions ethically and appropriately

Manage conflicts of interests

Do not use your position for personal benefit

Use council resources and information correctly

Maintain appropriate relationships with other council officials



General Conduct



General Conduct

you must...

You **must**:

- act lawfully and honestly and exercise care and diligence
- consider matters consistently, promptly and fairly and in accordance with procedures
- ensure regulatory decisions are properly made and that all parties are dealt with fairly
- comply with work health and safety requirements



General Conduct

you must not...

You **must not** conduct yourself in a way that:

- will bring the council into disrepute
- is contrary to law and council policies
- is improper, unethical or an abuse of power
- involves misuse of your position for personal benefit
- constitutes harassment or bullying or is unlawfully discriminatory, or
- is intimidating or verbally abusive.



Behaviour at Meetings



Behaviour at Meetings

- It is critical that the community can have confidence in the decisions made on its behalf by councillors at meetings
- Meetings must be conducted in an orderly, respectful way and decisions must be made that are informed and soundly based
- You must not participate in binding caucus votes in relation to matters considered at council or committee meetings



Behaviour at Meetings

- You **must** comply with rulings by the chair
- You **must not**:
 - engage in disruptive or disorderly behaviour, or
 - bully the chair or other councillors or council staff and members of the public attending meetings



Behaviour at Meetings

You **must not** engage in conduct at meetings that prevents the proper or effective functioning of the council including by:

- leaving the meeting to deprive it of a quorum
- submitting a rescission motion and then voting against it to prevent another councillor from submitting a rescission motion in relation to the same decision, or
- impeding the consideration of business at the meeting.



Questions



Returns of Interests



Returns of Interests

- Councillors are required to disclose their personal interests in returns of interests
- Returns of interests are publicly available
- Transparency promotes community confidence in decision making by councillors



Returns of Interests

When do I need to submit a return?

You must submit a return of interests:

- within three months of being elected
- annually (within three months of the start of each financial year)
- within three months of becoming aware of any new interest that needs to be disclosed in the return



Returns of Interests

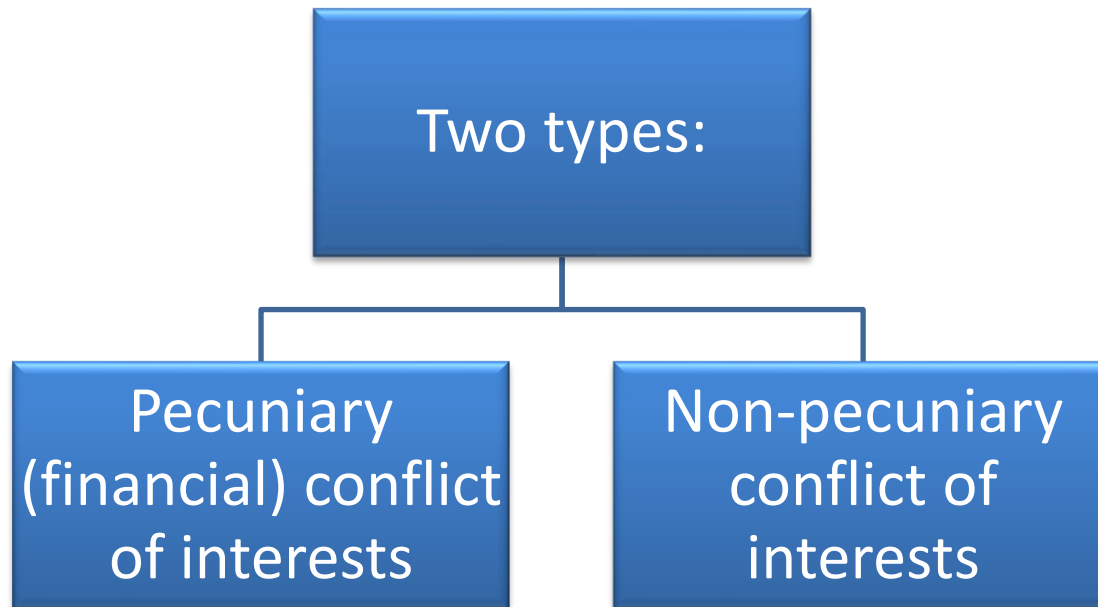
What interests do I need to disclose?

You are required to disclose:

- interests in real property
- gifts
- contributions to travel
- interests and positions in corporations
- whether you are a property developer or a close associate of a property developer
- positions in trade unions and professional or business associations
- dispositions of real property
- sources of income
- debts

Managing Conflicts of Interests

Types of Conflicts of Interest





Conflicts of Interest

What is a pecuniary interest?

You will have a **pecuniary interest** in a matter where there is a reasonable likelihood or expectation that you or a related person will gain or lose financially as a result of any decision made in relation to that matter.





Conflicts of Interest

Managing pecuniary interests at meetings



You must:

Disclose you have a pecuniary interest

Disclose the nature of the interest

You must not:

Involve yourself in discussions

Participate in the vote

Be present at, or in sight of the meeting, during discussion or the vote



Examples

Pecuniary Interest and Disciplinary Tribunal decisions

Land affected by rezoning

- 2 year disqualification

Business affected by nearby development

- 5 month suspension

Participating in public forum at meeting

- reprimand



Conflicts of Interest

What is a non-pecuniary conflict of interest?

- **Non-pecuniary interests** are private or personal interests that are not pecuniary interests.
- You will have a non-pecuniary conflict of interest in a matter you are dealing with if a reasonable and informed person would perceive that you could be influenced by a private interest that you have in that matter.
- How you deal with a non-pecuniary conflict of interest will depend on whether it is **significant**.



Conflicts of Interest

significant non-pecuniary conflicts of interest

You will have a **significant non-pecuniary conflict of interest** in a matter where you have:

- a close relationship (including a business relationship) with a person who will be affected by a decision
- a strong affiliation with an organisation that will be affected by a decision
- a financial interest in the matter that is not a pecuniary interest, or you otherwise stand to gain or lose a personal benefit as a result of a decision



Conflicts of Interest

“conflict of duties”

Significant non-pecuniary conflicts of interest also occur where you are member of the board or management committee of an organisation as the council’s representative and the interests of the council and the organisation are potentially in conflict in relation to the matter under consideration.

This is what is known as a **“conflict of duties”**.



Conflicts of Interest

Managing significant non-pecuniary conflicts of interest

- **Significant non-pecuniary conflicts of interest** are managed in the same way as a pecuniary interest.
- You must:
 - disclose the nature of the interest, and
 - leave the chamber while the matter is being considered and voted on.
- You must do this at each meeting where the matter arises.



Conflicts of Interest

Managing non-pecuniary conflicts of interest that are not significant

- A **non-pecuniary conflict of interest will not be significant** where it arises from a relationship or affiliation that is not particularly close or strong.
- If you believe that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, you must still disclose the interest and explain why you believe it is not significant and no further action is necessary to manage it.
- You must disclose the interest at each meeting the matter arises.



Conflicts of Interest

Political matters

- Your personal or political views on a matter, or those of any organisation you are a member of, cannot, on its own give rise to a conflict of interest.
- Absent any other personal interest in the matter, you will not have a conflict of interest in a matter simply because you have campaigned on it or expressed a personal or political opinion on it.



Conflicts of Interest

Environmental planning instruments

- Special rules apply to the management of pecuniary and significant non-pecuniary conflicts of interest in relation to environmental planning instruments applying to the whole or a significant portion of the council's area.
- You may participate in consideration and voting on these provided the only interests affected are your home or the homes of your relatives and you disclose the affected interests in a special return of interests that is tabled at the meeting.



Conflicts of Interest

Political donations

Where you have received or knowingly benefitted from a reportable political donation:

- made by a major political donor in the previous 4 years, and
- the major political donor has a matter before council,

you must:

- declare a non-pecuniary conflict of interest in the matter
- disclose the nature of the interest, and
- manage the conflict of interest as if you had a pecuniary interest, by leaving the chamber while it is being considered and voted on.



Conflicts of Interest

What if you are not sure?

- The onus is on you to identify and disclose any potential conflict of interest you may have in a matter you are dealing with and to manage it appropriately.
- If you are not sure, always err on the side of caution
- **If in doubt, get out.**



Conflicts of Interest

Dealing with council as a resident

- You should deal with the council in the same way as other members of the public.
- You should not expect or seek any preferential treatment.
- You must not use your position to obtain a private benefit for yourself or for someone else or to influence others to obtain a private benefit for yourself or for someone else, except through the exercise of your functions as an elected representative.



Menti-quiz

The local bowling club has a DA that is before council. I am a social member of the club but only ever attend the club occasionally to see music acts. Do I have:

- no conflict of interest
- a less than significant non-pecuniary conflict of interest
- a significant non-pecuniary conflict of interest
- a pecuniary conflict of interest?



Menti-quiz

My child's best friend's mother's company has submitted a tender which is being considered by council. Our families socialise regularly. Do I have:

- no conflict of interest
- a less than significant non-pecuniary conflict of interest
- a significant non-pecuniary conflict of interest
- a pecuniary conflict of interest?



Menti-quiz

A local logging company has a DA before council to build a road to support the expansion of its operations. I campaigned during the election on a platform to save the local forests. Do I have:

- no conflict of interest
- a less than significant non-pecuniary conflict of interest
- a significant non-pecuniary conflict of interest
- a pecuniary conflict of interest?



Menti-quiz

The council is considering a draft LEP which, if made, will see my parents' farm rezoned as residential. Do I have:

- no conflict of interest
- a less than significant non-pecuniary conflict of interest
- a significant non-pecuniary conflict of interest
- a pecuniary conflict of interest?



Questions



Gifts and Benefits



Gifts and Benefits

key principles

- A gift or benefit is something offered to or received by you or someone closely associated with you for personal use or enjoyment.
- Key principles:
 - You must not benefit personally from your role other than through payment of your fee and any other support the council provides to you.
 - You must not be influenced or be seen to be influenced as a result of the receipt of a gift or personal benefit.



Gifts and Benefits

What is not a gift or benefit?

Gifts and benefits **do not** include:

- items with a value of \$10 or less
- political donations
- a gift or benefit provided to the council as part of a cultural exchange or sister city relationship
- a benefit or facility provided to you by the council
- attendance at a work-related event or function for the purpose of undertaking your official functions, or
- meals, beverages or refreshments provided to you while you are carrying out your official functions.





Gifts and Benefits

you must not...

You **must not**:

- seek or accept bribes
- seek gifts or benefits of any kind
- accept any gift or benefit that may create a sense of obligation, or that may be perceived as intended or likely to influence you
- accept any gift or benefit that is worth more than \$100
- accept tickets to major sporting or cultural events with a ticket value of over \$100 or corporate hospitality at such events
- accept cash or cash-like gifts of any amount
- participate in competitions for prizes where eligibility is based on the council being a customer of the competition organiser
- personally benefit from reward points programs when purchasing on behalf of council.





Gifts and Benefits

What if you can't refuse?

If you are offered a gift or benefit that is worth more than \$100 that cannot be reasonably refused, you must surrender it to the council.





Gifts and Benefits

What can you accept?

- You can accept gifts valued under \$100.
- **But**, if the same person, or someone associated with them, offers you another gift in the next 12 months, which, if added to the value of the first gift, has a value that exceeds \$100, you must refuse to accept the additional gift.
- You must promptly disclose any gift of any value to the general manager in writing for entry into council's gift register.



Menti-quiz

I assisted an elderly resident to resolve an issue with a cracked footpath outside her home. She has given me a box of veggies from her garden to thank me. Do I:

- accept the gift
- refuse the gift?



Menti-quiz

I have been invited by a local developer to join them in their corporate box at a local NRL game. Do I:

- accept the gift
- refuse the gift?



Menti-quiz

I have been invited by the local rotary club to speak at their dinner at a local restaurant in my capacity as a councillor. The meal costs more than \$100. Do I:

- accept the gift
- refuse the gift?



Questions



Interactions with Council Staff



Interactions with Council Staff

- The general manager is responsible for the management of council staff.
- The mayor and councillors cannot direct staff in the performance of their duties.
- Most contact is likely to occur through the general manager or other senior staff approved by the general manager.
- Any interaction must be with the general manager's approval or comply with council's councillor/staff interaction policy.
- You are not entitled to access staff only areas



Interactions with Council Staff

you must not...

You **must not**:

- behave in an overbearing or threatening way towards staff
- direct, pressure or influence staff in the performance of their duties, including in relation to the making of recommendations, or
- make personal attacks on staff at council meetings or other public forums including social media.



Interactions with Council Staff

staff obligations

Staff **should not**:

- discuss personal workplace matters with you such as operational issues, grievances, workplace investigations or disciplinary matters
- provide ad hoc advice to you without recording or documenting the interaction in the same way they would a member of the public.

Staff **should**

- treat you with respect and not behave in an overbearing or threatening way towards you



Interactions with Council Staff

What information are you entitled to?

- The mayor and councillors are entitled to any information necessary to perform their functions effectively as members of the governing body and as elected representatives.
- If you have a private interest only in council information, you have the same rights of access to that information as any other member of the public.





Interactions with Council Staff

requesting information

- You must make any requests by way of the councillor action/information request system or in accordance with council's councillor/staff interaction policy.
- The general manager will decide whether you can be provided with information you have requested.
- If information is provided to one councillor, then it must also be provided to all other councillors who request it.
- You are not entitled to access information relating to matters you have a conflict of interest in.



Questions



Use of Council Resources



Use of Council Resources

- Council resources are public resources.
- You must use council resources ethically, effectively, efficiently and carefully when performing your duties.
- You must not use council resources for private purposes, or convert council property for your own use unless you are authorised to do so.



Use of Council Resources

Use of council resources for election purposes

You **must not**:

- use council resources, property or facilities to assist with your (or others) election campaign (council, State or Federal), unless they are available to the public and any publicly advertised fee is paid for their use
- use council letterhead, crests, email or social media or other information that could give the appearance it is official council material for the purpose of assisting an election campaign



Use of Council Resources

What records should be kept?

- All information created, sent or received in your official capacity and any information stored on council resources is considered to be a council record and must be kept in accordance with the *State Records Act 1998* and the council's records management policy.
- Do not destroy, alter or dispose of records unless authorised to do so.





Use of Council Resources

Using council information

- You can only access and use council information for council business.
- You must not use council information for private purposes.
- You must not seek to privately benefit from any council information you have obtained in your role as a councillor.
- You must only release council information in accordance with council policies and procedures and in compliance with relevant legislation.



Use of Council Resources

Protecting confidential information

You must maintain the integrity and security of any confidential or personal information you have access to.

In particular, **you must:**

- only access confidential or personal information that you have been authorised to access and only for the purposes of performing your functions
- protect confidential and personal information
- only use confidential or personal information for the purpose for which it is intended to be used
- only release confidential or personal information if authorised



Use of Council Resources

protecting confidential information

You must not:

- use confidential or personal information to obtain a private benefit for you or for someone else
- use confidential or personal information to cause harm to the council or anyone else
- disclose confidential information discussed during a closed session of a council or committee meeting or any other confidential forum



Use of Council Resources

using council devices

You **must not** use council's computer or mobile devices to access, download or communicate any material that is:

- offensive
- obscene
- pornographic
- threatening
- abusive or defamatory
- could lead to civil or criminal liability and/or damage council's reputation.





Questions



Code of Conduct Complaints



Code of Conduct Complaints

- The council's code of conduct is the key mechanism for promoting and enforcing ethical and behavioural standards.
- It is important that the council's code of conduct is correctly used and that code of conduct processes are respected and complied with.



Code of Conduct Complaints

How are complaints made?

To be dealt with under the code of conduct, complaints must:

- be made in writing to the general manager, or if about the general manager, to the mayor
- be made within 3 months
- show conduct that would constitute a breach of the council's code of conduct if proven.





Code of Conduct Complaints

What is not a “code of conduct complaint”?

Complaints about the following **are not** “code of conduct complaints” and should not be dealt with under the council’s code of conduct:

- the standard or level of service provided by the council
- the merits of a decision
- policies or procedures of the council
- conduct in good faith, that would not otherwise constitute a breach of the council’s code of conduct.





Code of Conduct Complaints

How are complaints about councillors dealt with?

- The general manager has a discretion to decline or informally resolve complaints at the outset.
- If it is not resolved at the outset, it is referred to an expert independent conduct reviewer.
- The conduct reviewer will undertake a preliminary assessment to determine how the matter should be dealt with.
- Most matters will be resolved informally - only the more serious matters are formally investigated.



Code of Conduct Complaints

How are investigations undertaken?

- Investigations must follow strict rules designed to ensure matters are dealt with fairly, confidentially and with rigour.
- If the conduct reviewer determines there has been a breach, they can recommend censure and, where the breach is serious, referral to the Office of Local Government (OLG) for further disciplinary action.
- A councillor is censured for a breach of the code of conduct by a formal resolution of the council that discloses the grounds for the censure.
- The council's resolution is published in the minutes thereby ensuring the councillor is publicly accountable for their conduct.



Code of Conduct Complaints

Referral to OLG

- Serious breaches may be referred to the Office of Local Government (OLG) for further disciplinary action.
- The following matters are automatically deemed to be serious and are referred to OLG instead of being dealt with under the council's code of conduct:
 - pecuniary interest breaches
 - failure to disclose conflicts of interest arising from political donations
 - breaches of the “integrity” provisions (ie misuse of the code of conduct, reprisal action, disclosure of information about code of conduct matters and failure to comply with a council resolution).



Code of Conduct Complaints

Disciplinary action for misconduct

- OLG can take disciplinary action or refer more serious matters to the NCAT - disciplinary action includes suspension from office or suspension of the payment of fees.
- NCAT can also disqualify a councillor from holding office for up to 5 years.
- Councillors suspended by either OLG or the NCAT on 3 or more occasions are automatically disqualified for 5 years.
- In the case of pecuniary interest breaches, OLG can apply to the Supreme Court for an order requiring a councillor to pay any financial benefit they received from a pecuniary interest breach to the council.



Code of Conduct Complaints

Your obligations

You **must not**:

- make code of conduct complaints for an improper purpose
- take reprisal action for making or dealing with a code of conduct complaint
- disclose any information about a code of conduct complaint
- impede or disrupt the consideration of a code of conduct complaint and comply with any reasonable and lawful requests.





Code of Conduct Complaints

Review of councillor misconduct framework

- The framework for dealing with councillor misconduct in NSW is currently the subject of an independent review.
- The review is examining the process for making complaints, the investigation process, the timeliness of disciplinary action, and the efficacy of the disciplinary action and penalties available.
- Information about the review, including its terms of reference and a consultation paper is available on OLG's website.
- Submissions can be made to the review before **28 March 2022**.
- Information on how to make a submission is provided in the consultation paper.



Questions

