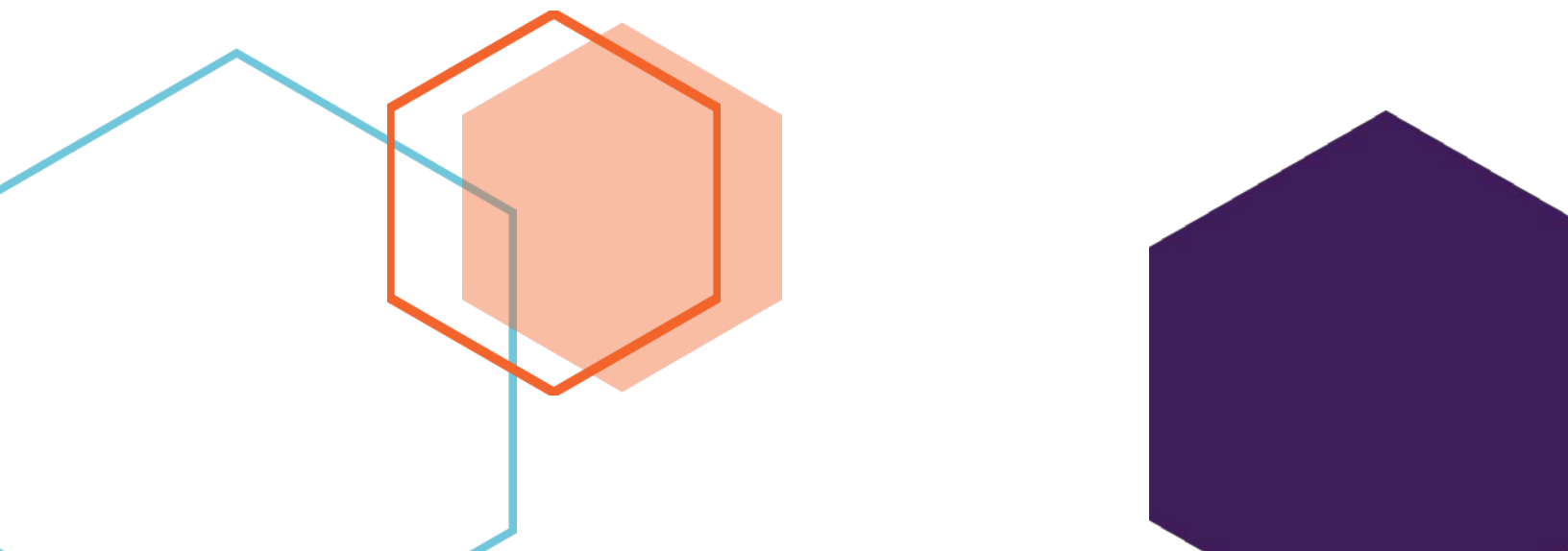




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# Procedures for the Administration of the Code of Conduct





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## PART 1

### INTRODUCTION

These procedures (“the Model Code Procedures”) are prescribed for the purposes of the administration of the Model Code of Conduct for Joint Organisations in NSW (“the Model Code”). The Model Code and Model Code Procedures are made under sections 440 and 440AA respectively of the Local Government Act 1993 (“the Act”) and the Local Government (General) Regulation 2005 (“the Regulation”).

Sections 440 and 440AA of the Act require every Joint Organisation to adopt a code of conduct and procedures for the administration of the code of conduct that incorporate the provisions of the Model Code and Model Code Procedures respectively.

In adopting procedures for the administration of their adopted code of conduct, Joint Organisations may supplement the Model Code Procedures. However provisions of a Joint Organisation may supplement the Model Code Procedures. However provisions of a Joint Organisation’s adopted procedures that are not consistent with those prescribed under the Model Code Procedures will have no effect.



## PART 2

### DEFINITIONS

For the purposes of the procedures, the following definitions apply:

|  |  |
|--|--|
| <b>the Act</b>                             | the Local Government Act 1993  |
| <b>administrator</b>                       | an administrator of a Joint Organisation appointed under the Act other than an administrator appointed under section 66  |
| <b>code of conduct</b>                     | a code of conduct adopted under section 440 of the Act   |
| <b>code of conduct complaint</b>           | a complaint that alleges conduct on the part of a Joint Organisation official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the Joint Organisation’s code of conduct |
| <b>complainant</b>                         | a person who makes a code of conduct complaint   |
| <b>complainant Board Member complaint</b>  | a Board Member who makes a code of conduct complaint   |
| <b>complaints coordinator</b>              | a person appointed by the Executive Officer under these procedures as a complaints coordinator   |
| <b>conduct reviewer</b>                    | a person appointed under these procedures to review allegations of breaches of the code of conduct by Joint Organisation or the Executive Officer  |
| <b>Joint Organisation committee</b>        | a committee established by resolution of the Joint Organisation  |
| <b>Joint Organisation committee member</b> | a person other than a Board Member or member of staff of a Joint Organisation who is a member of a Joint Organisation committee  |
| <b>Board Member</b>                        | a person elected or appointed to civic office and includes a Mayor   |
| <b>Joint Organisation official</b>         | includes Board Members, members of staff of the Joint Organisation, administrators, Joint Organisation committee members, conduct reviewers and delegates of the Joint Organisation  |



|   |   |
|---|---|
| <b>delegate of the Joint Organisation</b> | a person (other than a Board Member or member of staff of a Joint Organisation) or body and the individual members of that body to whom a function of the Joint Organisation is delegated |
| <b>OLG</b>                                | the Office of Local Government, Department of Premier and Cabinet   |
| <b>investigator</b>                       | a conduct reviewer or conduct review committee  |
| <b>the Regulation</b>                     | the Local Government (General) Regulation 2005  |
| <b>subject person</b>                     | a person whose conduct is the subject of investigation by a conduct reviewer or conduct review committee under these procedures   |



## PART 3

### ADMINISTRATOR FRAMEWORK

#### The establishment of a panel of conduct reviewers

- 3.1. The Joint Organisation must by resolution establish a panel of conduct reviewers.
- 3.2. The Joint Organisation may by resolution enter into an arrangement with their Member Councils, or another regional body associated with the Joint Organisation, to share a panel of conduct reviewers.
- 3.3. The panel of conduct reviewers is to be established following a public expression of interest process.
- 3.4. An expression of interest for members of the Joint Organisation’s panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.
- 3.5. To be eligible to be a conduct reviewer, a person must, at a minimum, meet the following requirements:
  - 3.5.1. an understanding of local government, and
  - 3.5.2. knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the *Public Interest Disclosures Act 1994*, and
  - 3.5.3. knowledge and experience of one of more of the following:
    - 3.5.3.1. investigations, or
    - 3.5.3.2. law, or
    - 3.5.3.3. public administration, or
    - 3.5.3.4. public sector ethics, or
    - 3.5.3.5. alternative dispute resolution, and
  - 3.5.4. meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.
- 3.6. A person is not eligible to be a member of the panel of conduct reviewers if they are:
  - 3.6.1. a councillor, or
  - 3.6.2. a nominee for election as a councillor, or
  - 3.6.3. an administrator, or



- 3.6.4. an employee of the Joint Organisation or a council, or
  - 3.6.5. a member of the Commonwealth Parliament or Territory Assembly, or
  - 3.6.6. a person who has a conviction for an indictable that is not an expired conviction.
- 3.7. A person is not precluded from being a member of the Joint Organisation’s panel of conduct reviewers if they are a member of another Joint Organisation’s panel of conduct reviewers or a member of a council’s panel of conduct reviewers.
  - 3.8. An incorporated or other entity may be appointed to the Joint Organisation’s panel of conduct reviewers where the Joint Organisation is satisfied that all the persons who will be undertaking the functions of a conduct reviewer on behalf of the entity meet the selection and eligibility criteria prescribed under this Part.
  - 3.9. A panel of conduct reviewers established under this Part is to have a term of up to four years.
  - 3.10. The Joint Organisation may terminate the panel of conduct reviewers at any time by resolution. Where a panel of conduct reviewers has been terminated, conduct reviewers who were members of the panel may continue to deal with any matter referred to them under these procedures prior to the termination of the panel until they have finalised their consideration of the matter.
  - 3.11. When the term of the conduct reviewers concludes or is terminated, the Joint Organisation must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
  - 3.12. A person who was a member of a previous panel of conduct reviewers established by the Joint Organisation may be a member of subsequent panels of the conduct reviewers established by the Joint Organisation if they continue to meet the selection and eligibility criteria for membership of the panel.

## **The Appointment of an internal ombudsman to a panel of conduct reviewers**

- 3.13. Despite clause 3.6(d), an employee of a JO who is the nominated internal ombudsman of one or more councils or JOs may be appointed to a JO’s panel of conduct reviewers with the OLG’s consent.
- 3.14. To be appointed to a JO’s panel of reviewers, an internal ombudsman must meet the qualification requirements for conduct reviewers prescribed under clause 3.5 as modified by the operation of clause 3.13.
- 3.15. An internal ombudsman appointed to a JO’s panel of conduct reviewers may also exercise the functions of the JO’s complaints co-coordinator. For the purposes of clause 6.1, an internal ombudsman who is a JO’s complaints co-ordinator and has been appointed to the JO’s panel of conduct reviewers, may either undertake a preliminary assessment and investigation of a matter referred to them under clauses 5.26 or 5.33 or refer the matter to another conduct reviewer in accordance with clause 6.2.
- 3.16. Clause 6.4(c) does not apply to an internal ombudsman appointed to a JO’s panel of conduct reviewers.





## The appointment of complaints coordinators

- 3.17. The Executive Officer must appoint a member of staff of the Joint Organisation or another person (such as, but not limited to, a member of staff of another council or a member of staff of a joint organisation or other regional body associated with the council), to act as a complaints coordinator. Where the complaints co-ordinator is a member of staff or a member of council staff, the complaints co-ordinator should be a senior and suitably qualified member of staff.
- 3.18. The Executive Officer may appoint other members of staff of the Joint Organisation or other persons (such as, but not limited to, a member of staff of another council or a member of staff of a joint organisation or other regional body associated with the council), to act as alternatives to the complaints coordinator.
- 3.19. The Executive Officer must not undertake the role of complaints coordinator.
- 3.20. The person appointed as complaints coordinator or alternate complaints coordinator must also be a nominated disclosure coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the *Public Interest Disclosures Act 1994*.
- 3.21. The role of the complaints coordinator is to:
  - 3.21.1. coordinate the management of complaints made under the Joint Organisation’s code of conduct,
  - 3.21.2. liaise with and provide administrative support to a conduct reviewer or conduct review committee,
  - 3.21.3. liaise with the OLG of Local Government, and
  - 3.21.4. Arrange the annual reporting of code of conduct complaints statistics.



## PART 4

# HOW MAY CODE OF CONDUCT COMPLAINTS BE MADE?

## What is a code of conduct complaint?

- 4.1. For the purpose of these procedures, a code of conduct complaint is a complaint that shows or tends to show conduct on the part of the JO official in connection with their role as a JO official or the exercise of the functions as a JO official that would constitute a breach of the standards of conduct prescribed under the JO's code of conduct if proven.
- 4.2. The following are not "code of conduct complaints" for the purposes of these procedures:
  - 4.2.1. complaints about the standard or level of service provided by the JO or a JO official
  - 4.2.2. complaints that relate solely to the merits of a decision made by the JO or a JO official or the exercise of a discretion by the council or a council official
  - 4.2.3. complaints about the policies or procedures of the JO.
  - 4.2.4. complaints about the conduct of a JO official arising from the exercise of their functions in good faith, whether or not involving error, that would not otherwise constitute a breach of the standards of conduct prescribed under the JO's code of conduct.
- 4.3. Only code of conduct complaints are to be dealt with under these procedures. Complaints that do not satisfy the definition of a code of conduct complaint are to be dealt with under the JO's routine complaints management processes.

## When must a code of conduct complaint be made?

- 4.4. A code of conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.
- 4.5. A complaint made after the three months may only be accepted if the Executive Officer, or their delegate, in the case of a complaint about the Executive Officer, the Chairperson or their delegate, is satisfied that the allegations are serious and compelling grounds exist for the matter to be dealt with under the code of conduct.



## **How may a code of conduct complaint about a Joint Organisation official other than the Executive Officer be made?**

- 4.6. All code of conduct complaints other than those relating to the Executive Officer are to be made to the Executive Officer in writing. This clause does not operate to prevent a person from making a complaint to an external agency.
- 4.7. Where a code of conduct complaint about a Joint Organisation official other than the Executive Officer cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.8. In making a code of conduct complaint about a Joint Organisation official other than the Executive Officer, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.9. The Executive Officer their delegate or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.10. Notwithstanding clauses 4.6 and 4.7, where the Executive Officer becomes aware of a possible breach of the Joint Organisation's code of conduct, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

## **How may a code of conduct complaint about the Executive Officer be made?**

- 4.11. Code of conduct complaints about the Executive Officer are to be made to the Chairperson in writing. This clause does not operate to prevent a person from making a complaint about the Executive Officer to an external agency.
- 4.12. Where a code of conduct complaint about the Executive Officer cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.13. In making a code of conduct complaint about the Executive Officer, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.14. The Chairperson or their delegate, or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.15. Notwithstanding clauses 4.11 and 4.12, where the Chairperson becomes aware of a possible breach of Joint Organisation's code of conduct by the Executive Officer, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.



## **PART 5**

### **HOW ARE CODE OF CONDUCT COMPLAINTS TO BE MANAGED?**

#### **Delegation by Executive Officers and Chairpersons of their functions under this Part**

- 5.1. A Executive Officer or Chairperson may delegate their functions under this Part to a member of staff of the JO or to a person or persons external to the JOI other than an external agency. References in this Part to the Executive Officer or Chairperson are also to be taken to be references to their delegates.

#### **Consideration of complaints by Executive Officers and Chairperson**

- 5.2. In exercising their functions under this Part, Executive Officers and Chairpersons may consider the complaint assessment criteria prescribed under clause 6.31

#### **What complaints may be declined at the outset?**

- 5.3. Without limiting any other provision in these procedures,

#### **How are code of conduct complaints about staff (other than the Executive Officer) to be dealt with?**

- 5.4. The Executive Officer is responsible for the management of code of conduct complaints about members of staff of Joint Organisation (other than complaints alleging a breach of pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.
- 5.5. The Executive Officer must refer code of conduct complaints about members of staff of the Joint Organisation alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.
- 5.6. The Executive Officer may decide to take no action in relation to a code of conduct complaint about a member of staff of the JO other than one requiring referral to the Office under clause 5.5 where they consider that no action is warranted in relation to the complaint..
- 5.7. Where the Executive Officer decides to take no action in relation to a code of conduct complaint about a member of staff of the JO,, the Executive Officer must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.
- 5.8. Code of conduct complaints about members of staff of the JO must be managed in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness including the right of an employee to be represented by their union.



- 5.9. Sanctions for breaches of the code of conduct by staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

## **How are code of conduct complaints about delegates of Joint Organisation and Joint Organisation advisers and committee members to be dealt with?**

- 5.10. The Executive Officer is responsible for the management of code of conduct complaints about delegates of the Joint Organisation and Joint Organisation committee members (other than complaints alleging a breach of pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints
- 5.11. The Executive Officer must refer code of conduct complaints about JO advisers, delegates of the JO and JO committee members alleging breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.
- 5.12. The Executive Officer may decide to take no action in relation to a code of conduct complaint about a delegate of the JO or a JO committee member other than one requiring referral to the Office under clause 5.11 here they consider that no action is warranted in relation to the complaint.
- 5.13. Where the Executive Officer decides to take no action in relation to a code of conduct complaint about a delegate of the Joint Organisation or a Joint Organisation committee member, the Executive Officer must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.
- 5.14. Where the Executive Officer considers it to be practicable and appropriate to do so, the Executive Officer may seek to resolve code of conduct complaints about delegates of the JO or JO committee members by alternative means such as, but not limited to, explanation, counselling, training, medication, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the JO's code of conduct.
- 5.15. Where the Executive Officer resolves a code of conduct complaint under clause 5.14 to the Executive Officer's satisfaction, the Executive Officer must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.16. Sanctions for breaches of the code of conduct by delegates of Joint Organisation and/or members of Joint Organisation committees depend on the severity, scale and importance of the breach and may include one or more of the following;
- 5.16.1. Censure;
- 5.16.2. requiring the person to apologise to any person or organisation adversely affected by the breach in such a time and form specified by the Executive Officer;
- 5.16.3. prosecution for any breach of the law,;
- 5.16.4. removing or restricting the person's delegation; or
- 5.16.5. removing the person from membership of the relevant Joint Organisation committee.



5.17. Prior to imposing a sanction against a delegate of a Joint Organisation or a Joint Organisation committee member under clause 5.16, the Executive Officer or any person making enquiries on behalf of the Executive Officer must comply with the requirements of procedural fairness. In particular:

5.17.1. the substance of the allegation (including the relevant provision/s of Joint Organisation’s code of conduct that the alleged conduct is in breach of) must be put to the person the subject of the allegation, and

5.17.2. the person must be given an opportunity to respond to the allegation, and

5.17.3. the Executive Officer must consider the person’s response in deciding whether to impose a sanction under clause 5.9.

## **How are code of conduct complaints about administrators to be dealt with?**

5.18. The Executive Officer must refer all code of conduct complaints about administrators to the Office for its consideration.

5.19. The Executive Officer must notify the complainant of the referral of their complaint in writing.

## **How are code of conduct complaints about Board Members to be dealt with?**

5.20. The Executive Officer must refer the following code of conduct complaints about Board Members to the OLG:

5.20.1. complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct

5.20.2. complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interest arising from political donations (see section 328B of the Act),

5.20.3. complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct

5.20.4. complaints the subject of a special complaints management arrangement with the Office under clause 5.49.

5.21. Where the Executive Officer refers a complaint to the Office under clause 5.20, the Executive Officer must notify the complainant of the referral in writing.

5.22. The Executive Officer may decide to take no action in relation to a code of conduct complaint about a Board Member other than one requiring referral to the Office under clause 5.20 where they consider no action is warranted in relation to the complaint.



- 5.23. Where the Executive Officer decides to take no action in relation to a code of conduct complaint about a Board Member, the Executive Officer must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.24. Where the Executive Officer considers it to be practicable and appropriate to do so, the Executive Officer may seek to resolve code of conduct complaints about Board Members, other than those requiring referral to the Office under clause 5.20, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the JO's code of conduct.
- 5.25. Where the Executive Officer resolves a code of conduct complaint under clause 5.24 to the Executive Officer's satisfaction, the Executive Officer must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.26. The Executive Officer must refer all code of conduct complaints about Board Members other than those referred to the Office under clause 5.20 or resolved under clause 5.24 to the complaints coordinator.

## **How are code of conduct complaints about the Executive Officer to be dealt with?**

- 5.27. The Chair must refer the following code of conduct complaints about the Executive Officer to the Office:
  - 5.27.1. complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct
  - 5.27.2. complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct
  - 5.27.3. complaints the subject of a special complaints management arrangement with the Office under clause 5.49.
- 5.28. Where the Chairperson refers a complaint to the Office under clause 5.27, the Chairperson must notify the complainant of the referral in writing.
- 5.29. The Chairperson may decide to take no action in relation to a code of conduct complaint about the Executive Officer, other than one requiring referral to the Office under clause 5.27, where they consider that no action is warranted in relation to the complaint.
- 5.30. Where the Chairperson decides to take no action in relation to a code of conduct complaint about the Executive Officer, the Chairperson must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.31. Where the Chairperson considers it to be practicable and appropriate to do so, the Chairperson may seek to resolve code of conduct complaints about the Executive Officer, other than those requiring referral to the Office under clause 5.27, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or voluntary apology or an undertaking not to repeat the offending



behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the Joint Organisation's code of conduct.

- 5.32. Where the Chairperson resolves a code of conduct complaint under clause 5.31 to the Chairperson's satisfaction, the Chairperson must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of the receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.33. The Chairperson must refer all code of conduct complaints about the Executive Officer other than those referred to the Office under clause 5.27 or finalised under clause 5.31 to the complaints coordinator.

## **Referral of code of conduct complaints to external agencies**

- 5.34. The Executive Officer, Chairperson or a conduct reviewer or conduct review committee may, at any time, refer a code of conduct complaint to an external agency or body such as, but not limited to, the OLG, the Independent Commission Against Corruption, the NSW Ombudsman or the Police for its consideration, where they consider such a referral is warranted.
- 5.35. Where the Executive Officer, Chairperson, conduct reviewer or conduct review committee refers a complaint to an external agency or body under clause 5.26, they must notify the complainant of the referral in writing where it is appropriate for them to do so.
- 5.36. Referral of a matter to an external agency or body shall finalise consideration of the matter under the code of conduct unless the JO is subsequently advised otherwise by the referral agency or body.

## **Disclosure of the identity of complaints**

- 5.37. In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed unless:
  - 5.37.1. the complainant consents in writing to the disclosure, or
  - 5.37.2. it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or
  - 5.37.3. it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or
  - 5.37.4. a conduct reviewer or conduct review committee is of the opinion that disclosure of the information be disclosed, or
  - 5.37.5. it is otherwise in the public interest to do so.
- 5.38. Clause 5.29 does not apply to the code of conduct complaints made by Board Members about other Board Members or the Executive Officer.
- 5.39. Where a Board Member makes a code of conduct complaint about another Board Member or the Executive Officer and the complainant Board Member considers that compelling grounds exist that would warrant





information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.

- 5.40. A request made by a complainant Board Member under clause 5.31 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.
- 5.41. The Executive Officer or Chairperson or, where the matter is referred, a conduct reviewer or conduct review committee must consider a request made under clause 5.31 before disclosing information that identifies or tends to identify the complainant Board Member but are not obliged to comply with the request.
- 5.42. Where a complainant Board Member makes a request under clause 5.31, the Executive Officer or Chairperson or, where the matter is referred, a conduct reviewer or conduct review committee shall notify the Board Member in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

## **Code of conduct complaints made as public interest disclosures**

- 5.43. Code of conduct complaints that are made as public interest disclosures under the Public Interest Disclosures Act 1994 are to be managed in accordance with the requirements of that Act, the Joint Organisations internal reporting policy and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.
- 5.44. For a code of conduct complaint to be dealt with as a public interest disclosure, the complainant must state at the outset and in writing at the time of making the complaint that it is made as a public interest disclosure.
- 5.45. Where a Board Member makes a code of conduct complaint about another Board Member or the Executive Officer as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant Board Member must consent in writing to the disclosure of their identity as the complainant.
- 5.46. Where a complainant Board Member declines to consent to the disclosure of their identity as the complainant under clause 5.37, the Executive Officer or the Chairperson must refer the complaint to the OLG for consideration. Such a referral must be made under section 26 of the Public Interest Disclosures Act 1994.

## **Special complaints management arrangements**

- 5.47. The Executive Officer may request in writing that the OLG enter into a special complaints management arrangement with the Joint Organisation in relation to code of conduct complaints made by or about a person or persons.
- 5.48. Where the OLG receives a request under clause 5.39, it may agree to enter into a special complaints management arrangement where it is satisfied that the number or nature of the code of conduct complaints made by or about a person or persons has:
  - 5.48.1. imposed an undue or disproportionate cost burden on the Joint Organisation's administration of its code of conduct, or
  - 5.48.2. impeded or disrupted the effective administration by the Joint Organisation of its code of conduct, or



5.48.3. impeded or disrupted the effective functioning of the Joint Organisation.

5.49. A special complaints management arrangement must be in writing and must specify the following:

5.49.1. the code of conduct complaints the arrangement relates to, and

5.49.2. the period that the arrangement will be in force.

5.50. The OLG may by notice in writing, amend or terminate a special complaints management arrangement at any time.

5.51. While a special complaints management arrangement is in force, an officer or the OLG (the assessing OLGal officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of these procedures except as provided in clause 5.44 below.

5.52. Where, following a preliminary assessment, the assessing OLGal officer determines that a code of conduct complaint warrants investigation by a conduct reviewer or a conduct review committee, the assessing OLGal officer shall notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing OLGal officer.

5.53. Prior to the expiry of a special complaints management agreement, the OLG shall, in consultation with the Executive Officer, review the arrangement to determine whether it should be renewed or amended.

5.54. A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.45.



## PART 6

### PRELIMINARY ASSESSMENT

#### Referral of code of conduct complaints to conduct reviewers

- 6.1. The complaints coordinator must refer all code of conduct complaints about Board Members or the Executive Officer submitted to the complaints coordinator within 21 days of receipt of a complaint by the Executive Officer or the Chairperson.
- 6.2. For the purposes of clause 6.1, the complaints coordinator will refer a complaint to a conduct reviewer selected from:
  - 6.2.1. a panel of conduct reviewers established by the Joint Organisation, or
  - 6.2.2. a panel of conduct reviewers established by an organisation approved by the Chief Executive of the OLG.
- 6.3. In selecting a suitable conduct reviewer, the complaints coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers.
- 6.4. A conduct reviewer must not accept the referral of a code of conduct complaint where:
  - 6.4.1. they have a conflict of interests in relation to the matter referred to them, or
  - 6.4.2. a reasonable apprehension of bias arises in relation to their consideration of the matter, or
  - 6.4.3. they or their employer has entered into one or more contracts with the Joint Organisation in the 2 years preceding the referral and they or their employer have received or expect to receive payments under the contract or contracts of a cumulative value that exceeds \$100,000, or
  - 6.4.4. at the time of the referral, they or their employer are the Joint Organisation's legal service providers or are a member of a panel of legal service providers appointed by the Joint Organisation.
- 6.5. For the purposes of clause 6.4.1, a conduct reviewer will have a conflict of interests in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 4.1 of the Model Code of Conduct).
- 6.6. For the purposes of clause 6.4.2, a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.
- 6.7. Where the complaints coordinator refers to a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the code of conduct complaint and any other information relevant to the matter held by the Joint Organisation.



- 6.8. The complaints coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer and advise which conduct reviewer the matter has been referred to.

## **Preliminary assessment by a conduct reviewer**

- 6.9. The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the complaints coordinator for the purposes of determining how the complaint is to be managed.
- 6.10. The conduct reviewer may determine to do one or more of the following in relation to a complaint referred to them but the complaints coordinator:
- 6.10.1. to take no action, or
  - 6.10.2. to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
  - 6.10.3. to refer the matter back to the Executive Officer or, in the case of a complaint about the Executive Officer, the Chairperson, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
  - 6.10.4. to refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the OLG or the Police, or
  - 6.10.5. to investigate the matter, or
  - 6.10.6. to recommend that the complaints coordinator convene a conduct review committee to investigate the matter.
- 6.11. In determining how to deal with a matter under clause 6.10, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.27.
- 6.12. The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what option to exercise under clause 6.10.
- 6.13. The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what option to exercise in relation to the matter under clause 6.10. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.
- 6.14. The conduct reviewer must refer to the OLG any complaints referred to him or her that should have been referred to the OLG under clauses 5.16 and 5.21.
- 6.15. The conduct reviewer must determine to take no action on a complaint that is not a code of conduct complaints for the purposes of these procedures.



- 6.16. Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.10, paragraphs 6.10.1, 6.10.2 or 6.10.3, they must provide the complainant with written notice of their determination and provide reasons for it and this will finalise consideration of the matter under these procedures.
- 6.17. Where the conduct reviewer refers to a complaint to another agency or body, they must notify the complainant of the referral in writing where it is appropriate for them to do so.
- 6.18. The conduct reviewer may only determine to investigate a matter or to recommend that a conduct review committee be convened to investigate a matter where they are satisfied as to the following:
  - 6.18.1. that the complaint is a “code of conduct complaint” for the purposes of these procedures, and
  - 6.18.2. that the alleged conduct, on its face, is sufficiently serious to warrant investigation, and
  - 6.18.3. that the matter is one that could not or should not be resolved by alternative means.
- 6.19. The conduct reviewer may only determine to recommend that a conduct review committee be convened to investigate a matter after consulting with complaints coordinator and where they are satisfied that it would not be practicable or appropriate for the matter to be investigated by a sole conduct reviewer.
- 6.20. The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the complaints coordinator.
- 6.21. The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint except as may be specifically required under these procedures.

## **Referral back to the Executive Officer or Chair for resolution**

- 6.22. Where the conduct reviewer determines to refer a matter back to the Executive Officer or to the Chair to be resolved by alternative and appropriate means, they must write to the Executive Officer or, in the case of a complaint about the Executive Officer, to the Chairperson, recommending the means by which the complaint may be resolved.
- 6.23. The conduct reviewer must consult with the Executive Officer or Chairperson prior to referring a matter back to them under clause 6.22.
- 6.24. The Executive Officer or Chair may decline to accept the conduct reviewer’s recommendation. Where the Executive Officer or Chair declines to do so, the conduct reviewer may determine to deal with the complaint by other means under clause 6.10.
- 6.25. Where the conduct reviewer refers a matter back to the Executive Officer or the Chair under clause 6.22, the Executive Officer or, in the case of a complaint about the Executive Officer, the Chair, is responsible for implementing or overseeing the implementation of the conduct reviewer’s recommendation.



- 6.26. Where the conduct reviewer refers a matter back to the Executive Officer or Chair under clause 6.22, the Executive Officer, or in the case of a complaint about the Executive Officer, the Chair, must advise the complainant in writing of the steps taken to implement the conduct reviewer' recommendation once these steps have been completed.

## Complaints assessment criteria

- 6.27. In undertaking the preliminary assessment of a complaint, the conduct reviewer may have regard to the following considerations:
- 6.27.1. whether the complaint is a “code of conduct complaint”
  - 6.27.2. whether the complaint is trivial, frivolous, vexatious or not made in good faith,
  - 6.27.3. whether the complaint discloses prima facie evidence of a breach of the code,
  - 6.27.4. whether the complaint raises issues that would be more appropriately dealt with by another agency or body,
  - 6.27.5. whether there is or was an alternative satisfactory means of redress available to the complainant in relation to the conduct complained of,
  - 6.27.6. whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation or apology,
  - 6.27.7. whether the issue/s giving rise to the complaint have previously been addressed or resolved,
  - 6.27.8. whether the conduct complained of forms part of a pattern of conduct,
  - 6.27.9. whether there were mitigating circumstances giving rise to the conduct complained of,
  - 6.27.10. the seriousness of the alleged conduct,
  - 6.27.11. the significance of the conduct or the impact of the conduct on the Joint Organisation,
  - 6.27.12. how much time has passed since the alleged conduct occurred, or
  - 6.27.13. such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.



## PART 7

### OPERATIONS OF CONDUCT REVIEW COMMITTEES

- 7.1. Where a conduct reviewer recommends that the complaints coordinator convene a conduct review committee to investigate a matter, the conduct reviewer must notify the complaints coordinator of their recommendation and the reasons for their recommendation in writing.
- 7.2. The complaints coordinator must convene a conduct review committee comprising three conduct reviewers selected from:
  - 7.2.1. a panel of conduct reviewers established by the Joint Organisation, or
  - 7.2.2. a panel of conduct reviewers established by an organisation approved by the Chief Executive of the OLG.
- 7.3. In selecting suitable conduct reviewers for membership of a conduct review committee convened under clause 7.2, the complaints coordinator may have regard to the following:
  - 7.3.1. the qualifications and experience of members of the panel of conduct reviewers, and
  - 7.3.2. any recommendation made by the conduct reviewer about the membership of the committee.
- 7.4. The conduct reviewer who made the preliminary assessment of the complaint must not be a member of a conduct review committee convened under clause 7.2.
- 7.5. A member of a panel of conduct reviewers may not be appointed to a conduct review committee where they would otherwise be precluded from accepting a referral of the matter to be considered by the committee under clause 6.4.
- 7.6. Where the complaints coordinator convenes a conduct review committee, they will advise the complainant in writing that the committee has been convened and the membership of the committee.
- 7.7. Where, after a conduct review committee has been convened, a member of the committee becomes unavailable to participate in further consideration of the matter, the complaints coordinator may appoint another person from a panel of conduct reviewers to replace them.
- 7.8. Meetings of a conduct review committee may be conducted in person from a panel of conduct reviewers to replace them.
- 7.9. The members of the conduct review committee must elect a chairperson of the committee.
- 7.10. A quorum for a meeting of the conduct review committee is two members.
- 7.11. Business is not to be conducted at any meeting of the conduct review committee unless a quorum is present.
- 7.12. If a quorum is not present at a meeting of the conduct review committee, it must be adjourned to a time and date that is specified.



- 7.13. Each member of the conduct review committee is entitled to one vote in relation to the matter. In the event of an equality of votes being cast, the chairperson will have the casting vote.
- 7.14. If the vote on a matter is not unanimous, then this should be noted in the report of the conduct review committee in which it makes its determination in relation to the matter.
- 7.15. The chairperson may make a ruling on questions of procedure and the chairperson's ruling is to be final.
- 7.16. The conduct review committee may only conduct business in the absence of the public.
- 7.17. The conduct review committee must maintain proper records of its proceedings.
- 7.18. The complaints coordinator shall undertake the following functions in support of the conduct review committee:
  - 7.18.1. provide procedural advice where required,
  - 7.18.2. ensure adequate resources are provided including secretarial support,
  - 7.18.3. attend meetings of the conduct review committee in an advisory capacity, and
  - 7.18.4. provide advice about the Joint Organisation's processes where requested.
- 7.19. The complaints coordinator must not be present at, or in sight of a meeting of, the conduct review committee where it makes its final determination in relation to the matter.
- 7.20. The conduct review committee may adopt procedures governing the conduct of its meetings that supplement these procedures. However any procedures adopted by the committee must not be inconsistent with these procedures.





## PART 8

### INVESTIGATIONS

#### **What matters may a conduct reviewer or conduct review committee investigate?**

- 8.1. A conduct reviewer or conduct review committee (hereafter referred to as an “investigator”) may investigate a code of conduct complaint that has been referred to them by the complaints coordinator and any matters related to or arising from that complaint.
- 8.2. Where an investigator identifies further separate possible breaches of the code of conduct that are not related to or arise from the code of conduct complaint that has been referred to them, they are to report the matters separately in writing to the Executive Officer, or, in the case of alleged conduct on the part of the Executive Officer, to the Chair.
- 8.3. The Executive Officer or the Chair is to deal with a matter reported to them by an investigator under clause 8.2 as if it were a new code of conduct complaint in accordance with these procedures.

#### **How are investigations to be commenced?**

- 8.4. The investigator must at the outset of their investigation provide written notice of investigation to the subject person. The notice of investigation must:
  - 8.4.1. disclose the substance of the allegations against the subject person, and
  - 8.4.2. advise of the relevant provisions of the code of conduct that apply to the alleged conduct, and
  - 8.4.3. advise of the process to be followed in investigating the matter, and
  - 8.4.4. invite the subject person to make a written submission in relation to the matter within 28 days or such other reasonable period specified by the investigator in the notice, and
  - 8.4.5. provide the subject person the opportunity to address the investigator on the matter within such reasonable time specified in the notice.
- 8.5. The subject person may within 14 days of receipt of the notice of investigation, request in writing that the investigator provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them. An investigator will only be obliged to provide such information that the investigator considers reasonably necessary for the subject person to identify the substance of the allegation against them.
- 8.6. An investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the subject person in relation to the matter referred to them.



- 8.7. Where an investigator issues an amended notice of investigation, they will provide the subject person with a further opportunity to make a written submission in response to the amended notice of investigation within 28 days or such other reasonable period specified by the investigator in the amended notice.
- 8.8. The investigator must also, at the outset of their investigation, provide written notice of the investigation to the complainant, the complaints coordinator and the Executive Officer, or in the case of a complaint about the Executive Officer, to the Chair. This notice must:
  - 8.8.1. advise them of the matter the investigator is investigating, and
  - 8.8.2. in the case of the notice to the complainant, invite them to make a written submission in relation to the matter within 28 days or such other reasonable period specified by the investigator in the notice.

## Written and oral submissions

- 8.9. Where the subject person or the complainant fails to make a written submission in relation to the matter within the period specified by the investigator in their notice of investigation or amended notice of investigation, the investigator may proceed to prepare their draft report without receiving such submissions.
- 8.10. The investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.
- 8.11. Prior to preparing a draft report, the investigator must give the subject person an opportunity to address the investigator on the matter being investigated. The subject person may do so in person or by telephone.
- 8.12. Where the subject person fails to accept the opportunity to address the investigator within the period specified by the investigator in the notice of investigation, the investigator may proceed to prepare a draft report without hearing from the subject person.
- 8.13. Where the subject person accepts the opportunity to address the investigator in person, they may have a support person or legal advisor in attendance. The support person or legal advisor will act in an advisory or support role to the subject person only. They must not speak on behalf of the subject person or otherwise interfere with or disrupt proceedings.
- 8.14. The investigator must consider all written and oral submissions made to them in relation to the matter.

## How are the investigations to be conducted

- 8.15. Investigations are to be undertaken without undue delay.
- 8.16. Investigations are to be undertaken in the absence of the public and in confidence.
- 8.17. Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.
- 8.18. Investigators may seek such advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.



- 8.19. An investigator may request that the complaints coordinator provide such further information that the investigator considers may be reasonably necessary for them to establish the facts of the matter. The complaints coordinator will, as far as is reasonably practicable, provide the information requested by the investigator.

## **Referral or resolution of a matter after the commencement of an investigation**

- 8.20. At any time after an investigator has issued a notice of investigation and before they have issued a draft report, an investigator may determine to:
- 8.20.1. resolve the matter by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
  - 8.20.2. refer the matter to the Executive Officer, or, in the case of a complaint about the Executive Officer, to the Chairperson, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
  - 8.20.3. refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the OLG or the Police.
- 8.21. Where an investigator determines to exercise any of the options under clause 8.20 after the commencement of an investigation, they must do so in accordance with the requirements of Part 6 of these procedures relating to the exercise of these options at the preliminary assessment stage.
- 8.22. Where an investigator determines to exercise any of the options under clause 8.20 after the commencement of an investigation, they may by written notice to the subject person, the complainant, the complaints coordinator and the Executive Officer, or in the case of a complaint about the Executive Officer, the Chair, discontinue their investigation of the matter.
- 8.23. Where the investigator discontinues their investigation of a matter under clause 8.22, this shall finalise the consideration of the matter under these procedures.
- 8.24. An investigator is obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under clause 8.20 or to discontinue their investigation except as may be specifically required under these procedures.

## **Draft investigation reports**

- 8.25. When an investigator has completed their enquiries and considered any written or oral submissions made to them in relation to a matter, they must prepare a draft of their proposed report.
- 8.26. The investigator must provide their draft report to the subject person and invite them to make a written submission in relation to it within 28 days or such other reasonable period specified by the investigator.
- 8.27. Where the investigator proposes to make adverse comment about any other person (an affected person) in their report, they must also provide the affected person with relevant extracts of their draft reporting



containing such comment and invite the affected person to make a written submission in relation to it within the 28 days or such other reasonable period specified by the investigator.

- 8.28. The investigator must consider written submissions received in relation to the draft report prior to finalizing their report in relation to the matter.
- 8.29. The investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. Where as a result of making further enquiries, the investigator makes any material change to their proposed report that makes new adverse comment about the subject person or an affected person, they must provide the subject person or affected person as the case may be with a further opportunity to make a written submission in relation to the new adverse comment.
- 8.30. Where the subject person or an affected person fails to make a written submission in relation to the draft report within the period specified by the investigator, the investigator may proceed to prepare and issue their final report without receiving such submissions.
- 8.31. The investigator may accept written submissions in relation to the draft report received outside the period specified by the investigator at any time prior to issuing their final report.

## Final Investigation reports

- 8.32. Where an investigator issues a notice of investigation they must prepare a final report in relation to the matter unless the investigation is discontinued under clause 8.22.
- 8.33. An investigator must not prepare the final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.
- 8.34. The investigator's final report must:
  - 8.34.1. make findings of fact in relation to the matter investigated, and
  - 8.34.2. make a determination that the conduct investigated either:
    - 8.34.2.1. constitutes a breach of the code of conduct, or
    - 8.34.2.2. does not constitute a breach of the code of conduct, and
  - 8.34.3. provide reasons for the determination.
- 8.35. Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may make one or more of the following recommendations:
  - 8.35.1. that the Joint Organisation revise any of its policies and procedures,
  - 8.35.2. that the subject person undertake any training or other education relevant to the conduct giving rise to the breach,
  - 8.35.3. that the subject person be counselled for their conduct,



- 8.35.4. that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation,
- 8.35.5. that findings of inappropriate conduct be made public,
- 8.35.6. in the case of a breach by the Executive Officer, that action be taken under the Executive Officer's contract for the breach,
- 8.35.7. in the case of a breach by a Board Member, that the Board Member be formally censured for the breach under section 440G of the Act,
- 8.35.8. in the case of a breach by a Board Member, that the Joint Organisation resolves as follows:
  - 8.35.8.1. that the Board Member be formally censured for the breach under section 440G of the Act, and
  - 8.35.8.2. that the matter be referred to the OLG for further action under the misconduct provisions of the Act.
- 8.36. Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may make one or more of the following recommendations:
  - 8.36.1. that the Joint Organisation revise any of its policies or procedures,
  - 8.36.2. that a person or persons undertake any training or other education.
- 8.37. In making a recommendation under clause 8.35, the investigator may have regard to the following:
  - 8.37.1. the seriousness of the breach
  - 8.37.2. whether the breach can be easily remedied or rectified,
  - 8.37.3. whether the subject person has remedied or rectified their conduct,
  - 8.37.4. whether the subject person has expressed contrition,
  - 8.37.5. whether there were any mitigating circumstances,
  - 8.37.6. the age, physical or mental health or special infirmity of the subject person,
  - 8.37.7. whether the breach is technical or trivial only,
  - 8.37.8. any previous breaches,
  - 8.37.9. whether the breach forms part of a pattern of conduct,
  - 8.37.10. the degree of reckless intention or negligence of the subject person,
  - 8.37.11. the extent to which the has affected other parties or the Joint Organisation as a whole,



- 8.37.12. the harm or potential harm to the reputation of the Joint Organisation or local government arising from the conduct,
  - 8.37.13. whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny,
  - 8.37.14. whether the educative approach would be more appropriate than a punitive one,
  - 8.37.15. the relative costs and benefits from taking formal enforcement action as opposed to taking no action or taking informal action,
  - 8.37.16. what action or remedy would be in the public interest.
- 8.38. At a minimum, the investigator's final report must contain the following information:
- 8.38.1. a description of the allegations against the subject person,
  - 8.38.2. the relevant provisions of the code of conduct that apply to the alleged conduct investigated,
  - 8.38.3. a statement of reasons as to why the conduct reviewer considered that the matter warranted investigation,
  - 8.38.4. a statement of reasons as to why the conduct reviewer considered that the matter was one that could not or should not be resolved by alternative means,
  - 8.38.5. where the matter is investigated by a conduct review committee, a statement as to why the matter was one that warranted investigation by a conduct review committee instead of a sole conduct reviewer,
  - 8.38.6. a description of any attempts made to resolve the matter by use of alternative means,
  - 8.38.7. the steps taken to investigate the matter,
  - 8.38.8. the facts of the matter,
  - 8.38.9. the investigator's findings in relation to the facts of the matter and the reasons for those findings,
  - 8.38.10. the investigator's determination and the reasons for that determination,
  - 8.38.11. any recommendations.
- 8.39. The investigator must provide a copy of their report to the complaints coordinator, the subject person and the complainant.
- 8.40. Where the investigator has determined that there has not been a breach of the code of conduct, the complaints coordinator must provide a copy of the investigator's report to the Executive Officer or, where the report relates to the Executive Officer's conduct, to the Chair and this will finalise the consideration of the matter under these procedures.
- 8.41. Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35.1, the complaints coordinator must provide a copy of



the investigator's report to the Executive Officer. Where the Executive Officer agrees with the recommendation/s, the Executive Officer is responsible for implementing the recommendation/s.

- 8.42. Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35.2 or 8.35.3, the complaints coordinator must provide a copy of the investigator's report to the Executive Officer or, where the report relates to the Executive Officer's conduct, to the Chair. The Executive Officer is responsible for arranging the implementation of the recommendation/s where the report the report relates to a Board Member's conduct. The Chair is responsible for arranging the implementation of the recommendation/s where the report relates to the Executive Officer's conduct.
- 8.43. Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35.4 to 8.35.8, the complaints coordinator must, where practicable, arrange for the investigator's report to be reported to the next ordinary Joint Organisation meeting for the Board's consideration unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary Joint Organisation meeting following the election.

## **Consideration of the final investigation report by the Joint Organisation**

- 8.44. The role of the Joint Organisation in relation to a final investigation report is to impose a sanction where an investigator determines that there has been a breach of the code of conduct and makes a recommendation in their final report under clause 8.35.4 to 8.35.8.
- 8.45. The Joint Organisation is to close its meeting to the public to consider the final investigation report where it is permitted to do so under section 10A of the Act.
- 8.46. Where the complainant is a Board Member, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant Board Member may absent themselves without making any disclosure of interests in relation to the matter unless otherwise required to do so under the Act or the Model Code.
- 8.47. Prior to imposing sanction, the Joint Organisation must provide the subject person with an opportunity to make an oral submission to the Joint Organisation. The subject person is to confine their submission to addressing the investigator's recommendation/s.
- 8.48. Once the subject person has completed their oral submission they must absent themselves from the meeting, and, where they are a Board Member, take no part in any discussion or voting on the matter.
- 8.49. The Joint Organisation must not invite oral submissions from other persons for the purposes of seeking to rehear evidence previously considered by the investigator.
- 8.50. Prior to imposing a sanction, the Joint Organisation by resolution:
- 8.50.1. request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or
  - 8.50.2. seek an opinion by the OLG in relation to the report.



- 8.51. The Joint Organisation may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the OLG.
- 8.52. The investigator may make additional enquiries for the purpose of preparing a supplementary report.
- 8.53. Where the investigator prepares a supplementary report, they must provide copies to the complaints coordinator who shall provide a copy each to the Joint Organisation, the subject person and the complainant.
- 8.54. The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.
- 8.55. The Joint Organisation is only required to provide the subject person a further opportunity to address it on a supplementary report where the supplementary report contains new information that is adverse to them.
- 8.56. A Joint Organisation may by resolution impose one or more of the following sanctions on a subject person:
  - 8.56.1. that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the resolution,
  - 8.56.2. that findings of inappropriate conduct be made public,
  - 8.56.3. in the case of a breach by the Executive Officer, that action be taken under the Executive Officer's contract for the breach,
  - 8.56.4. in the case of a breach by a Board Member, that the Board Member be formally censured for the breach under section 440G of the Act,
  - 8.56.5. in the case of a breach by a Board Member:
    - 8.56.5.1. that the Board Member be formally censured for the breach under section 440G of the Act, and
    - 8.56.5.2. that the matter be referred to the OLG for further action under the misconduct provisions of the Act.
- 8.57. The Joint Organisation is not obliged to adopt the investigator's recommendation/s. where the Joint Organisation does not adopt the investigator's recommendation/s, the Joint Organisation must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.
- 8.58. The Joint Organisation may, by resolution, impose a sanction on the subject person under clause 8.56 different to the sanction recommended by the investigator in their final report.
- 8.59. Where the Joint Organisation resolves not to adopt the investigator's recommendation/s, the complaints coordinator must notify the OLG of the JO's decision and the reasons for it.





## PART 9

### RIGHTS OF REVIEW

#### Failure to comply with a requirement under these procedures

- 9.1. Where any person believes that a person has failed to comply with a requirement prescribed under these procedures, they may, at any time prior to the Joint Organisation’s consideration of an investigator’s final report, raise their concerns in writing with the OLG.

#### Practice rulings

- 9.2. Where a subject person and an investigator are in dispute over a requirement under these procedures, either person may make a request in writing to the OLG to make a ruling on a question of procedure (a practice ruling).
- 9.3. Where the OLG receives a request in writing for a practice ruling, the OLG may provide notice in writing of its ruling and the reasons for it to the person who requested it and to the investigator, where that person is different.
- 9.4. Where the OLG makes a practice ruling, all parties are to comply with it.
- 9.5. The OLG may decline to make a practice ruling. Where the OLG declines to make a practice ruling, it will provide notice in writing of its decision and the reasons for it to the person who requested it and to the investigator, where that person is different.

#### Requests for review

- 9.6. A person the subject of a sanction imposed under Part 8 of these procedures other than one imposed under clause 8.56, paragraph (e) may, within 28 days of the sanction being imposed, seek a review of the investigator’s determination and recommendation by the OLG.
- 9.7. A review under clause 9.6 may be sought on the following grounds:
  - 9.7.1. that the investigator has failed to comply with a requirement under these procedures, or
  - 9.7.2. that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
  - 9.7.3. that the Joint Organisation has failed to comply with a requirement under these procedures in imposing a sanction.
- 9.8. A request for a review made under clause 9.6 must be made in writing and must specify the grounds upon which the person believes the investigator or the Joint Organisation has erred.



- 9.9. The OLG may decline to conduct a review, where the grounds upon which the review is sought are not sufficiently specified.
- 9.10. The OLG may undertake a review of the matter without receiving a request under clause 9.6.
- 9.11. The OLG will undertake a review of the matter on the papers. However, the OLG may request that the complaints coordinator provide such further information that the OLG considers reasonably necessary for it to review the matter. The complaints coordinator must, as far as is reasonably practicable, provide the information requested by the OLG.
- 9.12. Where a person requests a review under clause 9.6, the OLG may direct the Joint Organisation to defer any action to implement a sanction. The Joint Organisation must comply with a direction to defer action by the OLG.
- 9.13. The OLG must notify the person who requested the review and the complaints coordinator of the outcome of the OLG's review in writing and the reasons for its decision. In doing so, the OLG may comment on any other matters the OLG considers to be relevant.
- 9.14. Where the OLG considers that the investigator or the Joint Organisation has erred, the OLG may recommend that a decision to impose a sanction under these procedures be reviewed.
- 9.15. In the case of a sanction implemented by the Executive Officer or the Chair under clause 8.42, where the OLG recommends that the decision to impose a sanction be reviewed:
  - 9.15.1. the complaints coordinator must provide a copy of the OLG's determination in relation to the matter to the Executive Officer or the Chair, or
  - 9.15.2. the Executive Officer or Chair must review any action taken by them to implement the sanction, and
  - 9.15.3. the Executive Officer or Chair must consider the OLG's recommendation in doing so.
- 9.16. In the case of a sanction imposed by the Joint Organisation by resolution under clause 8.56, where the OLG recommends that the decision to impose a sanction be reviewed:
  - 9.16.1. the complaints coordinator must, where practicable, arrange for the OLG's determination to be tabled at the next ordinary Joint Organisation meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary meeting following the election, and
  - 9.16.2. the Joint Organisation must:
    - 9.16.2.1. review its decision to impose the sanction, and
    - 9.16.2.2. consider the OLG's recommendation in doing so, and
    - 9.16.2.3. resolve to either rescind or reaffirm its previous resolution in relation to the matter.
- 9.17. Where having reviewed its previous decision in relation to a matter under clause 9.16 the Joint Organisation resolves to reaffirm its previous decision, the Joint Organisation must state in its resolution its reasons for doing so.



## PART 10

### PROCEDURAL IRREGULARITIES

- 10.1. A failure to comply with these procedures does not, on its own, constitute a breach of the code of conduct except as may be otherwise specifically provided under the code of conduct.
- 10.2. A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:
  - 10.2.1. the non-compliance is isolated and/or minor in nature, or
  - 10.2.2. reasonable steps are taken to correct the non-compliance, or
  - 10.2.3. reasonable steps are taken to address the consequences of the non-compliance.



## PART 11

### PRACTICE DIRECTIONS

- 11.1. The OLG may at any time issue a practice direction in relation to the application of these procedures.
- 11.2. The OLG will issue practice directions in writing, by circular to all councils and JOs
- 11.3. All persons performing a function prescribed under these procedures must consider the OLG's practice directions when performing the function.



## PART 12

### REPORTING ON COMPLAINTS STATISTICS

- 12.1. The complaints coordinator must arrange for the following statistics to be reported to the Joint Organisation within 3 months of the end of September of each year:
  - 12.1.1. the total number of code of conduct complaints made about Board Members and the Executive Officer under the code of conduct in the year to September,
  - 12.1.2. the number of code of conduct complaints referred to a conduct reviewer,
  - 12.1.3. the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints,
  - 12.1.4. the number of code of conduct complaints investigated by a conduct reviewer,
  - 12.1.5. the number of code of conduct complaints investigated by a conduct review committee,
  - 12.1.6. without identifying particular matters, the outcome of code of conduct complaints investigated by a conduct reviewer or conduct review committee under these procedures,
  - 12.1.7. the number of matters reviewed by the OLG and, without identifying particular matters, the outcome of the reviews, and
  - 12.1.8. the total cost of dealing with code of conduct complaints made about Board Members and the Executive Officer in the year to September, including staff costs.
- 12.2. The Joint Organisation is to provide the OLG with a report containing the statistics referred to in clause 2.1 within 3 months of the end of September of each year.



## PART 13

### CONFIDENTIALITY

- 13.1. Information about code of conduct complaints and the management and investigation of code of conduct complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under these procedures.



## MODEL CODE PROCEDURE FLOWCHART

