



BYRON SHIRE COUNCIL

CONDUCT REVIEW COMMITTEE

CONSTITUTION

**INFORMATION ABOUT THIS DOCUMENT
(INTERNAL USE ONLY)**

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Further Document Information and Relationships

Related Legislation	Section 355, Local Government Act (1993), Protected Disclosures Act 1994, Local Government Act 1993, Local Government Regulation 2005, Independent Commission Against Corruption Act 1988
Related Policies	Code of Conduct, Protected Disclosures Policy 1.11, Complaints Management Policy 3.22
Related Procedures/ Protocols, Statements, documents	Strategic Planning Committee Constitution, Audit Committee Constitution, Internal Audit Committee Constitution, Markets and Creative Industries Committee Constitution, Communications Committee, Guide to Operations - Advisory Committees

1. INTRODUCTION AND OVERVIEW

Byron Shire Council adopted its Code of Conduct, based on the Department of Local Government Model Code of Conduct for Local Government Councils in NSW (June 2008), at its meeting held on 28 August 2008 in accordance with the provisions of Section 440 of the Local Government Act 1993.

Except for allegations against the General Manager, all suspected breaches of the Code of Conduct should be reported to the General Manager in the first instance, and preferably in writing. Councillors should refrain from making allegations in public, including raising issues at meetings of the Council.

The Code of Conduct provides a three-step process in addressing complaints about suspected breaches of the Code of Conduct, with the first step carried out by the General Manager, the second step by the Conduct Review Committee or a Conduct Reviewer, and the third step by the Council. This Constitution relates to the operations of an appointed Conduct Review Committee.

The General Manager determines whether to refer a complaint to the Conduct Review Committee. If not referred, the General Manager advises the complainant and gives reasons. The process for complaint handling is set out in clause 12 of Policy 1.8 – Model Code of Conduct.

The Conduct Review Committee assesses and/or investigates the facts of the complaint referred to it by the General Manager and prepares a report to the Council on whether there is a prima facie breach of the Code of Conduct. The Committee may recommend a sanction.

The Council determines whether there has been a breach of the Code and may impose sanctions in accordance with the Code.

Allegations against the General Manager should be reported to the Mayor. In that instance the Mayor will adopt the role of the General Manager in determining whether the complaint is referred to the Conduct Review Committee.

Enquiries by the General Manager, Mayor, an independent investigator or the Conduct Committee will follow the rules of procedural fairness – see “Complaint Handling Procedure” at section 9 for more details.

2. NAME

The Committee will be known as the “Byron Shire Council Conduct Review Committee”.

3. SCOPE

The Conduct Review Committee will only deal with complaints about Councillors referred to it by the General Manager or complaints against the General Manager referred to it by the Mayor.

Allegations of a Pecuniary Interest shall be reported to the Director General of the Department of Local Government and allegations of corrupt conduct are to be reported to ICAC under Section 10 of the ICAC Act 1988 and will not be dealt with by the Conduct Committee.

The Conduct Review Committee does not deal with complaints about staff other than the General Manager.

4. MEMBERSHIP AND REMUNERATION

- 4.1. The Conduct Review Committee panel shall comprise of at least five appropriately qualified persons of high standing in the community who are independent of the Council, who are to be appointed through a publicly advertised expression of interest process.
- 4.2. Where a matter is to be considered by the conduct review committee/reviewer, then in each case, the general manager, or Mayor in the case of complaints about the general manager, acting in their capacity as advisor, will either convene a conduct review committee and select its members from those appointed by council or alternatively select a sole conduct reviewer from those appointed by council.
- 4.3. The Committee will comprise of three or more members when convened by either the General Manager or the Mayor in the case of complaints about the General Manager.

5. TENURE OF OFFICE

The Committee is appointed for the term of the Council.

6. QUORUM

- 6.1. A quorum for a meeting of the Conduct Review Committee is the majority of the members of the Conduct Review Committee.
- 6.2. 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.
- 6.3. Business is not to be conducted at any meeting of the Conduct Review Committee unless a quorum is present.
- 6.4. Business may be conducted by video-conference or teleconference.

7. MEETINGS

- 7.1. Meetings of the Conduct Review Committee shall be held as required and at a time convenient to all members of the Committee.
- 7.2. In the circumstances where a member of the Conduct Review Committee cannot participate in a matter, the general manager, or Mayor in the case of complaints about the general manager, should select another person from those appointed by Council or alternatively select a sole conduct reviewer from those appointed by Council.
- 7.3. The chairperson is to be elected by the members of the Conduct Review Committee.
- 7.4. The general manager, or in the case of complaints about the general manager, the Mayor, will act in an advisory capacity to the committee when requested.

8. VOTING OF THE CONDUCT REVIEW COMMITTEE

- 8.1. Each member of the Conduct Review Committee shall be entitled to one vote in respect of any matter. In the event of equality of votes being cast, the chairperson shall have the casting vote.

- 8.2. If the vote on a matter is not unanimous, then this should be noted in any report to Council on its findings.
- 8.3. In relation to any procedural matters relating to the operation of the Conduct Review Committee, the ruling of the chairperson shall be final.

9. **COMMITTEE COMPLAINT HANDLING PROCEDURE GUIDELINES**

The following sections outline the procedures to be followed in investigating complaints about Councillors or the General Manager under the Code of Conduct.

Enquiries by the General Manager, Mayor, an independent investigator or the Conduct Review Committee/Reviewer will follow the rules of procedural fairness. The Committee/Reviewer must:

- a. provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation
 - b. provide the person the subject of the complaint with an opportunity to place before the conduct review committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry
 - c. provide the person the subject of the complaint with an opportunity to address the conduct review committee/reviewer in person
 - d. hear all parties to a matter and consider submissions before deciding the substance of any complaint
 - e. make reasonable enquiries before making any recommendations
 - f. act fairly and without prejudice or bias
 - g. ensure that no person decides a case in which they have a conflict of interests
 - h. conduct the enquiries without undue delay.
- 9.1. **The Complainant** - The complainant makes a complaint, preferably in writing, to the General Manager (or in the case of a complaint about the General Manager, the Mayor) fully particularising the complaint and including at the least:
- a. The name of person being complained about;
 - b. The date or dates upon which relevant conduct is alleged to have taken place;
 - c. A summary of conduct complained about;
 - d. How the complainant says the conduct complained about is a breach of the Code of Conduct;
 - e. Enough information to address the following questions is essential:
 - i. Was the person acting as a councillor (or in the case of the General Manager, as the General Manager), ie on Council business, on Council premises and/or representing himself/herself as a councillor (or General Manager)?
 - ii. Is the matter a conflict of pecuniary interest? If so, the complaint should be made to the Department of Local Government, not the Conduct Committee.
 - iii. Does the matter involve corruption? If so, the complaint should be made to the Independent Commission Against Corruption (ICAC).
 - iv. What section of the Code is alleged to have been breached?
 - v. Is the complainant seeking to make a Protected Disclosure?*
 - vi. Any evidence the complainant wishes to rely upon

*See Policy 1.11 - Protected Disclosures.

- 9.2. **The General Manager** - The general manager (or the Mayor, in the case of a complaint about the general manager), within seven (7) days after receipt of the written complaint, determines whether or not to report the matter to the Conduct Review Committee and:
- a. If not, gives reasons to the complainant in writing.
 - b. If so, refers the whole of the complaint to the Conduct Review Committee and advises the complainant.
- 9.2.2. The general manager/Mayor will use the following criteria as a guide in determining whether to refer the matter to the Conduct Review Committee:
- a. whether there is any prima facie evidence of a breach of the code of conduct
 - b. whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as general manager
 - c. whether the complaint is trivial, frivolous, vexatious or not made in good faith
 - d. whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct
 - e. whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police
 - f. whether there is an alternative and satisfactory means of redress (eg apology, retraction or alternative dispute resolution)
 - g. how much time has elapsed since the events the subject of the complaint took place
 - h. how serious the complaint is and the significance it has for council
 - i. whether the complaint is one of a series indicating a pattern of conduct
- 9.2.3. The general manager may inform the person being the subject of the complaint (“respondent”) and may seek additional information from the complainant and/or respondent. The General Manager will inform the complainant and respondent, of the process and likely confidentiality of any information supplied.
- 9.2.4. The general manager, or in the case of complaints about the general manager, the Mayor, will undertake the following functions in relation to the conduct review committee/reviewer:
- provide procedural advice when requested
 - ensure adequate resources are provided, including providing secretariat support
 - attend meetings of the conduct review committee if so requested by the committee, and then in an advisory capacity only
 - provide advice about council processes if requested to do so but not so as to take part in the decision making process
 - if attending the conduct review committee meeting to provide advice, must not be present at, or in sight of, the meeting when a decision is taken.
- 9.2.5. Where the general manager, or in the case of complaints about the general manager, the Mayor, is unable to act as advisor to the conduct review committee/reviewer due to a conflict of interests in relation to a complaint, they are to nominate a senior council officer or councillor (in the case of complaints about the general manager) to perform this role

9.2.6. Where a matter is to be considered by the Conduct Review Committee/reviewer, then in each case, the general manager, or Mayor in the case of complaints about the general manager, acting in their capacity as advisor, will either convene a meeting of the Conduct Review Committee or alternatively select a sole conduct reviewer from those appointed by Council.

- 9.3. **The Conduct Review Committee/Reviewer** - Each of the members of the Conduct Committee is to independently review the written referral and decide by majority either to:
- a. not make enquiries into the complaint and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or;
 - b. resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, making recommendations to the general manager, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
 - c. make enquiries into the complaint, or
 - d. engage another appropriately qualified person to make enquiries into the complaint, or
 - e. not make enquiries or discontinue making enquiries where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing. Despite any other provision of this code, this will constitute finalisation of such matters and no further action is required.
 - f. For each matter investigated by or on behalf of the Committee, the Committee shall prepare an investigation plan to ensure:
 - i. procedural fairness and natural justice,
 - ii. proper record keeping, including minutes of meetings,
 - iii. appropriate level of confidentiality in the circumstances of the complaint;
 - iv. adequacy of investigations.

The investigation plan would include, at a minimum:

- i. providing the respondent with a full copy of the complaint (subject to the Protected Disclosures Act and Policy);
- ii. seeking a written response within a specified and reasonable time (which will vary from complaint to complaint and be determined at the discretion of the Conduct Committee or independent investigator, as the case may be);
- iii. providing the response to the complainant with a further opportunity to reply, advising parties of limits on confidentiality; and
- iv. keeping minutes of meetings.

NOTE: Only fresh issues raised by the respondent may be addressed by the complainant in any reply and it may often be the case that no reply is necessary. In the interests of natural justice, no new issues can be determined by the Conduct Committee where the respondent has not had an opportunity to respond.

After receipt of all information or the final report of the independent investigator or if no response is received within the stipulated time, the Committee meets again within a further fourteen days and deals with the complaint by:

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- a. determining whether there is a prima facie case/evidence of a breach of the Code;
 - b. if not, giving written reasons to both parties and reporting the matter to Council;
 - c. if so, making a report to Council on the complaint and advising the complainant and the person subject of the complaint.
 - d. The Committee may make a recommendation to Council as to the sanction that should be imposed.
 - e. Before making any such recommendations, the conduct review committee/reviewer shall have regard to the following:
 - i. the seriousness of the breach
 - ii. whether the breach can be easily remedied or rectified
 - iii. whether the subject has remedied or rectified their conduct
 - iv. whether the subject has expressed contrition
 - v. whether the breach is technical or trivial only
 - vi. whether the breach represents repeated conduct
 - vii. the age, physical or mental health or special infirmity of the subject
 - viii. the degree of reckless intention or negligence of the subject
 - ix. the extent to which the breach has affected other parties or the council as a whole
 - x. the harm or potential harm to the reputation of local government and of the council arising from the conduct
 - xi. whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny
 - xii. whether an educative approach would be more appropriate than a punitive approach
 - xiii. the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action
 - xiv. what action or remedy would be in the public interest
 - xv. where to comply with a councillor's obligations under this code of conduct would have had the effect of depriving the council of a quorum or otherwise compromise the capacity of council to exercise its functions
 - f. The General Manager shall determine whether all or part of the Committee's report is "confidential" when presented to Council. Council will determine through its normal processes whether to consider the matter and any outcome in confidential session or not.
 - g. The conduct review committee/reviewer will conduct business in the absence of the public.
 - h. The conduct review committee/reviewer will keep proper records of deliberations.

NOTE:

1. *Written rather than oral submissions are required unless circumstances prevent the submissions being made in writing.*
2. *All parties to the complaint are/will be expected to strictly comply with stipulated times, and extensions of time will only be made in special circumstances.*

9.4 The Council - The Council shall consider a report from the Conduct Review Committee and determine whether a breach of the Code of Conduct has occurred. If Council

determines that a breach of the Code of Conduct has occurred, Council may resolve to impose a sanction as provided by the Code of Conduct:

Sanctions for delegates and/or members of council committees depend on severity, scale and importance of the breach and may include:-

- a) censure
- b) requiring the person to apologise to any person adversely affected by the breach
- c) counselling
- d) prosecution for any breach of the law
- e) removing or restricting the person's delegation
- f) removing the person from membership of the relevant council committee
- g) revising any of council's policies, procedures and/or the code of conduct.

The Council having determined that a councillor or the general Manager have breached the code may by resolution impose a sanction to:-

- a) censure the councillor for misbehaviour in accordance with section 440G of the Act
- b) require the councillor or general manager to apologise to any person adversely affected by the breach
- c) counsel the councillor or general manager
- d) make public findings of inappropriate conduct
- e) prosecute for any breach of law.

NOTE:

In the event that the above Guidelines are not consistent with of Policy 1.8 – Model Code of Conduct, the procedures in the Policy will have precedence.