

1. **MANAGING UNREASONABLE COMPLAINANT CONDUCT POLICY**

Introduction

The purpose of this report is for Council to consider adoption of the revised Managing Unreasonable Complainant Conduct Policy.

Background

Council adopted its Managing Unreasonable Complainant Conduct Policy on 9 March 2016, **Resolution No 2016/59**. The policy is based on the NSW Ombudsman's Model Policy of 2013.

Issues

Council's policy is due to be reviewed. The NSW Ombudsman's model policy of 2013 on which Council's policy is based has not changed. There are therefore, no substantial amendments proposed to the policy. Minor alterations have been marked in red for ease of reference (**see Attachment No. 1**).

Assessment

(a) *Legal Implications Including Directives and Guidelines*

The NSW Ombudsman's *Unreasonable Complainant Conduct Model Policy* provides guidance for organisations to ensure that their policy and procedures dealing with unreasonable complainants is fair, consistent and is compliant with the NSW Ombudsman's suggested approach.

(b) *Financial/Social and Environmental Impacts*

In a very small number of cases some complainants behave in ways that are inappropriate and unacceptable – despite Council's best efforts to help them. They make inappropriate demands on staff time and Council resources and refuse to accept decisions and recommendations in relation to their complaints.

Unreasonable Complainant Conduct incidents will generally be managed by limiting or adapting the ways in which Council will interact with complainants e.g. restricting who they have contact with; defining the subject matter of communications that will be considered and responded to; when they can have contact with Council; where they may make contact or how they may make contact.

(c) *Strategic Implications*

This report relates to:- Community Strategic Plan 4.2.8 – Implement best practice governance standards, transparent decision making and a strong ethical culture – Delivery Program 4.2.8.2 – Maintain a framework of relevant policies and procedures.

1. MANAGING UNREASONABLE COMPLAINANT CONDUCT POLICY

Summary

Council's Managing Unreasonable Complainant Conduct Policy is due to be reviewed. The Policy is based on the NSW Ombudsman's *Unreasonable Complainant Conduct Model Policy* issued in 2013. Minor amendments have been marked in red for ease of reference.

There is no legal requirement for this policy to be placed on public exhibition.

RECOMMENDATION

That the attached revised Managing Unreasonable Complainant Conduct Policy be adopted.

2. JOINT ORGANISATION – REGULATION CONSULTATION GUIDE

Introduction

The purpose of this report is to advise of the Office of Local Government's (OLG) Regulation Consultation Guide for Joint Organisations, released February 2018.

Background

The Local Government Act 1993 has been amended to allow Joint Organisations (JOs) to be established. The amendments set out the principal functions of JOs and provide the framework for JOs to operate in an efficient and accountable way.

The next step is to formalise the regulations that support the Act amendments. These will be delivered by amendments to the Local Government (General) Regulation 2005. The draft regulations are attached (**see Attachment No 2.**) Also attached is a guide explaining the Draft Regulations (**see Attachment No. 3.**)

Issues

The OLG are seeking feedback on the draft regulation to support JOs by 5pm Friday 16 March 2018. Details for submissions are listed on page 2 of the attached Regulation Consultation Guide.

2. JOINT ORGANISATION – REGULATION CONSULTATION GUIDE (Cont'd)

Points of interest include:

- Chair of the JO will not have a casting vote. Instead if there are equal votes the motion is lost.
- Within 12 months, a JO will need to adopt an expenses and facilities policy
- There will be allowance for remote participation and voting via telephone or videoconferencing.
- First Statement of Strategic Regional Priorities can only be prepared at the end of 2018 or six months after date JO officially commences (whichever is later)
- JO does not need to prepare an annual report in the first year of operation
- JO does not need financial report until after first full year of operation
- JO to make an interim appointment of Executive Officer for 12 months if they choose
- Future staff will be covered by the State Award. This allows for the transfer of staff from a Council to a JO without loss of leave entitlements etc.

Other parts of Local Government Act which will apply to JOs include:

- Open meetings
- Tendering requirements
- Staffing structures
- Code of Meeting Practice, how often it meets, insurance against liability, financial assistance to other Councils etc.
- Financial management, performance management, suspension, public enquiries etc.
- Disclosures of interest
- Loans, investments, fees for services etc.
- Offences, legal proceedings, penalty notices
- Regulations, Code of Conduct

The OLG have also recently advised that the NSW Government has decided to extend the period by which all Councils must submit nominations to be part of a JO to 23 March 2018. Council has already resolved to join a JO and the Minister has been advised accordingly.

Summary

The OLG have released draft amendments to the Regulations relating to JOs as well as a guide explaining the regulation amendments. Submissions close 5pm Friday 16 March 2018.

RECOMMENDATION

That the information be noted

3. NARROMINE SHIRE COUNCIL CROWN RESERVES RESERVE TRUST

Introduction

This report is presented to Council to consider granting seasonal licence agreements with various sporting clubs for their use of Rotary Park.

Background

Council is the Trust Manager of Narromine Shire Council Crown Reserves Reserve Trust which manages Rotary Park (58602) Reserve. This reserve includes the Noel Powell Ovals and Olsen Park.

Reserve No 58602 at Narromine is for the purpose of public recreation, notified in the Government Gazette of 19 February 1926.

Under the *Crown Lands Act 1989*, the Reserve Trust can enter into a temporary licence for a term of not more than one year. Agreements for longer terms require the Minister's consent. All licence agreements for Crown Land have a standard format acceptable to Crown Lands, however Schedule 2 can include special conditions if applicable.

Issues

One of Council's Delivery Program activities is to prepare leases/licence agreements for all sporting groups using Council's sporting fields. Council has already determined the fees and charges for the use of its sporting facilities. As Rotary Park is Crown Land, the Reserve Trust must grant consent for temporary licence agreements.

Current sporting groups using Rotary Park are Narromine Senior Rugby Union Club; Narromine Senior Rugby League Club; Narromine Junior Rugby League Club and the Narromine Junior Rugby Union Club.

Assessment

a) Legal Implications

Crown Lands Act 1989
Reserve Trust Handbook

b) Financial Implications

Fees and charges for the use of sporting facilities have been adopted by Council as part of its Operational Plan 2017/2018.

c) Policy Implications

Nil

3. NARROMINE SHIRE COUNCIL CROWN RESERVES RESERVE TRUST (Cont'd)

d) Strategic Implications

This report relates to Item 1.1.12 of the Community Strategic Plan – Ensure connection between sporting user groups and Item 1.1.12.2 of the Delivery Plan – Prepare leases/licences or user agreements for all sporting groups using Council's sporting fields.

Summary/Conclusion

The *Crown Lands Act 1989* and the *Reserve Trust Handbook* stipulate how Reserve Trusts are to be managed. Council is the Trust Manager of Narromine Shire Council Crown Reserves Reserve Trust which manages Rotary Park (58602) Reserve. The Reserve Trust can enter into temporary licence agreements without Ministerial consent.

RECOMMENDATION

That Council as Trust Manager of Narromine Shire Council Crown Reserves Reserve Trust enter into seasonal temporary licence agreements with the Narromine Senior Rugby Union Club; the Narromine Senior Rugby League Club; Narromine Junior Rugby League Club and the Narromine Junior Rugby Union Club for their use of part of the Rotary Park (58602) Reserve for sporting activities.

4. TRANGIE PUBLIC RECREATION (R520094) RESERVE TRUST

Introduction

This report is presented to Council to consider granting seasonal licence agreements with various sporting clubs for their use of Burns Oval.

Background

Council is the Trust Manager of Trangie Public Recreation (R520094) Reserve Trust which manages Trangie Park – Burns Oval (520094) Reserve.

Reserve 520094 at Trangie is for the purpose of public recreation dedicated on 18 October 1894.

Under the *Crown Lands Act 1989*, the Reserve Trust can enter into a temporary licence for a term of not more than one year. Agreements for longer terms require the Minister's consent. All licence agreements for Crown Land have a standard format acceptable to Crown Lands, however Schedule 2 can include special conditions if applicable.

4. TRANGIE PUBLIC RECREATION (R520094) RESERVE TRUST (Cont'd)

Issues

One of Council's Delivery Program activities is to prepare leases/licence agreements for all sporting groups using Council's sporting fields. Council has already determined the fees and charges for the use of its sporting facilities. As Burns Oval is Crown Land, the Reserve Trust must grant consent for temporary licence agreements.

Current sporting groups using Burns Oval are Trangie Rugby League Club; Trangie Soccer Club and Trangie Cricket Club.

It should be noted that the Trangie Rugby Union Club already has a 5 year licence agreement for their use of Burns Oval.

Assessment

a) *Legal Implications*

Crown Lands Act 1989
Reserve Trust Handbook

b) *Financial Implications*

Fees and charges for the use of sporting facilities have been adopted by Council as part of its Operational Plan 2017/2018.

c) *Policy Implications*

Nil

d) *Strategic Implications*

This report relates to Item 1.1.12 of the Community Strategic Plan – Ensure connection between sporting user groups and Item 1.1.12.2 of the Delivery Plan – Prepare leases/licences or user agreements for all sporting groups using Council's sporting fields.

Summary/Conclusion

The *Crown Lands Act 1989* and the *Reserve Trust Handbook* stipulate how Reserve Trusts are to be managed. Council is the Trust Manager of Trangie Public Recreation (R520094) Reserve Trust which manages Trangie Park – Burns Oval (520094) Reserve. The Reserve Trust can enter into temporary licence agreements without Ministerial consent.

RECOMMENDATION

That Council as Trust Manager of Trangie Public Recreation (520094) Reserve Trust enter into seasonal temporary licence agreements with The Trangie Rugby League Club, Trangie Soccer Club, and Trangie Cricket Club for their use of part of Trangie Park – Burns Oval (520094) Reserve for sporting activities.

5. TRANGIE SHOWGROUND AND RACECOURSE (D520007) RESERVE TRUST

Introduction

This report is presented to Council to consider granting a further 5 year licence agreement with the Trangie Campdraft Association Inc. for their use of the Trangie Showground and Racecourse.

Background

Council is the Trust Manager of the Trangie Showground and Racecourse (D520007) Reserve Trust which manages the Trangie Showground and Racecourse (520007) Reserve.

Reserve 520007 was dedicated for Racecourse and Showground at Trangie and notified as such on 13 July 1934.

The existing five year licence agreement between the Reserve Trust and the Trangie Campdraft Association will expire on 8 July 2018.

Under the *Crown Lands Act 1989*, the Reserve Trust can enter into a temporary licence for a term of not more than one year. Agreements for longer terms require the Minister's consent. As this licence agreement is for a 5 year period, Minister's consent will be required. The draft licence agreement must be forwarded to NSW Trade and Investment, Crown Lands Division for comment and in-principle consent prior to signature by the parties.

Assessment

a) *Legal Implications*

Crown Lands Act 1989
Reserve Trust Handbook

b) *Financial Implications*

Fees and charges for the use of the showground and racecourse facilities have been adopted by Council as part of its Operational Plan 2017/2018.

c) *Policy Implications*

Nil

d) *Strategic Implications*

This report relates to Item 4.3.4 of the Community Strategic Plan – Ensure Council's property assets are monitored and well managed.

5. TRANGIE SHOWGROUND AND RACECOURSE (D520007) RESERVE TRUST (Cont'd)

Summary/Conclusion

The *Crown Lands Act 1989* and the *Reserve Trust Handbook* stipulate how Reserve Trusts are to be managed. Council is the Trust Manager of Trangie Showground and Racecourse (D520007) Reserve Trust which manages the Trangie Showground and Racecourse (520007) Reserve. Ministerial consent will be required for a further 5 year agreement with the Trangie Campdraft Association.

RECOMMENDATION

That Council as Trust Manager of Trangie Showground and Racecourse (D520007) Reserve Trust enter into a further 5 year licence agreement with Trangie Campdraft Association for their use of part of the Trangie Showground and Racecourse (520007) Reserve for camp drafting events.

6. NARROMINE SHOWGROUND (R86330) RESERVE TRUST

Introduction

This report is presented to Council to consider granting further 5 year licence agreements with the Narromine Agricultural (Show) Society Inc. and the Narromine Turf Club Inc. for their use of the Narromine Showground and Racecourse.

Background

Council is the Trust Manager of the Narromine Showground (R86330) Reserve Trust which manages the Narromine Showground (86330) Reserve.

Reserve 86330 was dedicated for Racecourse, Showground and Public Recreation and notified as such on 21 July 1967.

The existing five year licence agreement between the Reserve Trust and the Narromine Agricultural (Show) Society will expire on 31 May 2018; and that between the Reserve Trust and the Narromine Turf Club will expire on 30 June 2018.

Under the *Crown Lands Act 1989*, the Reserve Trust can enter into a temporary licence agreement for a term of not more than one year. Agreements for longer terms require the Minister's consent. As these licence agreements are for a 5 year period, Minister's consent will be required. The draft licence agreements must be forwarded to NSW Trade and Investment, Crown Lands Division for comment and in-principle consent prior to signature by the parties.

6. NARROMINE SHOWGROUND (R86330) RESERVE TRUST (Cont'd)

Assessment

a) *Legal Implications*

Crown Lands Act 1989
Reserve Trust Handbook

b) *Financial Implications*

Fees and charges for the use of the showground and racecourse facilities have been adopted by Council as part of its Operational Plan 2017/2018.

c) *Policy Implications*

Nil

d) *Strategic Implications*

This report relates to Item 4.3.4 of the Community Strategic Plan – Ensure Council's property assets are monitored and well managed.

Summary/Conclusion

The *Crown Lands Act 1989* and the *Reserve Trust Handbook* stipulate how Reserve Trusts are to be managed. Council is the Trust Manager of Narromine Showground (R86330) Reserve Trust which manages the Narromine Showground (86330) Reserve. Ministerial consent will be required for a further 5 year agreement with the Narromine Agricultural (Show) Society Inc. and the Narromine Turf Club Inc. for their use of the reserve.

RECOMMENDATION

That Council as Trust Manager of Narromine Showground (R86330) Reserve Trust:-

1. Enter into a further 5 year licence agreement with Narromine Agricultural (Show) Society Inc. for their use of part of Reserve 86330 for holding an annual show.
2. Enter into a further 5 year licence agreement with Narromine Turf Club Inc. for their use of part of Reserve 86330 for horse training and racing.

7. TRANGIE BURNS OVAL – REDEVELOPMENT

Introduction

The purpose of this report is for Council as Trust Manager of the Trangie Public Recreation (R520094) Reserve Trust to continue to determine if they wish to auspice the funding on behalf of the Trangie Rugby Union Club for the redevelopment of Burns Oval.

7. TRANGIE BURNS OVAL – REDEVELOPMENT (Cont'd)

Background

A report was put before Council's Ordinary Meeting held on 14 February 2018 providing an update on the proposed project. At that stage Council was in the process of seeking a variation to the grant to remove the lights and drainage from the original scope of works due to the market value of the project being well in excess of the funding received. The Department of Liquor and Gaming has now approved this variation.

As advised in the February report to Council, it will be necessary for Council to re-tender the work, given the significant reduction/change in the scope of works required to bring the project to within budget.

Issues

Council held a public meeting in Trangie on Tuesday 6 March 2018 advising that the Department of Liquor and Gaming had approved the reduced scope of works as part of a variation to the funding agreement and advising that accordingly, the new project would not include lighting or drainage. There was some conjecture that a local community group could undertake the original fully scoped project themselves to come within budget.

Council as the Trust Manager of this reserve cannot abrogate its legal responsibilities and allow ad hoc, well-meaning individual community members to complete a project of this magnitude. Crown Lands originally agreed to support the project on the basis that the work was to be a Council managed project, undertaken to Council standards. Contact with Crown Lands has recently been made and they have advised that they will consider supporting the project being undertaken by a community group, provided the community group is able to demonstrate their ability to undertake the project to local government standards. This means that the group is a legal entity, has the correct public liability and professional indemnity insurances, has the necessary safety management systems and documentation in place and has previous experience with similar projects. Council as Trust Manager will still be required to oversee the project.

Options

The re-development has become a complex project with a great deal of staff time and associated costs being apportioned to it and not charged to the project.

Council as Trust Manager of the Reserve has a number of options going forward:-

1. Council re-tender for the reduced scope of works as approved by the Department of Liquor and Gaming.
2. Council re-tender for the reduced scope of works as approved by the Department of Liquor and Gaming and allow for alternate tenders to be submitted which can include the original scope of works.

7. TRANGIE BURNS OVAL – REDEVELOPMENT (Cont'd)

3. Council decline the offer of funding from the Department of Liquor and Gaming and apply for different streams of funding to encompass the original scope of works, possibly as a staged project.
4. Council decline the offer of funding from the Department of Liquor and Gaming and maintain the facility in line with its adopted capital works program.

Assessment

a) *Legal Implications*

Local Government Act 1993
Crown Lands Act 1989

b) *Financial Implications*

Council has committed \$100,000 in the 2017/18 financial year towards this project, of which approximately \$65,000 has been expended on project management and detailed design to date.

c) *Policy Implications*

Office of Local Government – Tendering Guidelines
Council's Procurement Policy

d) *Strategic Implications*

This report relates to Item 4.3.4 of the Community Strategic Plan – Ensure Council's property assets are monitored and well managed.

Summary/Conclusion

Council as Trust Manager of the Reserve cannot abrogate its legal responsibilities with respect to the re-development of Burns Oval. Crown Lands as owner of the land will reconsider providing support to a community group undertaking the project, provided they can demonstrate adherence to Work Health and Safety requirements, insurance requirements, skill and experience etc. Given that there is conjecture from the local community that the original scope of works can be achieved within the funding, it is proposed that Council consider re-tendering for the reduced scope of works as approved by the Department of Liquor and Gaming and allow for alternate tenders to be submitted which can include the original scope of works.

RECOMMENDATION

That Council as Trust Manager of the Trangie Public Recreation (R520094) Reserve Trust:-

1. Re-tender for the reduced scope of works as approved by the Department of Liquor and Gaming and allow for alternate tenders to be submitted which can include the original scope of works.
2. Make the decision whether to accept the tender or not.

Jane Redden
General Manager



Managing Unreasonable Complainant Conduct Policy

Adopted By Council

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1. INTRODUCTION

1.1 Statement of support

Narromine Shire Council is committed to being accessible and responsive to all complainants who approach Council for assistance and/or with a complaint. At the same time the success of Council depends on:

- its ability to do its work and perform functions in the most effective and efficient ways possible
- the health, safety and security of its staff, and
- its ability to allocate resources fairly across all the complaints received.

When complainants behave unreasonably in their dealings with Council, their conduct can significantly affect Council's success. As a result, Council will take proactive and decisive action to manage any complainant conduct that negatively and unreasonably affects Council and will support Council staff to do the same in accordance with this policy.

2. OBJECTIVES

2.1 Policy aims

This policy has been developed to assist all staff members to better manage unreasonable complainant conduct ('UCC'). Its aim is to ensure that all staff:

- Feel confident and supported in taking action to manage UCC.
- Act fairly, consistently, honestly and appropriately when responding to UCC.
- Are aware of their roles and responsibilities in relation to the management of UCC and how this policy will be used.
- Understand the types of circumstances when it may be appropriate to manage UCC using one or more of the following mechanisms:
 - The strategies to change or restrict a complainant's access to Council's services.
 - Alternative dispute resolution strategies to deal with conflicts involving complainants and members of Council.
 - Legal instruments such as trespass laws/legislation to prevent a complainant from coming onto Council premises and orders to protect specific staff members from any actual or apprehended personal violence, intimidation or stalking.
- Have a clear understanding of the criteria that will be considered before Council decides to change or restrict a complainant's access to Council's services.
- Are aware of the processes that will be followed to record and report UCC incidents as well as the procedures for consulting and notifying complainants about any proposed actions or decisions to change or restrict their access to Council's services.
- Are familiar with the procedures for reviewing decisions made under this policy, including specific timeframes for review.

3. DEFINING UNREASONABLE COMPLAINANT CONDUCT

3.1 Unreasonable complainant conduct

Most complainants who come to Council act reasonably and responsibly in their interactions even when they are experiencing high levels of distress, frustration and anger about their complaint. However in a very small number of cases some complainants behave in ways that are inappropriate and unacceptable – despite Council's best efforts to help them. They are aggressive and verbally abusive towards staff. They threaten harm and violence, bombard Council's offices with unnecessary and excessive phone calls and emails, make inappropriate demands on Council time and resources and refuse to accept Council decisions and recommendations in relation to their complaints. When complainants behave in these ways Council considers their conduct to be 'unreasonable'.

Unreasonable complainant conduct ('UCC') is any behaviour by a current or former complainant which, because of its nature or frequency raises substantial health, safety, resource or equity issues for Council, its staff, other service users and complainants or the complainant himself/herself.

UCC can be divided into five categories of conduct:

- Unreasonable persistence
- Unreasonable demands
- Unreasonable lack of cooperation
- Unreasonable arguments
- Unreasonable behaviours

3.2 Unreasonable persistence

Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on Council, staff, services, time and/or resources. Some examples of unreasonably persistent behaviour include:

- An unwillingness or inability to accept reasonable and logical explanations including final decisions that have been comprehensively considered and dealt with.
- Persistently demanding a review simply because it is available and without arguing or presenting a case for one.
- Pursuing and exhausting all available review options when it is not warranted and refusing to accept further action cannot or will not be taken on their complaints.
- Reframing a complaint in an effort to get it taken up again.
- Bombarding Council and its staff with phone calls, visits, letters, emails (including cc'd correspondence) after repeatedly being asked not to do so.
- Contacting different people within Council and/or externally to get a different outcome or more sympathetic response to their complaint – internal and external forum shopping.

3.3 Unreasonable demands

Unreasonable demands are any demands (express or implied) that are made by a complainant that have a disproportionate and unreasonable impact on Council, staff, services, time and/or resources. Some examples of unreasonable demands include:

- Issuing instructions and making demands about how Council have/should handle their complaint, the priority it was/should be given, or the outcome that was/should be achieved.
- Insisting on talking to a senior manager or the General Manager personally when it is not appropriate or warranted.
- Emotional blackmail and manipulation with the intention to guilt trip, intimidate, harass, shame, seduce or portray themselves as being victimised – when this is not the case.
- Insisting on outcomes that are not possible or appropriate in the circumstances – eg for someone to be sacked or prosecuted, an apology and/or compensation when no reasonable basis for expecting this.
- Demanding services that are of a nature or scale that Council cannot provide when this has been explained to them repeatedly.

3.4 Unreasonable lack of cooperation

Unreasonable lack of cooperation is an unwillingness and/or inability by a complainant to cooperate with Council, staff, or complaints system and processes that results in a disproportionate and unreasonable use of Council services, time and/or resources. Some examples of unreasonable lack of cooperation include:

- Sending a constant stream of comprehensive and/or disorganised information without clearly defining any issues of complaint or explaining how they relate to the core issues

being complained about – only where the complainant is clearly capable of doing this.

- Providing little or no detail with a complaint or presenting information in 'drips and drabs'.
- Refusing to follow or accept Council instructions, suggestions, or advice without a clear or justifiable reason for doing so.
- Arguing frequently and/or with extreme intensity that a particular solution is the correct one in the face of valid contrary arguments and explanations.
- Displaying unhelpful behaviour – such as withholding information, acting dishonestly, misquoting others, and so forth.

3.5 Unreasonable arguments

Unreasonable arguments include any arguments that are not based in reason or logic, that are incomprehensible, false or inflammatory, trivial or delirious and that disproportionately and unreasonably impact upon Council, staff, services, time, and/or resources. Arguments are unreasonable when they:

- fail to follow a logical sequence
- are not supported by any evidence and/or are based on conspiracy theories
- lead a complainant to reject all other valid and contrary arguments
- are trivial when compared to the amount of time, resources and attention that the complainant demands
- are false, inflammatory or defamatory.

3.6 Unreasonable behaviour

Unreasonable behaviour is conduct that is unreasonable in all circumstances – regardless of how stressed, angry or frustrated that a complainant is – because it unreasonably compromises the health, safety and security of Council staff, other service users or the complainant himself/herself. Some examples of unreasonable behaviours include:

- Acts of aggression, verbal abuse, derogatory, racist, or grossly defamatory remarks.
- Harassment, intimidation or physical violence.
- Rude, confronting and threatening correspondence.
- Threats of harm to self or third parties, threats with a weapon or threats to damage property including bomb threats.
- Stalking (in person or online).
- Emotional manipulation.

All staff should note that *Council* has a zero tolerance policy towards any harm, abuse or threats directed towards them. Any conduct of this kind will be dealt with under this policy, and in accordance with Council's duty of care and work health and safety responsibilities.

4. ROLES AND RESPONSIBILITIES

4.1 All staff

All staff are responsible for familiarising themselves with this policy as well as the *Individual Rights and Mutual Responsibilities of the Parties to a Complaint* in Appendix A. Staff are also encouraged to explain the contents of this document to all complainants particularly those who engage in UCC or exhibit the early warning signs for UCC.

Any strategies that effectively change or restrict a complainant's access to Council's services must be considered by the General Manager as provided in this policy.

Staff are also responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) to their Director within 24 hours of the incident occurring, using the

Sample UCC incident form in Appendix B. A file note of the incident should also be copied into Council's electronic document records management system.

4.2 The General Manager

The General Manager, in consultation with relevant staff, has the responsibility and authority to change or restrict a complainant's access to Council's services in the circumstances identified in this policy. When doing so they will take into account the criteria in Part 7.2 below (adapted into a checklist in Appendix C) and will aim to impose any service changes/restrictions in the least restrictive ways possible. Their aim, when taking such actions will not be to punish the complainant, but rather to manage the impacts of their conduct. When applying this policy the General Manager will also aim to keep at least one open line of communication with a complainant. However, Council does recognise that in extreme situations all forms of contact may need to be restricted for some time to ensure the health and safety and security of Council staff and/or third parties.

The General Manager is also responsible for recording, monitoring and reviewing all cases where this policy is applied to ensure consistency, transparency and accountability for the application of this policy. They will also manage and keep a file record of all cases where this policy is applied.

4.3 Directors

All Directors (including the Chief Financial Officer) are responsible for supporting staff to apply the strategies in this policy. Directors are also responsible for ensuring compliance with the procedures identified in this policy and ensuring that all staff members are trained to deal with UCC – including on induction.

Following a UCC and/or stressful interaction with a complainant Directors are responsible for providing affected staff members with the opportunity to debrief and vent their concerns either formally or informally. Directors will also ensure that staff are provided with proper support and assistance including medical and/or police assistance and support through programs such as Employee Assistance Program (EAPS), if necessary.

Depending on the circumstances Directors may also be responsible for arranging other forms of support for staff which are detailed in Part 12 of this policy.

5. RESPONDING TO AND MANAGING UCC

5.1 Changing or restricting a complainant's access to Council's services

UCC incidents will generally be managed by limiting or adapting the ways that Council interacts with and/or deliver services to complainants by restricting:

- **Who they have contact with** – eg limiting a complainant to a sole contact person/staff member in Council.
- **What they can raise with Council** – eg restricting the subject matter of communications that Council will consider and respond to.
- **When they can have contact** – eg limiting a complainant's contact with Council to a particular time, day, or length of time, or curbing the frequency of their contact with Council.
- **Where they can make contact** – eg limiting the locations where Council will conduct face-to-face interviews to secured facilities or areas of the office.
- **How they can make contact** – eg limiting or modifying the forms of contact that the complainant can have with Council. This can include modifying or limiting face-to-face interviews, telephone and written communications, prohibiting access to Council premises, contact through a representative only, taking no further action or terminating Council services altogether.

When using the restrictions provided in this section Council recognises that discretion will need to be used to adapt them to suit a complainant's personal circumstances, level of competency, literacy skills, etc. In this regard, Council also recognises that more than one strategy may need to be used in individual cases to ensure their appropriateness and efficacy.

5.2 Who – limiting the complainant to a sole contact point

Where a complainant tries to forum shop internally within Council, changes their issues of complaint repeatedly, reframes their complaint, or raises an excessive number of complaints it may be appropriate to restrict their access to a single staff member (a sole contact point) who will exclusively manage their complaint(s) and interactions with Council. This may ensure they are dealt with consistently and may minimise the chances for misunderstandings, contradictions and manipulation.

To avoid staff 'burn out' the sole contact officer's supervisor will provide them with regular support and guidance – as needed. Also, the General Manager will review the arrangement every six months to ensure that the officer is managing/coping with the arrangement. Complainants who are restricted to a sole contact person will however be given the contact details of one additional staff member who they can contact if their primary contact is unavailable – eg they go on leave or are otherwise unavailable for an extended period of time.

5.3 What – restricting the subject matter of communications that Council will consider

Where complainants repeatedly send written communications, letters, emails, or online forms that raise trivial or insignificant issues, contain inappropriate or abusive content or relate to a complaint/issue that has already been comprehensively considered and/or reviewed (at least once) by Council, Council may restrict the issues/subject matter the complainant can raise with Council or which Council will respond to. For example, Council may:

- Refuse to respond to correspondence that raises an issue that has already been dealt with comprehensively, that raises a trivial issue, or is not supported by clear/any evidence. The complainant will be advised that future correspondence of this kind will be read and filed without acknowledgement unless Council decides that it needs to pursue it further in which case, Council may do so on its 'own motion'.
- Restrict the complainant to one complaint/issue per month. Any attempts to circumvent this restriction, for example by raising multiple complaints/issues in the one complaint letter may result in modifications or further restrictions being placed on their access.
- Return correspondence to the complainant and require them to remove any inappropriate content before Council will agree to consider its contents. A copy of the inappropriate correspondence will also be made and kept for Council's records to identify repeat/further UCC incidents.

5.4 When – limiting when and how a complainant can contact Council

If a complainant's telephone, written or face-to-face contact with Council places an unreasonable demand on Council's time or resources because it is overly lengthy (eg disorganised and voluminous correspondence) or affects the health safety and security of Council staff because it involves behaviour that is persistently rude, threatening, abusive or aggressive, Council may limit when and/or how the complainant can interact with Council. This may include:

- Limiting their telephone calls or face-to-face interviews to a particular time of the day or days of the week.
- Limiting the length or duration of telephone calls, written correspondence or face-to-face interviews. For example:

- Telephone calls may be limited to 10 minutes at a time and will be politely terminated at the end of that time period.
- Lengthy written communications may be restricted to a maximum of 15 typed or written pages, single sided, font size 12 or it will be sent back to the complainant to be organised and summarised – This option is only appropriate in cases where the complainant is capable of summarising the information and refuses to do so.
- Limiting face-to-face interviews to a maximum of 45 minutes.
- Limiting the frequency of their telephone calls, written correspondence or face-to-face interviews. Depending on the natures of the service(s) provided Council may limit:
 - Telephone calls to 1 every two weeks/ month.
 - Written communications to 1 every two weeks/month.
 - Face-to-face interviews to 1 every two weeks/month.

For irrelevant, overly lengthy, disorganised or frequent written correspondence Council may also:

- Require the complainant to clearly identify how the information or supporting materials they have sent to Council relates to the central issues that Council has identified in their complaint.
- Restrict the frequency with which complainants can send emails or other written communications to Council.
- Restrict a complainant to sending emails to a particular email account (eg Council's main email account) or block their email access altogether and require that any further correspondence be sent through Australia Post only.

Writing only restrictions

When a complainant is restricted to 'writing only' they may be restricted to written communications through:

- Australia Post only
- Email only to a specific staff email or Council's general office email account
- Fax only to a specific fax number
- Some other relevant form of written contact, where applicable.

If a complainant's contact is restricted to 'writing only', the General Manager will clearly identify the specific means that the complainant can use to contact Council (eg Australia Post only). Also if it is not suitable for a complainant to enter Council's premises to hand deliver their written communication, this must be communicated to them as well.

Any communications that are received by Council in a manner that contravenes a 'write only' restriction will either be returned to the complainant or read and filed without acknowledgement.

5.5 Where – limiting face-to-face interviews to secure areas

If a complainant is violent or overtly aggressive, unreasonably disruptive, threatening or demanding or makes frequent unannounced visits to Council's premises, Council may consider restricting face-to-face contact with them.

These restrictions may include:

- Restricting access to particular secured premises or areas of the office – such as the reception area or secured room/facility.
- Restricting their ability to attend Council's premises to specified times of the day and/or days of the week only – for example, when additional security is available or to times/days that are less busy.
- Allowing them to attend Council's offices on an 'appointment only' basis and only with specified staff. Note – during these meetings staff should always seek support and assistance of a colleague for added safety and security.

- Banning the complainant from attending Council premises altogether and allowing some other form of contact – eg 'writing only' or 'telephone only' contact.

Contact through a representative only

In cases where Council cannot completely restrict contact with a complainant and their conduct is particularly difficult to manage, Council may also restrict their contact to contact through a support person or representative only. The support person may be nominated by the complainant but must be approved by the General Manager.

When assessing a representative/support persons suitability, the General Manager should consider factors like: the nominated representative/support person's competency and literacy skills, demeanour/behaviour and relationship with the complainant. If the General Manager determines that the representative/support person may exacerbate the situation with the complainant the complainant will be asked to nominate another person or Council may assist them in this regard.

5.6 Completely terminating a complainant's access to Council's services

In rare cases, and as a last resort when all other strategies have been considered and/or attempted, the General Manager may decide that it is necessary for Council to completely restrict a complainant's contact/access to Council's services.

A decision to have no further contact with a complainant will only be made if it appears that the complainant is unlikely to modify their conduct and/or their conduct poses a significant risk for Council staff or other parties because it involves one or more of the following types of conduct:

- Acts of aggression, verbal and/or physical abuse, threats of harm, harassment, intimidation, stalking, assault.
- Damage to property while on Council premises.
- Threats with a weapon or common office items that can be used to harm another person or themselves.
- Physically preventing a staff member from moving around freely either within their office or during an off-site visit – eg entrapping them in their home.
- Conduct that is otherwise unlawful.

In these cases the complainant will be sent a letter notifying them that their access has been restricted as outlined in Part 7.4 below.

A complainant's access to Council's services and premises may also be restricted (directly or indirectly) using the legal mechanisms such as trespass laws/legislation or legal orders to protect members of staff from personal violence, intimidation or stalking by a complainant.

For more information, about the types of circumstances where legal mechanisms may be used to deal with UCC, please see:

- *Unauthorised entry onto agency premises – applying the provisions of the Inclosed Lands Protection Act 1901 (NSW)*
- *Orders to address violence, threats, intimidation and / or stalking by complainants.*

6. ALTERNATIVE DISPUTE RESOLUTION

6.1 Using alternative dispute resolution strategies to manage conflicts with complainants

If the General Manager determines that Council cannot terminate its services to a complainant in a particular case or that Council/its staff bear some responsibility for causing or exacerbating their conduct, they may consider using alternative dispute resolution

strategies ('ADR') such as mediation and conciliation to resolve the conflict with the complainant and attempt to rebuild a relationship with them. If ADR is considered to be an appropriate option in a particular case, the ADR will be conducted by an independent third party to ensure transparency and impartiality.

However, Council recognises that in UCC situations, ADR may not be an appropriate or effective strategy particularly if the complainant is uncooperative or resistant to compromise. Therefore, each case will be assessed on its own facts to determine the appropriateness of this approach.

7. PROCEDURE TO BE FOLLOWED WHEN CHANGING OR RESTRICTING A COMPLAINANT'S ACCESS TO COUNCIL'S SERVICES

7.1 Consulting with relevant staff

When the General Manager receives a UCC incident form from a staff member they will contact the staff member to discuss the incident. They will discuss:

- The circumstances that gave rise to the UCC/incident.
- The impact of the complainant's conduct on Council, relevant staff, time, resources, etc.
- The complainant's responsiveness to the staff member's warnings/requests to stop the behaviour.
- The actions the staff member has taken to manage the complainant's conduct, if any.
- The suggestions made by relevant staff on ways that the situation could be managed.

7.2 Criteria to be considered

Following a consultation with relevant staff the General Manager will search the Council's document management system for information about the complainant's prior conduct and history with Council. They will also will consider the following criteria:

- Whether the conduct in question involved overt anger, aggression, violence or assault (which is unacceptable in all circumstances).
- Whether the complainant's case has merit.
- The likelihood that the complainant will modify their unreasonable conduct if they are given a formal warning about their conduct.
- Whether changing or restricting access to Council's services will be effective in managing the complainant's behaviour.
- Whether changing or restricting access to Council's services will affect the complainant's ability to meet their obligations, such as reporting obligations.
- Whether changing or restricting access to Council's services will have an undue impact on the complainant's welfare, livelihood or dependents etc.
- Whether the complainant's personal circumstances have contributed to the behaviour? For example, the complainant is a vulnerable person who is under significant stress as a result of one or more of the following:
 - homelessness
 - physical disability
 - illiteracy or other language or communication barrier
 - mental or other illness
 - personal crises
 - substance or alcohol abuse.
- Whether the complainant's response/ conduct in the circumstances was moderately disproportionate, grossly disproportionate or not at all disproportionate.
- Whether there any statutory provisions that would limit the types of limitations that can be put on the complainant's contact/access to Council's services.

Once the General Manager has considered these factors they will decide on the appropriate course of action. They may suggest formal or informal options for dealing with the

complainant's conduct which may include one or more of the strategies provided in the practice manual and this policy.

See Appendix C – Sample checklist for General Manager to consider when deciding to modify or restrict a complainant's access.

7.3 Providing a warning letter

Unless a complainant's conduct poses a substantial risk to the health and safety of staff or other third parties, the General Manager will provide them with a written warning about their conduct in the first instance.

The warning letter will:

- Specify the date, time and location of the UCC incident.
- Explain why the complainant's conduct/ UCC incident is problematic.
- List the types of access changes and/or restrictions that may be imposed if the behaviour continues. (Note: not every possible restriction should be listed only those that are most relevant).
- Provide clear and full reasons for the warning being given
- Include an attachment of the Council's ground rules and / or briefly state the standard of behaviour that is expected of the complainant. See Appendix A.
- Provide the name and contact details of the staff member who they can contact about the letter.
- Be signed by the General Manager.

See Appendix D – Sample warning letter.

7.4 Providing a notification letter

If a complainant's conduct continues after they have been given a written warning or in extreme cases of overt aggression, violence, assault or other unlawful/unacceptable conduct the General Manager has the discretion to send a notification letter immediately restricting the complainant's access to Council's services (without prior written warning).

This notification letter will:

- Specify the date, time and location of the UCC incident(s).
- Explain why the complainant's conduct/UCC incident(s) is problematic.
- Identify the change and/or restriction that will be imposed and what it means for the complainant.
- Provide clear and full reasons for this restriction.
- Specify the duration of the change or restriction imposed, which will not exceed 12 months.
- Indicate a time period for review.
- Provide the name and contact details of the senior officer who they can contact about the letter and/or request a review of the decision.
- Be signed by the General Manager

See Appendix E – Sample letter notifying complainants of a decision to change or restrict their access to Council's services.

7.5 Notifying relevant staff about access changes/restrictions

The General Manager will notify relevant staff about any decisions to change or restrict a complainant's access to Council's services, in particular reception in cases where a complainant is prohibited from entering Council's premises.

The General Manager will also update the Council's electronic document records management system with a record outlining the nature of the restrictions imposed and their

duration.

7.6 Continued monitoring/oversight responsibilities

Once a complainant has been issued with a warning letter or notification letter the General Manager will review the complainant's record/restriction every 3 months, on request by a staff member, or following any further incidents of UCC that involve the particular complainant to ensure that they are complying with the restrictions/the arrangement is working.

If the General Manager determines that the restrictions have been ineffective in managing the complainant's conduct or are otherwise inappropriate they may decide to either modify the restrictions, impose further restrictions or terminate the complainant's access to Council's services altogether.

8. APPEALING A DECISION TO CHANGE OR RESTRICT ACCESS TO COUNCIL'S SERVICES

8.1 Right of appeal

Complainants are entitled to one appeal of a decision to change/restrict their access to Council's services. This review will be undertaken by a Director who was not involved in the original decision to change or restrict the complainant's access. This staff member will consider the complainant's arguments along with all relevant records regarding the complainant's past conduct. They will advise the complainant of the outcome of their appeal by letter. The Director will then refer any materials/records relating to the appeal to the General Manager to be kept in the appropriate file.

If a complainant continues to be dissatisfied after the appeal process, they may seek an external review from an oversight agency such as the Ombudsman. The Ombudsman may accept the review (in accordance with its administrative jurisdiction) to ensure that Council has acted fairly, reasonably and consistently and has observed the principles of good administrative practice including, procedural fairness.

9. NON-COMPLIANCE WITH A CHANGE OR RESTRICTION ON ACCESS TO COUNCIL'S SERVICES

9.1 Recording and reporting incidents of non-compliance

All staff members are responsible for recording and reporting incidents of non-compliance by complainants. This should be recorded in a file note in Council's electronic document records management system and a copy forwarded to the General Manager who will decide whether any action needs to be taken to modify or further restrict the complainant's access to Council's services.

10. PERIODIC REVIEWS OF ALL CASES WHERE THIS POLICY IS APPLIED

10.1 Period for review

All UCC cases where this policy is applied will be reviewed every 3 months or 6 months (depending on the nature of the service provided) and not more than 12 months after the service change or restriction was initially imposed or continued/upheld.

10.2 Notifying the complainant of an upcoming review

The General Manager will invite all complainants to participate in the review process unless they determine that this invitation will provoke a negative response from the complainant (ie further

UCC). The invitation will be given and the review will be conducted in accordance with the complainant's access restrictions (eg if contact has been restricted to writing only then the invitation to participate will be done in writing).

See Appendix F – Sample letter notifying a complainant of an upcoming review.

10.3 Criteria to be considered during a review

When conducting a review the General Manager will consider:

- Whether the complainant has had any contact with the organisation during the restriction period.
- The complainant's conduct during the restriction period.
- Any information/arguments put forward by the complainant for review.
- Any other information that may be relevant in the circumstances.

The General Manager may also consult any staff members who have had contact with the complainant during the restriction period.

Note – Sometimes a complainant may not have a reason to contact Council's office during their restriction period. As a result, a review decision that is based primarily on the fact that the complainant has not contacted Council during their restriction period (apparent compliance with Council's restriction) may not be an accurate representation of their level of compliance/reformed behaviour. This should be taken into consideration, in relevant situations.

See Appendix G – Sample checklist for reviewing an access change/restriction.

10.4 Notifying a complainant of the outcome of a review

The General Manager will notify the complainant of the outcome of their review using the appropriate/relevant method of communication as well as a written letter explaining the outcome, as applicable. The review letter will:

- Briefly explain the review process.
- Identify the factors that have been taken into account during the review.
- Explain the decision/outcome of the review and the reasons for it.

If the outcome of the review is to maintain or modify the restriction the review letter will **also**:

- Indicate the nature of the new or continued restriction.
- State the duration of the new restriction period.
- Provide the name and contact details of the General Manager or nominated staff member who the complainant can contact to discuss the letter.
- Be signed by the General Manager.

See Appendix H – Sample letter advising the complainant of the outcome of a review.

10.5 Recording the outcome of a review and notifying relevant staff

Like all other decisions made under this policy, the General Manager is responsible for keeping a record of the outcome of the review, updating Council's electronic document records management system and notifying all relevant staff of the outcome of the review including if the restriction has been withdrawn.

See Parts 4.2 and 7.5 above.

11 MANAGING STAFF STRESS

11.1 Staff reactions to stressful situations

Dealing with complainants who are demanding, abusive, aggressive or violent can be extremely stressful and at times distressing or even frightening for all Council staff – both experienced and inexperienced. It is perfectly normal to get upset or experience stress when dealing with difficult situations.

Council has a responsibility to support staff members who experience stress as a result of situations arising at work and will do its best to provide staff with debriefing and counselling opportunities, when needed. However, to do Council also needs help of all staff to identify stressful incidents and situations. As a result, all staff have a responsibility to notify their Directors of UCC incidents and any stressful incidents that they believe require management involvement.

11.2 Debriefing

Debriefing means talking things through following a difficult or stressful incident. It is an important way of 'off-loading' or dealing with stress. Many staff members naturally do this with colleagues after a difficult telephone call, but debriefing can also be done with a Director or as a team following a significant incident. Council encourages all staff to engage in an appropriate level of debriefing, when necessary.

Staff may also access an external professional service on a needs basis. All staff can access the Employee Assistance Program – a free, confidential counselling service. To arrange and appointment please contact Council's **Executive Manager** Human Resources **Manager**.

12 OTHER REMEDIES

12.1 Compensation for injury

Any staff member who suffers injury as a result of aggressive behaviour from complainants is entitled to make a workers' compensation claim. Council's **Executive Manager** Human Resources **Manager** will assist wherever possible in processing claims. If staff are the victim of an assault, they may also be able to apply to the Victim's Compensation Tribunal for compensation.

12.2 Compensation for damage to clothing or personal effects

Where damage is suffered to clothing or personal effects as a result of aggression by a complainant, compensation may be sought.

12.3 Legal assistance

If a staff member is physically attacked, or is a victim of employment generated harassment and the police do not lay charges, the General Manager will consider providing reasonable legal assistance if the staff members wishes to take civil action.

12.4 Threats outside the office or outside working hours

Where threats are directed at a particular staff member and it appears those threats may be carried out outside normal working hours or outside the office, the staff member will receive the support of Council. Requests for such assistance should be made to the General Manager.

12.5 Escorts home

When a staff member fears for their safety following a threat from a complainant, another staff member may accompany them home or Council can meet the cost of the staff member going home in a taxi. Ask the General Manager for more information.

12.6 Telephone threats on home numbers

If a staff member or their family have been harassed by telephone at their home and they believe it is connected with their employment they may apply to have Council meet the cost of having their telephone number changed and/or made silent. The staff member should also contact their telephone carrier, as they may provide an interception/monitoring service.

If assistance is approved, Council will meet the cost incurred for a period up to 12 months. Once approval is given, the staff member is responsible for making the necessary arrangements and will be reimbursed after producing a paid account.

Applications for reimbursement must be approved by the General Manager.

12.7 Other security measures

If other security measures are necessary, Council will give consideration to providing all reasonable support to ensure the safety and welfare of the staff member.

13. TRAINING AND AWARENESS

Council is committed to ensuring that all staff are aware of and know how to use this policy. All staff who deal with complainants in the course of their work will also receive appropriate training and information on using this policy and on managing UCC on a regular basis in particular, on induction.

14. OMBUDSMAN MAY REQUEST COPIES OF COUNCIL'S RECORDS

Council will keep records of all cases where this policy is applied, including a record of the total number of cases where it is used every year. This data may be requested by the Ombudsman to conduct an overall audit and review in accordance with its administrative functions and/or to inform its work on UCC.

15. POLICY REVIEW

All staff are responsible for forwarding any suggestions they have in relation to this policy to the General Manager, who along with relevant senior managers will review it biennially (every 2 years).

16. SUPPORTING DOCUMENTS AND POLICIES

16.1 Statement of compliance

This policy is compliant with and supported by the following documents:

- Council's Work, Health and Safety Policy
- Council's Complaint Handling Policy
- Managing unreasonable complainant conduct practice manual (2nd edition)
- Unauthorised entry onto agency premises – applying the provisions of the Inclosed Lands Protection Act 1901 (NSW)

- Orders to address violence, threats, intimidation and / or stalking by complainants

Prepared By: ~~Corporate, Community & Regulatory Services~~ General Manager's Department
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Appendix A

Individual Rights and Mutual Responsibilities of the Parties to a Complaint

In order for Council to ensure that all complaints are dealt with fairly, efficiently and effectively and that work health and safety standards and duty of care obligations are adhered to, the following rights and responsibilities must be observed and respected by all of the parties to the complaint process.

Individual rights¹

Complainants have the right:

- to make a complaint and to express their opinions in ways that are reasonable, lawful and appropriate²
- to a reasonable explanation of Council's complaints procedure, including details of the confidentiality, secrecy and/or privacy rights or obligations that may apply
- to a fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case³
- to a fair hearing⁴
- to a timely response
- to be informed in at least general terms about the actions taken and outcome of their complaint⁵
- to be given reasons that explain decisions affecting them
- to at least one right of review of the decision on the complaint⁶
- to be treated with courtesy and respect
- to communicate valid concerns and views without fear of reprisal or other unreasonable response.⁷

Staff have the right:

- to determine whether, and if so how, a complaint will be dealt with
- to finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances⁸
- to expect honesty, cooperation and reasonable assistance from complainants
- to expect honesty, cooperation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint
- to be treated with courtesy and respect
- to a safe and healthy working environment⁹
- to modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.¹⁰

Subjects of a complaint have the right:

- to a fair and impartial assessment and, where appropriate, investigation of the allegations made against them
- to be treated with courtesy and respect by Council staff
- to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated¹¹
- to be informed about the substance of any proposed adverse comment or decision
- to be given a reasonable opportunity to put their case during the course of any investigation and before any final decision is made¹²
- to be told the outcome of any investigation into allegations about their conduct, including the reasons for any decision or recommendation that may be detrimental to them
- to be protected from harassment by disgruntled complainants acting unreasonably.

Mutual responsibilities

Complainants are responsible for:

- treating Council staff with courtesy and respect

- clearly identifying to the best of their ability the issues of complaint, or asking for help from Council staff to assist them in doing so
- providing to Council all the relevant information available to them at the time of making the complaint (to the best of their ability)
- being honest in all communications with Council
- informing Council of any other action they have taken in relation to their complaint¹³
- cooperating with the staff who are assigned to assess/ investigate/resolve/determine or otherwise deal with their complaint.

If complainants do not meet their responsibilities, Council may consider placing limitations or conditions on their ability to communicate with staff or access certain services.

Council has a zero tolerance policy in relation to any harm, abuse or threats directed towards its staff. Any conduct of this kind may result in a refusal to take any further action on a complaint or to have further dealings with the complainant.¹⁴ Any such conduct of a criminal nature will be reported to police and in certain cases legal action may also be considered.

Staff are responsible for:

- providing reasonable assistance to complainants who need help to make a complaint and, where appropriate, during the complaint process
- dealing with all complaints, complainants and people or organisations the subject of complaint professionally, fairly and impartially
- giving complainants or their advocates a reasonable opportunity to explain their complaint, subject to the circumstances of the case and the conduct of the complainant
- giving people or organisations the subject of complaint a reasonable opportunity to put their case during the course of any investigation and before any final decision is made¹⁵
- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them¹⁶ and the substance of any proposed adverse comment or decision that they may need to answer or address¹⁷
- keeping complainants informed of the actions taken and the outcome of their complaints¹⁸
- giving complainants reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them
- treating complainants and any people the subject of complaint with courtesy and respect at all times and in all circumstances
- taking all reasonable and practical steps to ensure that complainants¹⁹ are not subjected to any detrimental action in reprisal for making their complaint²⁰
- giving adequate warning of the consequences of unacceptable behaviour.

If Council or its staff fail to comply with these responsibilities, complainants may complain to the NSW Ombudsman.

Subjects of a complaint are responsible for:

- cooperating with Council staff who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within their jurisdiction²¹
- providing to Council or its authorised staff all relevant information in their possession when required to do so by a properly authorised direction or notice
- being honest in all communications with Council and its staff
- treating Council staff with courtesy and respect at all times and in all circumstances
- refraining from taking any detrimental action against the complainant²² in reprisal for them making the complaint.²³

If subjects of a complaint fail to comply with these responsibilities, action may be taken under relevant laws and/or codes of conduct.

Council is responsible for:

- having an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording and reviewing complaints
- decisions about how all complaints will be dealt with
- ensuring that all complaints are dealt with professionally, fairly and impartially²⁴
- ensuring that staff treat all parties to a complaint with courtesy and respect
- ensuring that the assessment and any inquiry into the investigation of a complaint is based on sound reasoning and logically probative information and evidence
- finalising complaints on the basis of outcomes that the organisation, or its responsible staff, consider to be satisfactory in the circumstances²⁵
- implementing reasonable and appropriate policies/procedures/practices to ensure that complainants²⁶ are not subjected to any detrimental action in reprisal for making a complaint²⁷, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints
- giving adequate consideration to any confidentiality, secrecy and/or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

If Council fails to comply with these responsibilities, complainants may complain to the NSW Ombudsman.

ENDNOTES

¹ The word 'rights' is not used here in the sense of legally enforceable rights (although some are), but in the sense of guarantees of certain standards of service and behaviour that a complaint handling system should be designed to provide to each of the parties to a complaint.

² Differences of opinion are normal: people perceive things differently, feel things differently and want different things. People have a right to their own opinions, provided those opinions are expressed in acceptable terms and in appropriate forums.

³ While degrees of independence will vary between complaint handlers, all should assess complaints fairly and as impartially as possible, based on a documented process and the merits of the case.

⁴ The 'right to be heard' refers to the opportunity to put a case to the complaint handler/decision-maker. This right can be modified, curtailed or lost due to unacceptable behaviour, and is subject to the complaint handler's right to determine how a complaint will be dealt with.

⁵ Provided this will not prejudice on-going or reasonably anticipated investigations or disciplinary/criminal proceedings.

⁶ Such a right of review can be provided internally to the organisation, for example by a person not connected to the original decision.

⁷ Provided the concerns are communicated in the ways set out in relevant legislation, policies and/or procedures established for the making of such complaints/allegations/disclosures/etc.

⁸ Some complaints cannot be resolved to the complainant's satisfaction, whether due to unreasonable expectations or the particular facts and circumstances of the complaint [see also Endnote 25].

⁹ See for example WH&S laws and the common law duty of care on employers.

¹⁰ Unacceptable behaviour includes verbal and physical abuse, intimidation, threats, etc.

¹¹ Other than where there is an overriding public interest in curtailing the right, for example where to do so could reasonably create a serious risk to personal safety, to significant public funds, or to the integrity of an investigation into a serious issue. Any such notifications or opportunities should be given as required by law or may be timed so as not to prejudice that or any related investigation.

¹² Depending on the circumstances of the case and the seriousness of the possible outcomes for the person concerned, a reasonable opportunity to put their case, or to show cause, might involve a face to face discussion, a written submission, a hearing before the investigator or decision maker, or any combination of the above.

¹³ For example whether they have made a similar complaint to another relevant person or body or have relevant legal proceedings at foot.

¹⁴ Other than in circumstances where the organisation is obliged to have an ongoing relationship with the complainant.

¹⁵ See Endnote 11.

¹⁶ Other than where an allegation is so lacking in merit that it can be dismissed at the outset.

¹⁷ See Endnote 11.

¹⁸ See Endnote 5.

¹⁹ 'Complainants' include whistleblowers/people who make internal disclosures.

²⁰ 'Complaints' includes disclosures made by whistleblowers/people who make internal disclosures.

²¹ This does not include any obligation to incriminate themselves in relation to criminal or disciplinary proceedings, unless otherwise provided by statute.

²² See Endnote 19.

²³ See Endnote 20.

²⁴ See Endnote 3.

²⁵ Once made, complaints are effectively 'owned' by the complaint handler who is entitled to decide (subject to any statutory provisions that may apply) whether, and if so how, each complaint will be dealt with, who will be the case officer/investigator/decision-maker/etc, the resources and priority given to actioning the matter, the powers that will be exercised, the methodology used, the outcome of the matter, etc. Outcomes arising out of a complaint may be considered by the complaint handler to be satisfactory whether or not the complainants, any subjects of complaint or the organisation concerned agrees with or is satisfied with that outcome.

²⁶ See Endnote 19.

²⁷ See Endnote 20.

Appendix B
Sample UCC incident form

This form should only be completed if staff encounter unreasonable complainant conduct and consider that steps may need to be taken to change or restrict a complainant's access to Council services.

This form must be completed and sent electronically or by hand to the General Manager within 24 hours of a UCC incident. He/she will decide on the necessary and appropriate course of action for responding to and managing the complainant's conduct.

Date: _____ Case officer's name: _____

Name of complainant: _____ Complainant's case file no: _____

Details of the complainant's conduct/incident including whether emergency services were contacted:

Why do you consider this conduct to be unreasonable?

For example – has it occurred before/repeatedly, caused significant disruptions to Council, has or could raise significant health and safety issues for Council staff or other persons.

What action, if any, have you taken to deal with/manage the complainant's conduct?

For example – warning the complainant 'verbally' about their conduct, other/previous attempts to manage the behaviour etc.

What do you think should be done to effectively manage the complainant's conduct?

Note – the final decision on the appropriate course of action will be made by the General Manager

Is there any other information that might be relevant to this case? If necessary, attach any supporting documentation.

Appendix C

Sample checklist for the General Manager to consider when deciding to modify or restrict a complainant's access

- I have received a signed and completed incident form from the case officer(s) involved (attach copy).
- I have spoken with relevant case officer(s) to obtain further information, as needed.
- I have reviewed the complainant's record and all the relevant information in it.
- I have referred to and considered Part 7.2 Criteria to be considered which includes an assessment of the following:
 - The merits of the complainant's case

 - The complainant's circumstances

 - Jurisdictional issues

 - Proportionality

 - Organisational or case officer responsibility

 - Responsiveness, including previous conduct

 - Case officer's personal boundaries

 - Conduct that is unreasonable in all circumstances (assault, threats of harm etc.)

- Along with the case officer concerned and the Directors, I have considered all reasonable options for managing the complainant's conduct, including those that do not involve restricting their access to Council's services.

- The complainant has been warned about their conduct in writing.
- The complainant has been advised in writing of Council's decision to restrict their access to Council.

Attachment No 1

- I have made a record of my assessment and decision about the complainant's conduct and all relevant staff members have been notified of my decision.
- An electronic alert has been created in Council's electronic document records management system that notifies any staff dealing with this complainant of the nature of the conduct that caused us to be concerned, the nature of the restriction that has been placed on their access, its duration, how they are to deal with the complainant (including who they should direct any communications from the complainant to).

Date: _____ Signature: _____

Appendix D Sample warning letter

To be signed by the General Manager

[Date]

[Name of complainant]

[Address of complainant]

Dear [name of complainant]

Your contact with Narromine Shire Council

You recently had [state the form of contact – e.g. telephone, written or face-to-face] with staff at my office on [date]. [During/In that telephone call/appointment/letter,] I understand that you [explain the nature of the conduct that has caused the organisation to be concerned].

Council considers this type of behaviour to be inappropriate and it must stop. If you continue to behave in this way or in any other way that my staff consider to be unreasonable, Council will impose restrictions on your contact with Council's office. This may involve restricting your contact to [apply the relevant option(s)]:

- 'Writing only' – this means that Council will only accept communications from you in writing, delivered by Australia Post [if online or other written communications are preferred then explain].
- 'Telephone contact only' – this means that you will only be able to contact us by telephone on a specified time and day of the week.
- 'Face-to-face contact only' – this means that your contact will be limited to scheduled face-to-face meetings with a specified member of Council staff.

Or any other restriction that Council considers to be appropriate in the circumstances.

I have attached a copy of a document called [Individual rights and mutual responsibilities of the parties to a complaint] for your reference. Council expects everyone who complains to this office to act in the ways described in this document.

If you have any questions about this letter, contact me on 6889 9999.

Yours faithfully,
General Manager

Appendix E

Sample letter notifying a complainant of a decision to change or restrict their access to Council's services

To be signed by the General Manager

[Date]

[Name of complainant]

[Address of complainant]

Dear [name of complainant]

Decision to restrict your contact with Narromine Shire Council

It has come to my attention that you [describe the nature of the unreasonable conduct and its impact – e.g. if the complainant has been sending emails to several members of my staff on a daily basis...]

I understand that my staff have previously told you that Council considers this conduct to be unreasonable and unwarranted.

I also wrote to you on [date] and asked you to stop this behaviour. In that letter I advised you that if your behaviour continued, I would restrict your contact with Council. At the time I also attached a copy of Council's [Individual rights and mutual responsibilities of the parties to a complaint] which outlines your responsibilities as a complainant.

Because your behaviour has continued, I now consider it necessary to impose certain restrictions on your future contact with Council. I therefore give you notice that from [date], and with the exception(s) detailed below, Council will only accept communication from you [identify permissible form of contact, if any].

What this means

This means that you are only to contact Council using [describe the restriction in further details]. Any communications that do not comply with this restriction will be [describe what will happen – e.g. phone calls will be terminated immediately or emails/written communications will be read and filed without acknowledgment, emails will be blocked or deleted, no interviews will be granted, etc].

[Note: the complainant should be clearly informed how they can contact the organisation and how the organisation will contact them].

Your existing complaint (if applicable)

This organisation currently has one file open in your name. This relates to [state the subject of complaint and describe complaint]. This file is being handled by [name of officer and position title]. While you are able to contact [name of officer] [state nature of contact – e.g. by email] about this specific matter, all other contact with Council, including any future complaints, must be [state restriction – e.g. in writing through Australia Post] [provide contact details – e.g. address of organisation where post can be sent].

Review of this decision

My decision to restrict your contact with Council is effective immediately and will last for [3 months/6 months/12 months]. At that time Council will review your restriction and decide if it should be maintained, amended or withdrawn.

I take these steps with the greatest reluctance, but *[state reason for restriction – e.g. the equity and safety of other complainants and my staff]*, leaves me no alternative.

If you have any questions about this letter, you can contact *[provide name and phone number of the nominated senior manager]*.

Yours faithfully,
General Manager

Appendix F Sample letter notifying a complainant of an upcoming review

To be signed by the General Manager

[Date]

[Name of complainant]

[Address of complainant]

Dear [name of complainant]

Upcoming review of the decision to restrict your contact with Narromine Shire Council

It has now been [3 months/6 months/12 months] since restrictions were [imposed/upheld] on your contact with Council's office. As advised in Council's letter dated [date], Council are now reviewing its decision to ascertain whether the restrictions should be maintained, amended or withdrawn.

Council considers it important to give you an opportunity to participate in the review process, and therefore invites you to [apply the relevant option(s)]:

- make submissions in writing through Australia Post [include contact person's name and address]
- schedule a face-to-face interview with [include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling though the reception line on xxx-xxx-xxxx]
- schedule a telephone interview with [include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling though the reception line on xxx-xxx-xxxx]

In your letter, you should include information that would be relevant to Council's review. This includes information about [.....]/During the interview which will not last more than 30 minutes, Council will discuss whether:

- you have complied with the current contact restrictions
- the current contact restrictions should be removed
- the current contact restrictions should be amended to better suit your personal circumstances
- the current contact restrictions should be maintained
- any other information that is relevant to Council's decision.

Council must receive your letter by [time and date]/you should confirm your interview with [name of case officer] by [time and date]. If Council does not receive it/hear from you by this date, Council will assume that you do not wish to participate in this review and will undertake the review based on the information that Council has available.

Once the review is completed, Council will contact you again by letter notifying you of Council's decision.

If you have any questions about this letter, you can contact [provide name and phone number of the nominated senior manager].

Yours faithfully
General Manager

Appendix G
Sample checklist for reviewing a decision regarding an access change/restriction

- The complainant has been sent a letter notifying them of the review.
- The complainant will/will not participate in the review.
 - the complainant has/has not scheduled a face-to-face interview
 - the complainant has/has not made written submissions
 - the complainant has/has not scheduled a telephone interview
- I have reviewed all the information in the *[case management system]* from the last 12 months *[or relevant period of the restriction]* about the complainant's:
 - contact with the office (explain form of contact)

 - conduct during that contact (explain if conduct reasonable or unreasonable)

- I have spoken with the case officers who have had contact with the complainant during the last 12 months about the complainant's conduct during that period.
- I have considered the arguments/statements made by the complainant, including the impact of the restrictions on them (explain complainant's position, including if their circumstances have changed etc.) *Note: if the complainant is arguing that their circumstances have changed, they should be required to submit evidence to support this claim.*

- I have considered whether there are other more reasonable/suitable options for managing the complainant's conduct, including those that do not involve restricting their access to Council's services (list all that apply).

- I consider that the restriction should be (explain):
 - maintained – e.g. *because the conduct has continued or is likely to continue, is disproportionate etc.*
 - removed – e.g. *because the complainant has complied with the restrictions etc.*
 - amended – e.g. *because the complainant's circumstances have changed and the current restriction is no longer appropriate.*

- I have discussed my decision with *[other nominated senior officers]*
- The complainant has been advised in writing of my decision to maintain/remove/amend the restriction and this letter has been signed by the *(CEO)*.
- The *[case management system]* has been updated to reflect my decision.

Date: _____

Signature: _____

Appendix H

Sample letter advising the complainant of the outcome of a review

To be signed by the General Manager

[Date]

[Name of complainant]

[Address of complainant]

Dear [name of complainant]

Review of your contact with Narromine Shire Council

I am writing about a review that was undertaken by my organisation on [date] concerning your contact with this office. I understand that you [participated/did not participate] in that review.

Process of review

During the review you were given an opportunity to [explain in general terms how the review what undertaken].

Considerations

After your [interview/reading your submissions], Council considered the concerns and suggestions raised in your [interview/letter, etc.], particularly your concerns about [include information that would be relevant – e.g. the complainant said their circumstances had changed]. Council also reviewed its records of your conduct and contact with Council's office over the last 12 months. Council's records showed that [provide summary of relevant information – e.g. Council's records show that you have continued to send emails to Council, sometimes up to four times a day, throughout the period of your restriction].

[apply if relevant]: These communications were in direct violation of your restriction which limited your contact with Council to [state nature restriction] [explain what the purpose of the restriction was, if appropriate, and the impact of their conduct].

[apply if relevant]: Council's records show that you have complied with the restrictions that were imposed on your contact with Council.

Decision

[apply if relevant]: Due to [explain reasoning for the decision – e.g. the number of emails that you have sent to Council in the last 12 months and] I consider it necessary to maintain the restrictions on your contact with Council for a further 12 months, effective immediately.

[apply if relevant]: Due to [explain reasoning for the decision] I consider it necessary to amend the restrictions on your access to better suit your personal circumstances [explain, including providing clear instructions on how the complainant is to contact us and how Council will contact them]. The new restrictions will be effective immediately and will last for 12 months. If your circumstances change again during this period, you may [explain how the complainant can notify of the change].

[apply if relevant]: Due to [explain reasoning for the decision] I consider it appropriate to remove the restrictions that have been placed on your access with Council, effective immediately. You may contact Council using any of our normal servicing options.

If you have any questions about this letter, you can contact [provide name and phone number of the nominated senior manager].

Yours sincerely

[Nominated senior manager/CEO/Director General/Director/General Manager]

draft



New South Wales

Local Government (General) Amendment (Regional Joint Organisations) Regulation 2018

under the

Local Government Act 1993

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

Minister for Local Government

Explanatory note

The object of this Regulation is to amend the *Local Government (General) Regulation 2005* as follows:

- (a) to apply certain provisions of the Regulation to joint organisations and to modify the application of other provisions of the Regulation to joint organisations,
- (b) to require a joint organisation to include certain matters in its charter and to make the charter publicly available within 30 days of adoption of the charter,
- (c) to provide for the election of chairpersons of joint organisations,
- (d) to provide for the appointment of alternates for representatives on the boards of joint organisations and for the conduct of meetings other than in person,
- (e) to require a joint organisation to prepare a statement of strategic regional priorities, an annual statement reporting on the implementation of its strategies and plans for delivery of those priorities and a policy concerning the payment of expenses,
- (f) to provide for annual financial contributions and other contributions by member councils to joint organisations,
- (g) to provide for matters relating to the staff of joint organisations, including the appointment of first executive officers and staff entitlements on transfers between joint organisations or councils and joint organisations,
- (h) to exclude provisions conferring land acquisition powers from applying to joint organisations,
- (i) to provide for other transitional and consequential matters.

This Regulation is made under the *Local Government Act 1993*, including sections 400U (5), 400W, 400ZF and 400ZH and clause 17B of Schedule 6.

draft

Local Government (General) Amendment (Regional Joint Organisations) Regulation 2018 [NSW]

Local Government (General) Amendment (Regional Joint Organisations) Regulation 2018

under the

Local Government Act 1993

1 Name of Regulation

This Regulation is the *Local Government (General) Amendment (Regional Joint Organisations) Regulation 2018*.

2 Commencement

This Regulation commences on [insert date] and is required to be published on the NSW legislation website.

draft

Local Government (General) Amendment (Regional Joint Organisations) Regulation 2018 [NSW]
 Schedule 1 Amendment of Local Government (General) Regulation 2005

Schedule 1 Amendment of Local Government (General) Regulation 2005

[1] Clause 4 Application of Regulation

Insert at the end of the clause:

Note. The application of this Regulation to joint organisations is dealt with in clause 397A.

[2] Clause 231 Definitions

Insert “or a voting representative on, or a non-voting chairperson of, the board of a joint organisation” after “county council” in the definition of *councillor*.

[3] Clause 356E Display of posters

Omit “or county council” from clause 356E (2) (a) (ii).

Insert instead “, county council or joint organisation”.

[4] Clause 356F Writing, drawing or depicting of electoral matter

Omit “or county council” from clause 356F (4) (b).

Insert instead “, county council or joint organisation”.

[5] Part 11A

Insert after Part 11:

Part 11A Joint organisations

397A Application of this Regulation to joint organisations

- (1) Except as provided by this Regulation, this Regulation applies:
 - (a) to a joint organisation in the same way as it applies to a council, and
 - (b) to the representatives on the board of a joint organisation in the same way as it applies to the councillors of councils, and
 - (c) to the executive officer of a joint organisation in the same way as it applies to the general manager of a council.
- (2) In the application of a provision of this Regulation to a joint organisation and to a representative on the board of a joint organisation:
 - (a) a reference to the mayor of a council includes a reference to the chairperson of a joint organisation, and
 - (b) a reference to mayoral office includes a reference to the office of the chairperson of a joint organisation, and
 - (c) a reference to a councillor includes a reference to a voting representative on or a non-voting chairperson of the board of a joint organisation, and
 - (d) a reference to the holding of civic office includes a reference to holding office as a voting representative on or a non-voting chairperson of the board of a joint organisation, and
 - (e) a reference to the general manager of a council includes a reference to the executive officer of a joint organisation, and
 - (f) a reference to the area of a council includes a reference to the joint organisation area of a joint organisation.

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Local Government (General) Amendment (Regional Joint Organisations) Regulation 2018 [NSW]
 Schedule 1 Amendment of Local Government (General) Regulation 2005

- (3) Clause 235 does not apply to a meeting of a joint organisation.
- (4) Unless otherwise expressly provided by this Regulation, nothing in this clause applies a provision of this Regulation to a joint organisation if the provision is made under or for the purposes of a provision of the Act that does not apply to a joint organisation.

Note. The following provisions of this Regulation apply to a joint organisation:

Part 1 (other than clause 4), clause 133, Parts 6–8, Part 9 (other than clause 201 and Divisions 7 and 8), Part 10 (other than clauses 235 and 236), Part 12, Part 13 (other than Divisions 3, 4 (other than clause 403), 6 and 11) and Schedules 3, 3A and 12.

Note. Section 400ZH (3) of the Act sets out the provisions of the Act that do not apply to joint organisations, subject to any regulations made under that section. However, a provision of the Act and a provision of this Regulation may apply to a joint organisation if the joint organisation is exercising a function of a council conferred on it by or under the Act (see section 400ZH (4) (a)).

397B Charters of joint organisations

- (1) For the purposes of section 400U (5) (a) of the Act, the charter of a joint organisation is to contain the methodology for determining annual financial contributions to the joint organisation by member councils.
- (2) For the purposes of section 400U (5) (b) of the Act, the charter of a joint organisation is to be made publicly available on a website administered by the joint organisation within 30 days of its adoption by the joint organisation.

397C Election of chairperson

Schedule 7A contains provisions for the election of the chairperson of a joint organisation.

397D Tied votes

A motion at a meeting of the board of a joint organisation is taken to be defeated in the event of an equality of votes.

397E Alternates for board representatives

- (1) The deputy mayor of a member council of a joint organisation is to be the alternate of the mayor of the council, if the council has a deputy mayor and the deputy mayor is not otherwise a representative on the board of the joint organisation.
- (2) A member council must appoint councillors of the council to be the alternate of any of the mayor, deputy mayor or other any other councillor who are voting representatives on the board of the joint organisation.
- (3) A councillor appointed as an alternate may act as the alternate for 2 years, unless another term is specified by the member council or the appointment is revoked by the member council.
- (4) In the absence of a voting representative on the board of a joint organisation, the representative's alternate may, if available, act in the place of the representative.
- (5) While acting in the place of a voting representative on the board, a person has all the functions of a representative and is taken to be a representative.

397F Transaction of business by telephone etc

- (1) The board of a joint organisation may, if it thinks fit, transact any of its business at a meeting at which representatives (or some representatives) participate by telephone or other electronic means, but only if any

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Schedule 1 Amendment of Local Government (General) Regulation 2005

representative who speaks on a matter before the meeting can be heard by the other representatives.

- (2) For the purposes of a meeting held in accordance with this clause, the chairperson and each other representative on the board have the same voting rights as they have at an ordinary meeting of the board.

397G Statement of strategic regional priorities

- (1) Each joint organisation must have a statement of strategic regional priorities.
- (2) The statement must set out the strategic regional priorities for the joint organisation area and the strategies and plans for delivering those strategic regional priorities.
- (3) The statement is to be prepared not later than:
 - (a) the later of 31 December 2018 or 6 months after the establishment of the joint organisation, and
 - (b) 12 months after each subsequent ordinary election of councillors for all the member councils.
- (4) A joint organisation must consult with the member councils about the content of a proposed statement of strategic regional priorities.
- (5) The statement of strategic regional priorities is to be published by the joint organisation on a website maintained by the organisation.
- (6) Section 406 of the Act applies to a joint organisation as if a reference in that section to a community strategic plan were a reference to a statement of strategic regional priorities required to be prepared by the organisation under this clause.

397H Annual performance statements

- (1) Within 5 months from the end of each year, a joint organisation must prepare a report (its *annual statement*) for that year reporting as to its progress in implementing its strategies and plans for delivering its strategic regional priorities.
- (2) The annual statement is to be published by the joint organisation on a website maintained by the organisation.
- (3) A joint organisation is not required to, but may, prepare an annual statement for the first year in which it is established.
- (4) Section 406 of the Act applies to a joint organisation as if a reference in that section to an annual report were a reference to an annual statement required to be prepared by the organisation under this clause.

397I Financial contributions by member councils

- (1) For the purposes of section 400ZF of the Act, each member council of the joint organisation is to make an annual financial contribution to the joint organisation.
- (2) The joint organisation is to determine the amount of the annual contribution in accordance with the methodology adopted by the board in the charter.
- (3) The joint organisation may from time to time determine that additional financial contributions are to be made by any or all of the member councils.

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- (4) A financial contribution of a member council under this clause may be in the form of a monetary payment or in any other form agreed by the joint organisation with the member council.
- (5) A joint organisation must consult with the member councils about proposed financial contributions.

397J Payment of expenses and provision of facilities

- (1) For the purposes of section 400ZH (4) (b) of the Act, section 252 of the Act (other than section 252 (2)) is not an excluded provision of the Act.
- (2) A joint organisation must consult with the member councils about the content of a proposed policy concerning the payment of expenses.

397K First financial reports and other financial matters

- (1) This clause applies to a joint organisation if it is established after 1 July in a year.
- (2) The first financial reports required to be prepared under Part 3 of Chapter 13 of the Act for a joint organisation are to be prepared for the period commencing on the constitution of the joint organisation and ending on the last day of the year after the year in which the joint organisation is established.
- (3) For the purposes of section 400ZH (5) (a) of the Act, section 413 (1) of the Act applies to a joint organisation with the modifications set out in subclause (2).
- (4) For the purposes of section 400ZH (5) (b) of the Act, Division 5 of Part 2 of Chapter 17 of the Act does not apply to or in respect of a joint organisation.

397L Application of merit appointment provisions

- (1) Sections 348 (1) and (2) and 349 of the Act do not apply to the appointment of a person as the first executive officer of a joint organisation, if the term of appointment is for a period of not more than 12 months.
- (2) However, a joint organisation may comply with any of those provisions if it thinks fit.

397M Transfer of staff

- (1) Clause 406A applies to the following changes of employment:
 - (a) a change of employment from a joint organisation to another joint organisation,
 - (b) a change of employment from a joint organisation to a council,
 - (c) a change of employment from a council to a joint organisation.

Note. Because of clause 4, this clause, and Division 5 of Part 13 of this Regulation, apply to a county council in the same way as they apply to a council.
- (2) Clauses 406C and 406D apply to staff members of a joint organisation, with the following modifications:
 - (a) a staff transfer is taken to include a transfer of staff under a proclamation under Chapter 12 of the Act,
 - (b) a reference to a proclamation under Chapter 9 of the Act is taken to include a reference to a proclamation under Chapter 12 of the Act.
- (3) For the purposes of section 400ZH (4) (b) and (5) (a) of the Act, section 354G of the Act applies to staff transfers in connection with the transfer of functions to or from a joint organisation and a council or a county council in the same way as it applies to transfers in connection with the constitution of a new area.

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397N Acquisition of land excluded

For the purposes of section 400ZH (5) (b) of the Act, Part 1 of Chapter 8 of the Act does not apply to or in respect of a joint organisation.

[6] Schedule 7A

Insert after Schedule 7:

Schedule 7A Election of chairpersons of joint organisations

(Clause 397C)

Part 1 Preliminary**1 When election to be held**

An election for chairperson of a joint organisation is to be held:

- (a) at the first meeting of the board after the joint organisation is established, and
- (b) at the first meeting of the board after the term of the chairperson expires, and
- (c) if the office of chairperson becomes vacant for any other reason.

2 Returning officer

The returning officer is to be:

- (a) the executive officer of the joint organisation, or
- (b) if there is no executive officer, the Departmental Chief Executive or a person appointed by the Departmental Chief Executive.

3 Notification of vacancy

- (1) The returning officer must give notice of the occurrence of a vacancy in the office of chairperson of the joint organisation to the Departmental Chief Executive (unless the returning officer is the Departmental Chief Executive) and to the general managers of the member councils of the joint organisation.
- (2) The returning officer is to do that within 7 days of the occurrence of the vacancy.
- (3) The notice is to set out the manner in which a person may be nominated as a candidate for election as chairperson.

4 Nomination

- (1) A voting representative who is the mayor of a member council may be nominated without notice for election as chairperson of the joint organisation.
- (2) The nomination is to be made in writing by 2 or more mayors of member councils of the joint organisation (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.
- (3) The returning officer is to announce the names of the nominees at the board meeting at which the election is to be held.

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5 Election

- (1) If only one eligible voting representative of the joint organisation is nominated, that representative is elected.
- (2) If more than one eligible voting representative is nominated, the board is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting.
- (3) The election is to be held at the board meeting at which the joint organisation resolves on the method of voting.
- (4) In this clause:
ballot has its normal meaning of secret ballot.
open voting means voting by a show of hands or similar means.

Part 2 Ordinary ballot or open voting

6 Application of Part

This Part applies if the election proceeds by ordinary ballot or by open voting.

7 Marking of ballot-papers

- (1) If the election proceeds by ordinary ballot, the returning officer is to decide the manner in which votes are to be marked on the ballot-papers.
- (2) The formality of a ballot-paper under this Part must be determined in accordance with clause 345 (1) (b) and (c) and (5) of this Regulation as if it were a ballot-paper referred to in that clause.
- (3) An informal ballot-paper must be rejected at the count.

8 Count—2 candidates

- (1) If there are only 2 candidates, the candidate with the higher number of votes is elected.
- (2) If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.

9 Count—3 or more candidates

- (1) If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.
- (2) If 3 or more candidates then remain, a further vote is to be taken of those candidates and the one with the lowest number of votes from that further vote is to be excluded.
- (3) If, after that, 3 or more candidates still remain, the procedure set out in subclause (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Clause 8 of this Schedule then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.
- (6) If at any stage during a count under subclause (1) or (2), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

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Part 3 Preferential ballot

10 Application of Part

This Part applies if the election proceeds by preferential ballot.

11 Ballot-papers and voting

- (1) The ballot-papers are to contain the names of all the candidates. The voting representatives on the board are to mark their votes by placing the numbers “1”, “2” and so on against the various names so as to indicate the order of their preference for all the candidates.
- (2) The formality of a ballot-paper under this Part is to be determined in accordance with clause 345 (1) (b) and (c) and (5) of this Regulation as if it were a ballot-paper referred to in that clause.
- (3) An informal ballot-paper must be rejected at the count.

12 Count

- (1) If a candidate has an absolute majority of first preference votes, that candidate is elected.
- (2) If not, the candidate with the lowest number of first preference votes is excluded and the votes on the unexhausted ballot-papers counted to him or her are transferred to the candidates with second preferences on those ballot-papers.
- (3) A candidate who then has an absolute majority of votes is elected, but, if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the lowest number of votes and counting each of his or her unexhausted ballot-papers to the candidates remaining in the election next in order of the voter’s preference is repeated until one candidate has received an absolute majority of votes. That candidate is elected.
- (4) In this clause, *absolute majority*, in relation to votes, means a number that is more than one-half of the number of unexhausted formal ballot-papers.

13 Tied candidates

- (1) If, on any count of votes, there are 2 candidates in, or remaining in, the election and the numbers of votes cast for the 2 candidates are equal—the candidate whose name is first chosen by lot is taken to have received an absolute majority of votes and is therefore taken to be elected.
- (2) If, on any count of votes, there are 3 or more candidates in, or remaining in, the election and the numbers of votes cast for 2 or more candidates are equal and those candidates are the ones with the lowest number of votes on the count of the votes—the candidate whose name is first chosen by lot is taken to have the lowest number of votes and is therefore excluded.

Part 4 General

14 Choosing by lot

To choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the returning officer, the slips are folded by the returning officer so as to prevent the names being seen, the slips are mixed and one is drawn at random by the returning officer and the candidate whose name is on the drawn slip is chosen.

draft

Local Government (General) Amendment (Regional Joint Organisations) Regulation 2018 [NSW]
Schedule 1 Amendment of Local Government (General) Regulation 2005

15 Result

The result of the election (including the name of the candidate elected as chairperson of the joint organisation) is:

- (a) to be declared to the representatives on the board at the board meeting at which the election is held by the returning officer, and
- (b) to be delivered or sent to the Departmental Chief Executive.

16 By-elections

- (1) Subject to subclause (2), a by-election to fill a vacancy in the office of chairperson of a joint organisation is to be held at the next meeting of the board of the joint organisation occurring after the vacancy occurs.
- (2) No such by-election is to be held if the vacancy occurs after an ordinary election of councillors under Chapter 10 of the Act and before an election of chairperson of the joint organisation in accordance with clause 1 (a) of this Schedule.



Office of
Local Government

SUPPORTING JOINT ORGANISATION SUCCESS

REGULATION CONSULTATION GUIDE

February 2018



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1 Introduction and Purpose

Joint Organisations (JOs) will officially “open for business” in regional NSW from 1 July 2018.

JOs will transform the way local and state governments work together to plan and deliver the things that matter to regional communities. They will give local councils a seat at the table in planning for important regional infrastructure and investment.

The NSW Government is providing \$3.3 million in seed funding to establish JOs and the Office of Local Government (OLG) will continue to support local councils and JOs during the establishment phase.

A key milestone was to pass [amendments to the Local Government Act 1993](#) (the Act) to allow JOs to be established. The amendments set out the principal functions of JOs and provide the framework for JOs to operate in an effective and accountable way.

The next step is to finalise the regulations that support the Act amendments. This will be delivered via amendments to the Local Government (General) Regulation 2005. A draft of the Local Government (General) Amendment (Regional Joint Organisations) Regulation 2018 (the [Draft Regulation](#)) has been prepared for consultation.

This guide explains the Draft Regulation to enable councils to make informed submissions.

The proposed regulations are minimal, to ensure that JOs can focus on their core business and build organisations that reflect the unique characteristics of their region.

2 Providing feedback on the draft regulation

The NSW Government is inviting feedback on the Draft Regulation.

This Guide explains the key aspects of the Draft Regulation and how they relate to the Act. It also explains how JOs might use these provisions in their day to day operations. The Government is inviting council feedback on the Draft Regulation and some key questions.

Councils are invited to provide feedback on the draft regulation to support JOs by **5pm on Friday 16 March 2018**.

A list of focus questions is included in **Appendix A** to assist in preparing submissions. Submissions may be made using an online feedback form. Go to www.olg.nsw.gov.au and follow the link to the JO webpage.

Alternatively, submissions can be made by printing the form at Appendix A and scanning and emailing to jointorganisations@olg.nsw.gov.au or mailing to:

Office of Local Government

Joint Organisation Regulation Consultation

Locked Bag 3015

Nowra NSW 2541

OLG staff are available to speak to councils to answer any queries they may have in relation to the proposed regulations on (02) 4428 4100.

3 Key aspects of the Draft Regulation

3.1 The Charter

The Charter will be unique to each JO. It outlines how the JO will operate.

What the Act requires

The Act (section 400U(3)) requires each JO to prepare and adopt a Charter that contains, but is not limited to, the following:

- Operational principles for the JO
- Governance principles for the JO.

What is proposed in the Draft Regulation

The Draft Regulation proposes to require JO's Charters to include a methodology for determining annual financial contributions to the JO by member councils to ensure transparency (clause 397B(1) of the Draft Regulation). It will be up to each individual JO to develop its own methodology.

The Draft Regulation also proposes requiring that each JO makes its Charter available to the public by publishing it on its website (clause 397B(2)).

3.2 Election of the Chair

The JO Chairperson will play an important leadership role in representing the region and ensuring the efficient conduct of JO business. Councils have made it clear that they want the Chairperson to be a serving Mayor, chosen from amongst the voting members.

What the Act requires

The Act (sections 400T and 400V) prescribes that the Chairperson:

- is elected by the mayors who are voting representatives on the Board
- preside at meetings of the Board
- does not have a casting vote, and
- holds office for a term of 2 years.

The Act also allows each JO to decide whether or not it would like to have an independent, non-voting Chairperson to facilitate decision-making. Where this is the case the following will apply:

- the non-voting chair must still be the Mayor of a member council
- the Deputy Mayor of that council will be appointed to vote on their behalf as a member of the Board
- where there is no Deputy Mayor (or the Deputy is already a voting member), another councillor may be appointed to vote.

What is proposed in the Draft Regulation

The Draft Regulation proposes a process for electing the JO Chairperson that is similar to the way that the chair of a county council is currently chosen. In essence, it requires that:

- a Chairperson must be elected at the first meeting of the Board, at the first meeting after each two year term expires, or any time the position becomes vacant;
- the Executive Officer will usually be the election returning officer;
- the election can be either by open vote, ordinary ballot or preferential ballot; and
- where the vote is tied, the Chairperson can be chosen by lot.

For more details of the process see Schedule 7A of the Draft Regulation.

3.3 Tied votes

Member councils of JOs have equal voting rights on the Board as an equal partnership is fundamental to the success of JOs.

What the Act requires

Section 400T (10) of the Act provides that the regulations may prescribe a mechanism for resolving decisions of a board in the event of an equality of votes.

What is proposed in the draft Regulation

The Draft Regulation (clause 397D) clarifies that, in the event of an equality of votes, a motion at a JO Board meeting is taken to be defeated.

3.4 Alternates

There will be circumstances where the Mayor is not able to attend a JO meeting, for example due to illness or leave, so it is important to provide a process for appointing an alternate representative.

What the Act requires

The Act (section 400W) allows the regulations to make provisions about the appointment and functions of alternates for voting representatives on the JO Board.

What is proposed in the Draft Regulation

The Draft Regulation (clause 397E) proposes that the Deputy Mayor of a member council is to be the standing alternate for the Mayor. If there is no Deputy Mayor, or if the Deputy Mayor is already a voting member of the JO, the member council is to appoint another councillor as alternate for a 2 year period (or any other period that they see fit). The alternate has all the functions of the JO representative when acting in their place on the Board and is legally taken to be a representative.

3.5 Expenses and facilities

Like a council, a JO will be required to have an expenses and facilities policy and JOs will only be able to reimburse expenses in accordance with that policy.

What the Act requires

The Act (Schedule 6, item 17B) allows for regulations to be made about matters including travel and other expenses payable to board representatives.

What is proposed in the draft Regulation

The Draft Regulation (clause 397J) proposes to apply section 252 of the Act to JOs. This will require JOs to adopt an expenses and facilities policy within 12 months of being established and require reimbursement to be in accordance with that policy. JOs would be required to consult their member councils in developing this policy.

3.6 Remote participation and voting

JOs may cover very large geographic areas and it may not be practical for voting representatives to attend every meeting in person. Board members are to be enabled to attend and vote at Board meetings remotely - either by telephone or videoconferencing. This and other key differences in JO meeting practices are proposed to be reflected in a Model Code of Meeting Practice.

What the Act requires

Schedule 6 Regulations (Item 17B) of the Act provides for various regulations to be made in relation to JOs and lists examples that include remote voting and remote participation in a meeting.

What is proposed in the Draft Regulation

The Draft Regulation (clause 397F) provides that the Board of a JO may transact any business at a meeting in which representatives participate by telephone or other electronic means, as long as the representative speaking can be heard by the other representatives.

3.7 Planning and Reporting

Planning and reporting requirements for JOs are proposed to be minimal, fit for purpose and aligned to Integrated Planning and Reporting (IP&R) requirements for councils.

What the Act requires

The Act says that a principal function for JOs is to establish strategic regional priorities for the local government areas covered by the JO, and to develop plans to deliver those priorities (see section 400R of the Act). The Act requires the relevant strategic priorities or plans of member councils (including Community Strategic Plans) and those of the NSW Government are considered by a JO in establishing its strategic regional priorities.

The Act (section 413(1)) also requires each JO to prepare financial reports for each year, and refer them for audit as soon as practicable after the end of that year.

What is proposed in the Draft Regulation

Three key planning and reporting requirements are proposed in the Draft Regulation:

1. a Statement of Strategic Regional Priorities;
2. an Annual Performance Statement - reporting on progress in implementing its priorities; and
3. financial reports.

Statement of Strategic Regional Priorities

It is proposed in the Draft Regulation (clause 397G) that each JO will have a succinct Statement of Strategic Regional Priorities (SSRP) outlining the JO's vision for its region and how it plans to work with others towards achieving that vision. This builds on, rather than duplicates, the planning work of councils in their Community Strategic Plans and provides important connections between local and regional planning.

The Draft Regulation proposes the JO Board prepare and adopt the SSRP following the adoption by councils of their Community Strategic Plans so that the JO can take these into account. A JO must consult with member councils about the content of the proposed SSRP.

To assist JOs in their first year, it is proposed that the first SSRP be prepared and adopted by the end of 2018 or six months after the date JOs officially commence (whichever is later)(clause 397G(3) of the Draft Regulation). After this, JOs must prepare and adopt a SSRP within 12 months of the local government general elections (i.e. generally every 4 years).

Annual Performance Statement

It is also proposed that each JO produce a succinct Annual Performance Statement (APS) (clause 397H of the Draft Regulation) each year to show how the JO has progressed against its strategic priorities and plans. APS documents are to be prepared for each financial year and adopted and published before 30 November each year. JOs may, but need not, prepare an Annual Performance Statement for the first year they are established (clause 397H(3) of the Draft Regulation).

Financial Reports

To assist JOs in their first year of operations, the Draft Regulation allows JOs to wait until after their first full year of operations to prepare their first financial report (clause 397K).

3.8 Executive Officers

It will be up to each JO to determine whether to engage a full-time person in the Executive Officer role, the level of remuneration to be offered and the performance-based requirements to be applied.

What the Act requires

The Act (section 400Y) provides for the role of the Executive Officer. The role has responsibility for the day-to-day management of the JO in accordance with the strategic regional priorities and other plans, programs, strategies and policies of the organisation, and, to implement, without delay, lawful decisions of the JO.

What is proposed in the Draft Regulation

The Draft Regulation (clause 397L) assists JOs through their first year of operations by providing that the standard provisions to advertise the Executive Officer position and make an appointment on merit are suspended for 12 months. This will allow JOs to make an interim appointment of the Executive Officer, should they choose to do so, to enable a smooth start-up process. After this period, the JO must advertise the position and make an appointment on merit.

3.9 Other Staff

While JOs are not required to have any staff other than the Executive Officer, some may wish to do so, particularly where they have agreed to take on other functions delegated by member councils.

Once each JO is proclaimed, the NSW Government will seek the support of the Commonwealth Government to order that each specific JO is not a national system employer. This will ensure that future staff are covered by the State industrial relations system.

What the Act requires

The Act (section 400ZG) says that staff, other than the Executive Officer, may only be appointed by a JO if the entity is not a national system employer for the purposes of the Fair Work Act 2009 (Cth).

What is proposed in the Draft regulation

The Draft Regulation (clause 397M) proposes to allow for the transfer of staff between JOs or between a JO and a council (including a county council) without loss of entitlements. This would maintain any long service and sick leave accrued under the Local Government (State) Award.

Importantly, this will rely on the Award containing the relevant provisions and does not affect any leave entitlement of a senior staff member of a council under his or her employment contract.

The draft regulation (clause 397M(2)) also proposes to modify how clauses 406C and 406D of the Local Government (General) Regulation 2005 apply to JO staff. This essentially extends the effect of those provisions, which deal with the transfer of entitlements of senior staff, to senior staff of a JO whose employment is transferred by Proclamation.

Further, it is proposed (clause 397M (3)) to enable lateral transfers of staff that are not senior staff in connection with any transfer of functions to, or from, a JO and a council. This extends the effect of section 354G of the Act to staff in these circumstances, so that:

- lateral transfer of staff can occur through an internal process in which staff have the opportunity to apply, but external advertising of position/s is not required;
- preference is then given to employees performing substantially the same duties; and
- if there is more than one employee performing substantially the same duties, the employee with the greatest merit must be given preference in the filling of available positions.

3.10 Application of Act and Regulation

JOs are part of the system of local government in NSW so it is important that they share the same legislative framework as local councils.

Many of the provisions of the Local Government Act 1993 will also apply to JOs – for example the requirement for JO Board representatives to comply with the Code of Conduct. Some provisions do not apply – for example the capacity to raise rates will remain with local councils and not be applied to JOs.

Where a JO is delegated a function by its member councils, dis-applied provisions will apply to the JO in carrying out those functions as delegate of the councils.

Appendix B and C provide further details on these provisions.

Appendices

Appendix A - Feedback form and questions

Appendix B - The Local Government Act - What applies and does not apply to JOs

Appendix C - The Local Government (General) Regulation - What applies and does not apply to JOs.

Appendix A – Feedback Form

Below is a copy of the online feedback form containing questions about the regulation of Joint Organisations (JOs)

Submissions can be made online by 5pm on Friday 16 March 2018. To complete the submission go to www.olg.nsw.gov.au and follow the link to the Joint Organisations webpage.

For further information please contact the Joint Organisations Team in the Office of Local Government on **02 4428 4100**, via email to

jointorganisations@olg.nsw.gov.au, or

Office of Local Government

Levels 1 & 2

5 O’Keefe Avenue

Locked Bag 3015

NOWRA NSW 2541

Privacy Notice

When you give us your feedback, the Office of Local Government (OLG) will be collecting some personal information about you, in particular:

- your name
- your email address
- the name of your organisation (if provided)
- any personal information you decide to put in the additional comments fields.

All feedback received may be made publicly available. Please do not include any personal information in your feedback that you do not want published.

This information is being collected by OLG to help the Government develop the regulations to support the establishment of Joint Organisations. As part of that process, we may need to share your information with people outside OLG, including other public authorities and government agencies. We may also use your email contact details to send you notifications about further feedback opportunities or the outcome of consultation.

There may also be circumstances when OLG is required by law to release information (for example, in accordance with the requirements of the Government Information (Public Access) Act 2009. There is also a privacy policy located on the OLG website that explains how some data is automatically collected (such as your internet protocol (IP) address) whenever you visit the OLG’s website. The link to that policy is <http://www.olg.nsw.gov.au/privacy>

General Information

Name:

Position:

Organisation Name:

Organisation category (please tick applicable box below):

- Council
- ROC/Pilot JO
- Peak industry body
- State agency

Other

If ‘Other’, please specify:

Postal or email address:

Appendix A – Feedback Form

Feedback Questions

Question	Support
The Charter - Section 3.1	
Are the proposed provisions for the Charter appropriate?	Yes No In-part
What improvements could be made, if any?	Comment

Election of the Chair - Section 3.2

Are the proposed provisions setting out how a Chair may be elected appropriate?	Yes No In-part
What improvements could be made, if any?	Comment

Alternates - Section 3.4

Are the proposed provisions for the appointment of alternates appropriate?	Yes No In-part
What improvements could be made, if any?	Comment

Expenses and Facilities - Section 3.5

Are the proposed provisions on expenses and facilities appropriate?	Yes No In-part
What improvements could be made, if any?	Comment

Appendix A – Feedback Form

Feedback Questions

Question	Support
Remote participation and voting - Section 3.6	
Are the proposed provisions about remote voting appropriate?	Yes No In-part

What improvements could be made, if any?	Comment
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Planning and reporting - Section 3.7

Are the proposed provisions for planning and reporting appropriate?	Yes No In-part
---	----------------------

What improvements could be made, if any?	Comment
--	---------

Executive Officers - Section 3.8

Are the proposed provisions allowing JOs to appoint their first Executive Officer without needing to advertise or undertake merit-based selection for a period of up to 12 months appropriate?	Yes No In-part
--	----------------------

What improvements could be made to the provisions for appointing Executive Officers, if any?	Comment
--	---------

Other staff - Section 3.9

Are the proposed provisions enabling the lateral transfer of staff between councils and JOs to support the local government workforce appropriate?	Yes No In-part
--	----------------------

What improvements could be made to the provisions for staff transfers, if any?	Comment
--	---------

Appendix A – Feedback Form

Feedback Questions

Question	Support
Application of Act and Regulation - Section 3.10	
Is the proposed application of the Local Government Act and regulations to JOs appropriate?	Yes No In-part
What improvements could be made, if any?	Comment

Other comments

What other comments do you have about the proposed regulations to support JOs? Comment

Appendix B – Local Government Act and JOs – What applies and does not apply

Note: The table below provides an indication only, please seek your own legal advice. Please also note the effect of section 400ZH(4) of the Local Government Act in relation to excluded provisions which may apply in certain circumstances

Reference	Subject/s	Application
Chapter 1	Preliminary <ul style="list-style-type: none"> • Application to Crown • Geographical application 	Yes
Chapter 2	Purposes of the Act	Yes
Chapter 3	Principles for Local Government <ul style="list-style-type: none"> • Object of principles • Guiding principles • Financial management • IP&R principles 	No
Chapter 4 Part 1	How the community can influence what council does <ul style="list-style-type: none"> • Open meetings • Guidelines from Departmental Chief Executive 	Yes
Chapter 4 Part 3	How the community can influence what council does <ul style="list-style-type: none"> • Expressions of Community Opinion – council polls and referenda 	No
Chapter 5	What are council's functions <ul style="list-style-type: none"> • Functions under this Act • Other functions • Supplementary, incidental and consequential functions • DCE Guidelines 	Yes
Chapter 6 except for Part 3	Service functions of councils <ul style="list-style-type: none"> • General (provision of goods, services, facilities etc) • Public land • Environmental Upgrade Agreements <p><i>Note: Part 2A Minister for Environment portfolio</i></p>	No
Chapter 6 Part 3	Service functions of councils <ul style="list-style-type: none"> • Restraints and qualifications that apply to service functions including: <ul style="list-style-type: none"> - Tendering - Extension of requirements to council related entities - Water supply, sewerage and stormwater drainage works and facilities - Private works 	Yes

Appendix B – Local Government Act and JOs – What applies and does not apply

Reference	Subject/s	Application
Chapter 7	Regulatory functions <ul style="list-style-type: none"> • Activities that require approval • Crown activities • Making and determining applications for approval • Approvals for filming • Accreditation of components, processes and designs • Orders and Local Policies • Appeals 	No
Chapter 8	Ancillary council functions <ul style="list-style-type: none"> • Acquisition of land (clause 397N of the Regulation) 	No
Part 1		
Chapter 8	Ancillary council functions <ul style="list-style-type: none"> • Entry onto land and other powers 	Yes
Part 2		
Chapter 9 - section 252 (except for 252(2))	How councils are established <ul style="list-style-type: none"> • Fees, expenses and facilities 	Yes
Chapter 9 except for section 252	How councils are established <ul style="list-style-type: none"> • Areas - constitution and dissolution, amalgamation and alteration of boundaries • Councils - constitution, the mayor, councillors, Local Government Remuneration Tribunal • Local Government Boundaries Commission 	No
Chapter 10	How people are elected to civic office <ul style="list-style-type: none"> • Who may vote and who may be elected • System and timing of elections • Filling of casual vacancies • How elections are conducted • Postponement of elections • Political parties and political donations • Dismissal from civic office 	No
Chapter 11 - sections 335 and 342	How councils are staffed <ul style="list-style-type: none"> • Functions of General Manager • Appointment of Public Officer 	No
Chapter 11 - sections 348(1) and (2) and 349	Advertising and merit appointments for first executive officers <ul style="list-style-type: none"> • A JO may choose not to comply with these provisions in appointing the first executive officer, if the appointment is for less than 12 months. Otherwise the provisions do apply. 	Modified

Appendix B – Local Government Act and JOs – What applies and does not apply

Reference	Subject/s	Application
Chapter 11 – section 354G	Staff transfers <ul style="list-style-type: none"> The application of section 354G is expanded so that it applies to transfers of staff between JOs and councils or county councils. 	Modified
Chapter 11 (except for 335 and 342)	How councils are staffed <ul style="list-style-type: none"> Organisation structure General Manager and other senior staff* (except s.335 - functions of GM) The public officer – functions. While section 342 does not apply to enable appointment, note section 400Y which allows an executive officer to designate another member of staff (if there is any) as public officer Equal Employment Opportunity Other provisions about staffing (including merit, advertising, temporary appointments, restrictions etc) Arrangements for staff affected by amalgamations etc 	Yes
Chapter 12 –sections 355, 365, 370, 371, 375A, 377-380 and Part 5	How councils operate <ul style="list-style-type: none"> How councils exercise functions How often councils meet Voting entitlements of councillors What constitutes a council decision Recording votes on planning matters Delegations <ul style="list-style-type: none"> General power of council to delegate Delegations by the GM Delegations of regulatory functions Review of delegations County councils 	No
Chapter 12 (except for sections 355, 365, 370 371, 375A, 377-380 and Part 5	How councils operate <ul style="list-style-type: none"> Financial assistance to other councils Exercise of functions outside council areas Restrictions on forming corporations and other entities Councils acting as agents Decision making – Code of Meeting Practice Other council meeting requirements except <ul style="list-style-type: none"> How often council meets Voting entitlement of councillors What constitutes a council decision Recording votes on planning matters Delegation of functions – ONLY: <ul style="list-style-type: none"> Exercise of functions conferred or imposed on council employees under other Acts Insurance against liability Public private partnerships 	Yes

Appendix B – Local Government Act and JOs – What applies and does not apply

Reference	Subject/s	Application
Chapter 13 – Parts 2 & 4, s.438T, 438ZA and 438ZB	How councils are accountable for their actions <ul style="list-style-type: none"> Strategic planning Annual reports No amalgamations or alterations to area during temporary suspension of council 	No
Chapter 13 – section 406	Statement of strategic regional priorities <ul style="list-style-type: none"> Section 406 applies so that a reference in the section to a community strategic plan is to be read as a statement of strategic regional priorities. 	Modified
Chapter 13 Part 3	First annual report <ul style="list-style-type: none"> The first annual report for a JO is to be prepared for the period that ends at the expiry of the first full year after the JO is established. 	Modified
Chapter 13 (except for Parts 2 & 4, sections 406, 438T, 438ZA and 438ZB)	How councils are accountable for their actions <ul style="list-style-type: none"> Financial management – including funds, accounting records and auditing, other audit functions, auditors Inquiries, reviews and surcharging Performance management – including PIOs, temporary advisers and financial controllers Temporary suspension of council except: <ul style="list-style-type: none"> s.438T - No amalgamations or alterations to area Public inquiries <ul style="list-style-type: none"> s.438ZA – Ordinary election during suspension period s.438ZB – Election of Mayor during suspension period Service of ministerial and departmental documents 	Yes
Chapter 14	Honesty and disclosure of interests <ul style="list-style-type: none"> Conduct Serious corrupt conduct Misconduct Duties of disclosure, written returns and meetings Complaints about non-disclosure, investigations and NCAT proceedings Miscellaneous – acts of disorder, recovery of monetary benefits 	Yes
Chapter 15 – Parts 10, 12 and 13 and section 620	How councils are financed <ul style="list-style-type: none"> Council fees for services and activities, certain annual charges Loans and restrictions Investments Minister's grants 	Yes
Chapter 15 (except for Parts 10, 12 and 13 and section 620)	How councils are financed <ul style="list-style-type: none"> Limit of annual income from rates and charges Ordinary rates, charges Making and levying of rates and charges Rateable land Payment of rates and charges, concessions Miscellaneous – records, certificates, expenses, coastal protection service charges, writing off rates, charges, accrued interest Grants [Local Government Grants Commission] 	No

Appendix B – Local Government Act and JOs – What applies and does not apply

Reference	Subject/s	Application
Chapter 16	Offences <ul style="list-style-type: none"> • Failure re approvals and orders • Public places • Water, sewerage and stormwater drainage • Street drinking • Parking, immobilisation and detention of vehicles <ul style="list-style-type: none"> – Acting in civic office while disqualified • Miscellaneous e.g. obstruction, wilful destruction 	Yes
Chapter 17 – Part 2 Divisions 4 and 5	Enforcement <ul style="list-style-type: none"> • Proceedings by the council or its employees for the recovery of rates and charges through legal action • Sale of land for unpaid rates and charges (proposed by draft regulation) 	No
Chapter 17 (except for Part 2 Divisions 4 and 5)	Enforcement <ul style="list-style-type: none"> • Legal proceedings and other remedies • Proceedings by the council or its employees except: <ul style="list-style-type: none"> • Division 4 - for the recovery of rates and charges • Proceedings against councils, councillors and staff including liability and exemptions • Miscellaneous except s.736(2) below. 	Yes
Chapter 18 - Section 736(2)	Miscellaneous <ul style="list-style-type: none"> • Proclamations 	No
Chapter 18 (except for Section 736(2))	Miscellaneous <ul style="list-style-type: none"> • General – public hearings, preliminary inquiries, proclamations (except s.736(2)) privacy, correcting errors, notice, record keeping dispute resolution, property in waste, DCE and Ministerial delegation of functions, authorised officers, review of Act • Regulations • Savings transitional and other provisions 	Yes
Schedules 1-5	<ul style="list-style-type: none"> • Local Government Remuneration Tribunal • Boundaries Commission • Project Review Committees (PPPs) • Local Government Grants Commission 	No
Schedules 6-9	<ul style="list-style-type: none"> • Regulations • Code of Conduct • Savings, transitional and consequential provisions – this Act and other Acts • Special provisions for winding up of Cudgegong County Council 	Yes
Dictionary	All terms	Yes

Appendix C – The Local Government (General) Regulation 2005 – What applies and does not apply to JOs

Clause references		Subject of clauses	Applies?
Part 1	all	Preliminary	Yes
Part 2	all	Approvals	No
Part 3	all	Orders	No
Part 4	all	Community Land	No
Part 5	all	Rates and charges	No
Part 5A	all	Environmental upgrade agreements	No
Part 6	all	Water services	Yes
Part 7	all	Tendering	Yes
Part 8	all	Honesty and disclosure of interests	Yes
Part 9	clause 201, 217 – 219	Management and accountability <ul style="list-style-type: none"> Annual statement of council's revenue policy Additional matters for annual reports County councils 	No
Part 9	remainder	Management and accountability <ul style="list-style-type: none"> Budgeting by councils including system for budget control and budget review statements/revision of estimates except annual statement of council's revenue policy Council's funds Accounting records and accounting practices Annual financial reports Auditor's matters Half yearly inspection Loans to council to be charge on income General manager to notify borrowings 	Yes
Part 10	clause 235 and 236	Meetings <ul style="list-style-type: none"> Remote attendance at meetings prohibited Councillor elected to preside at certain meetings 	No
Part 10	remainder	Meetings <ul style="list-style-type: none"> Definition of "councillor" will be amended to include a voting representative of a non-voting chairperson of a JO Board, so the Part will apply to them in the same way as to a councillor. Convening of, and attendance at, meetings Procedure for the conduct of council meetings – except councillor to be elected to preside at certain meetings – including: Chair to have precedence, Order of business, agendas, meeting papers, extraordinary meetings, motions, official minutes, speeches, voting, meetings are public Keeping order at meetings Council committees Miscellaneous including inspection of minutes, tape recording requires permission 	Yes
Part 11	all	Elections	No

Appendix C – The Local Government (General) Regulation 2005 – What applies and does not apply to JOs

Clause references		Subject of clauses	Applies?
Part 12	all	Penalty notices	Yes
Part 13	division 3, 6 and 11, and clause 404	Miscellaneous <ul style="list-style-type: none"> • Surveys and polls relating to council amalgamations or boundary changes • Payments to councillors • Winding up of Cudgegong (Abattoir) County Council • Functions of general manager 	No
Part 13	Clauses 406A, 406C and 406D	Transfer of staff <ul style="list-style-type: none"> • The relevant provisions concerning staff transfers apply to transfers from JO to JO, JO to councils and councils to JOs. 	Modified
Part 13	remainder	Miscellaneous <ul style="list-style-type: none"> • Council seal • Compulsory acquisition for resale (section 188) • Council staffing matters • Certain exclusions • Bathing control notices (section 633) • Disclosure and misuse of information • Application of certain penalties • Standards of coastal protection services • Performance management criteria and suspension criteria 	Yes
Part 14	all	Savings and transitional provisions	No
Sch. 1-2	all	Standards relating to approvals and enforceable by orders	No
Sch. 3	all	Form of return - disclosure of interest	Yes
Sch. 3A	all	Form of special disclosure of pecuniary interest	Yes
Sch. 4	all	Counting of votes - optional preferential system	No
Sch. 5	all	Counting of votes - proportional system	No
Sch. 7	all	Election of mayor by councillors	No
Sch. 7A	all	Election of chairpersons of joint organisations	Yes
Sch. 8	all	Election of members and chairs - county councils	No
Sch. 10&11	all	Constitutional referendums, council polls, forms	No
Sch. 12	all	Penalty notice offences	Yes

