

# The ICAC and the Model Code of Conduct for local councils in NSW

On 1 January 2005, the *Local Government Amendment (Discipline) Act 2004* (“the Amendment Act”) became law. The purpose of the Amendment Act was to amend provisions concerning the discipline of council officials. This term includes mayors, councillors, council staff, general managers, council administrators, members of council committees, conduct reviewers and delegates of council.

The Amendment Act sets out the standards of behaviour that the community expects of council officials. These standards are specified in a Model Code of Conduct for local councils in NSW.

All councils are required to adopt and apply the provisions of the Model Code. Councils may supplement these with their own provisions, or may vary the provisions of the Model Code provided that these are more onerous than the provisions in the Model Code.

This brochure is designed to assist local councils in understanding how the Model Code relates to the ICAC’s jurisdiction and how it increases the ICAC’s capacity to investigate the conduct of council officials.

## The Model Code and ICAC jurisdiction

As well as amending the *Local Government Act 1993*, the Amendment Act amended the *Independent Commission Against Corruption Act 1988* to give the ICAC additional scope to investigate the conduct of council officials.

One of the principal functions of the ICAC, as set out in the ICAC Act, is to investigate allegations or complaints relating to corrupt conduct.

Section 9 of the ICAC Act – which sets out conditions which must be met for conduct to be considered corrupt – was amended to specifically include a “substantial breach” of an applicable requirement of a council’s code of conduct.

What this means is that, provided the requirements of section 8 – which defines the general nature of corrupt conduct – of the ICAC Act are met, the ICAC can now investigate conduct of council officials which involves, or may involve, a substantial breach of a council’s code of conduct.

## What is a “substantial breach”?

Whether a breach of a council’s code of conduct is substantial will be assessed on a case-by-case basis.<sup>1</sup> However, this will involve inappropriate conduct at the more serious end of the spectrum. The types of breaches that might be viewed as substantial include:

- abusing public office for undue personal gain
- exercising planning responsibilities for an improper motive
- intentional misuse of public resources or information
- deliberate mismanagement of a material conflict of interest
- repeated or ongoing misconduct.

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## Misbehaviour provisions and the ICAC

The Amendment Act created a framework for dealing with acts of misbehaviour, which are defined in section 440F of the Local Government Act to include:

- contravention by a councillor of the Local Government Act or its regulations
- failure by a councillor to comply with applicable requirements of a council’s code of conduct
- an act of disorder committed by a councillor (as defined in clause 256 of the Local Government (General) Regulation 2005).

The amendments and additions to Chapter 14 of the Local Government Act<sup>2</sup> give the ICAC the power to include in a report to the Department of Local Government (DLG) a recommendation that consideration be given to the suspension of a councillor.

The Director-General of the DLG, after considering the ICAC report, may then suspend a councillor from office for one month.<sup>3</sup>

Alternately, the Director-General may refer the ICAC's report to the Pecuniary Interest and Disciplinary Tribunal (PIDT) for consideration.<sup>4</sup> In turn, the PIDT may counsel or reprimand the councillor, suspend him or her from office for a period of up to six months, or suspend payments to the councillor for up to six months.<sup>5</sup>

Importantly, the power to initiate the process for suspension<sup>6</sup> is also given to the NSW Ombudsman. The suspension process can also be initiated by the Director-General of the DLG, or, in certain circumstances, by a local council itself.<sup>7</sup>

Despite these powers, the primary responsibility for managing councillor misbehaviour rests with individual councils.

## The Model Code of Conduct and the ICAC

As outlined above, councils are required to adopt and apply the provisions of the Model Code of Conduct. There are some key aspects of the Model Code that may require councils to adopt and enforce specific practices. Provisions relating to non-pecuniary conflicts of interest and inappropriate interactions are discussed below.

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## Non-pecuniary interests

The Model Code requires that councils have a formal system for disclosing and managing non-pecuniary conflicts of interest. It requires that councillors and council staff must disclose all non-pecuniary conflicts of interest fully and in writing.

The Model Code also sets out a number of options for dealing with non-pecuniary conflicts of interest once they have been disclosed. The decision on which management option to take will depend on whether or not the conflict is significant. For conflicts of interest involving council staff members, the decision on which management option to take must be made in consultation with the staff member's manager.

Identifying, disclosing and managing non-pecuniary conflicts of interest is an integral part of the duties of a council official.

The ICAC urges all councils officials to familiarise themselves with their obligations in this area. Deliberate mismanagement of serious non-pecuniary conflicts of interest could trigger an ICAC investigation.

## Inappropriate interactions

The Model Code also specifies a range of inappropriate interactions.

For instance, council staff are specifically prohibited from meeting with developers alone and outside office hours to discuss development applications or proposals.

Councillors and administrators are also prohibited from being overbearing or threatening to council staff.

## Breaches of the Model Code

Complaints about the conduct of councillors, members of council staff, members of council committees and delegates of council should be addressed in writing to the council's general manager. Complaints about the conduct of a general manager should be addressed in writing to the mayor.

### Complaint handling procedures for council staff, delegates and committee members (excluding general managers)

General managers are responsible for making enquiries, or causing enquiries to be made, into complaints alleging breach of the Model Code regarding council staff, delegates of council and/or members of council committees (other than councillors) and will determine such matters.

### Complaint handling procedures for councillors and general managers

General managers are responsible for assessing complaints alleging breaches of the Model Code by councillors. Mayors are responsible for assessing complaints alleging breaches of the Model Code by general managers. Complaints are assessed in order to determine whether to refer the matter to a council's conduct review committee/reviewer. The Model Code provides the criteria for this assessment.

The Model Code provides that once a complaint has been assessed a general manager or mayor must determine either to:

- take no further action and give the complainant the reasons in writing, or
- resolve the complaint by use of alternative and

appropriate strategies and give the complainant advice on the resolution of the matter in writing, or

- discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, including the ICAC, as well as advise the complainant in writing, or
- refer the matter to council's conduct review committee/ reviewer.

Furthermore, if a general manager believes there is a reasonable suspicion of corrupt conduct, the matter must be reported to the ICAC, as specified in section 11 of the ICAC Act.

### Conduct review committee/reviewer

Councils must resolve to appoint persons independent of council to comprise members of a conduct review committee and/or to act as sole conduct reviewers. Additional information about the role and operation of review committees and/or sole conduct reviewers is contained in the Model Code.

## For more information

Additional information about the Model Code can be found in DLG circulars 08/63 and 08/38. These circulars are available on the DLG website, [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au).

Comprehensive information about the role and functions of the ICAC is available on the ICAC website, [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au).

Telephone enquiries may be directed to:

Department of Local Government: Tel: 02 4428 4100

Independent Commission Against Corruption :  
Tel: 02 8281 5999 Freecall: 1800 463 909

## Further reading

*Report on an investigation into corruption allegations affecting Wollongong City Council* (part three), Independent Commission Against Corruption, October 2008.

"Updated Guidelines for the Model Code Of Conduct for Local Councils in NSW", DLG circular to councils, number 08/63, October 2008.

*Guidelines for the Model Code of Conduct for Local Councils in NSW*, NSW Department of Local Government, October 2008.

"Revised Model Code of Conduct for Local Councils in NSW", DLG circular to Councils, number 08/38, June 2008.

*The Model Code of Conduct for Local Councils in NSW*, NSW Department of Local Government, June 2008.

## Endnotes

1. Two ICAC investigation reports have explored the concept of a substantial breach of an applicable code of conduct:  
*Report on the investigation into the conduct of the Hon J. Richard Face* (June 2004) and  
*Report on an investigation into the conduct of the Hon Malcolm Jones MLC* (July 2003)
2. Section 440H(1)(d), Local Government Act.
3. Section 440K(1)(b), Local Government Act.
4. Section 440N, Local Government Act.
5. Section 482A, Local Government Act.
6. Under Section 440H(1)(c), Local Government Act.
7. The ICAC is also authorised to include in a report under section 74 of the *ICAC Act* a recommendation that consideration be given to the suspension of a councillor from civic office under the *Local Government Act* with a view to his or her dismissal for serious corrupt conduct. In addition, the ICAC can also include a recommendation in such a report that consideration be given to the making of a proclamation under the *Local Government Act* that all civic offices in relation to a council be declared vacant if the ICAC is of the opinion that systemic corruption exists within the council.



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## **ICAC tip sheet series**

Tip sheets provide readily accessible and practical advice on managing and/or preventing particular types of corrupt conduct. More detailed advice can generally be found in an ICAC guideline publication on the relevant topic. The ICAC's investigation reports also provide useful corruption prevention advice that is often widely applicable across the NSW public sector. To access the full range of ICAC publications go to [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au) and follow the links.