



Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors in NSW

**Division of Local Government
Department of Premier and Cabinet**

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Part One

The Guidelines

Acknowledgements

The Division of Local Government, Department of Premier and Cabinet would like to thank the Local Government and Shires Associations of NSW for their contribution to the review of these guidelines.

1.1 Purpose

These guidelines have been prepared for use by NSW councils to develop, implement and review their policies on the payment of expenses and the provision of facilities to mayors and councillors ('councillor expenses and facilities policies').

Councillor expenses and facilities policies should allow for councillors to receive adequate and reasonable expenses and facilities to enable them to carry out their civic duties as elected representatives of their local communities.

The preparation and review of these policies on an annual basis by councils is a mandatory requirement to ensure accountability and transparency in the reasonable and appropriate provision of expenses and facilities to mayors and councillors in NSW.

1.2 Background

A review by the then Department of Local Government in 2005 of a number of councillor expenses and facilities policies revealed a high level of variability in format and content, the scope of expenses and facilities provided and the level of payment. Many councils did not set a limit to the payment of a number of types of expenses.

To address these issues, amendments were made to the *Local Government Act 1993 (Local Government Amendment Act 2005)* and the *Local Government Regulation 2005*. In addition the first version of these guidelines was developed.

A further review of a number of councillor expenses and facilities policies in 2007 (Director General's Circular to Councils 08/03 refers) and feedback received from councils using the guidelines identified the need for clarification of a number of areas. The result is the release of this revised version of the guidelines.

1.3 Legislative Context

These guidelines have been prepared under the provisions of section 23A of the *Local Government Act 1993* ('the Act') as Director General's Guidelines. They replace any previous versions of the guidelines issued.

Councillor expenses and facilities policies are made under the Act and in accordance with sections 252 and 253 of the Act as well as clause 403 of the Local Government (General) Regulation 2005 ('the Regulation').

Under section 252(5) of the Act councillor expenses and facilities policies must comply with the provisions of the Act, the Regulation, these guidelines and other policies nominated in these guidelines.

Under section 439 of the Act every councillor must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions. Under section 440 each council must adopt a code of conduct that incorporates the provisions of the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).

Other policy documents to be considered during the development and review of councillor expenses and facilities policies include relevant Circulars to Councils the *Model Code of Conduct for Local Councils in NSW* and the Independent Commission against Corruption publication *No Excuse for Misuse*.

A council may disburse money only if the disbursement is authorised by the Local Government Act, either expressly or because it is supplemental, incidental to or consequential upon the exercise of its functions.

Further details of relevant legislative provisions and policy documents are in Appendix I to these guidelines.

1.4 Scope

Policies prepared under these guidelines provide for the payment or reimbursement of expenses and the provision of facilities by councils to mayors and councillors in NSW. They are also relevant to NSW council administrators where applicable and with necessary modifications.

The guidelines contain:

Discussion of principles and clarification of relevant issues in regard to the scope and extent of expenses and facilities that may be reasonably and appropriately provided for in councils' policies (Part One)

Notes and/or model clauses on specific expenses and facilities to assist councils to prepare their policies (Part Two)

Details of the relevant legislative and policy requirements ([Appendix I](#))

Suggested outline structure or format for a policy, which councils may use or adapt as necessary to suit their needs ([Appendix II](#)).

These guidelines do not deal with matters associated with the setting and payment of councillors' annual fees, which are a matter for the Local Government Remuneration Tribunal. Accordingly, policies prepared under these guidelines should not deal with councillors' annual fees.

1.5 Definitions

The Act: *The Local Government Act 1993*

Councillor expenses and facilities policies: policies prepared under these guidelines on the payment of expenses and the provision of facilities to mayors and councillors.

Expenses: Payments made by the council to reimburse councillors for reasonable costs or charges incurred or to be incurred for discharging their civic functions. Expenses must be outlined in a council's policy and may be either reimbursed to a councillor or paid directly by a council for something that is deemed to be a necessary expense to enable them to perform their civic functions. Expenses are separate and additional to annual fees.

Facilities: Equipment and services that are provided by councils to councillors to enable them to perform their civic functions with relative ease and at a standard appropriate to their professional role as councillors.

Functions of civic office/civic functions: Functions that councillors are required to undertake to fulfil their legislated role and responsibilities for the council that should result in a direct benefit for the council and/or for the local government area.

The Regulation: *The Local Government (General) Regulation 2005*

1.6 Key Principles and Issues

Below are a number of key principles and issues that councils must consider and integrate within their councillor expenses and facilities policies where appropriate.

1.6.1 General Conduct

Councillors must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out their functions under the Local Government Act or any other Act. This is required under section 439 of the Local Government Act and reinforced in the Model Code of Conduct made under section 440.

1.6.2 Use of council resources

Councils should be mindful of the provisions in the Model Code of Conduct about the use of council resources to ensure that councillor expenses and facilities are not used inappropriately.

The Model Code of Conduct provides that council resources must be used ethically, effectively, efficiently and carefully. Council property including intellectual property, official services and facilities must not be misused by any person or body for private benefit or gain. Councillors must also avoid any action or situation that could create the appearance that council resources are being used inappropriately (clauses 10.12-10.14 and 10.15 refer).

A person's re-election is considered to be a personal interest. Official council material such as letterhead, publications, websites as well as council services and forums must not be used for such personal interests. Situations in which the appearance may be given that these are being used for such purposes are also to be avoided (clause 10.16 refers).

The fundraising activities of political parties, including political fundraising events, are considered to be personal interests. Councils should not pay expenses or provide facilities to councillors in relation to supporting and/or attending such activities and events.

In circumstances where it is appropriate for councillors to give a gift or benefit (for example, on a council business related trip or when receiving visitors), these gifts and benefits should be of token value and in accordance with a policy developed by the council. For clarification on what token gifts and benefits are see the Model Code of Conduct (clause 8.1)

Further discussion in relation to the use of council resources for communication expenses is in Part Two.

Excerpts from the Model Code of Conduct in relation to use of council resources are in Appendix I.

1.6.3 Accountability and transparency

Councillor expenses and facilities policies must include all of the specific expenses for which councillors are entitled to receive reimbursement and all of the specific facilities councillors are entitled to use. Councillors can only receive reimbursement for expenses and the use of facilities when these are clearly identified in the policy.

The overriding principle to be addressed in the development of a council expenses policy is that the details and range of expenses paid and facilities provided to councillors by the council must be clearly and specifically stated and be fully transparent and acceptable to the local community. Policies must include clear limits and processes for approval, reconciliation and reimbursement for all expenses and facilities to maximise accountability and transparency.

Comprehensive reporting requirements of the Regulation, as outlined in Appendix I of these guidelines, further reinforce accountability and transparency.

1.6.4 Private benefit

Councillors should not obtain private benefit from the provision of equipment and facilities, nor from travel bonuses such as 'frequent flyer' schemes or any other such loyalty programs while on council business. However it is acknowledged that incidental use of council equipment and facilities may occur from time to time. Such incidental private use is not subject to a compensatory payment back to council.

Where more substantial private use does occur the Act provides that a payment may be made to cover the level of that private use (refer s252 (2)).

Councils are encouraged to include a statement in their councillor expenses and facilities policies clarifying that councillors should not obtain more than incidental private use of facilities. In situations where private use occurs, councils should also establish a suitable rate and/or mechanism for the reconciliation and reimbursement by councillors of that private use and include this in their policies.

1.6.5 General expense allowances

In accordance with clause 403 of the Regulation councillor expenses and facilities policies must not include provision for a general expense allowance. A general expense allowance is a sum of money paid by a council to a councillor to expend on an item or a service that is not required to be receipted and/or otherwise reconciled according to a set procedure and within a specific timeframe.

It is not appropriate or lawful for councils to pay general allowances unrelated to actual expenses incurred and which are designed to supplement councillors' annual fees.

Councils are encouraged to include a statement in their policies clarifying that general expense allowances will not be paid.

1.6.6 Limits

The payment of expenses and the provision of equipment and facilities to councillors must not be open-ended. However, these guidelines do not specify particular monetary limits. Rather, councils must agree and set monetary limits to all expense provisions in their policy, where practicable and where appropriate, as well as standards for the provision of equipment and facilities provided to councillors. In doing so, councils need to consider what is a reasonable and acceptable level of provision.

Limits need to be clearly stated and, where appropriate, justified within councillor expenses and facilities policies. The duration for which the limits apply to should also be clearly set out, for example one financial year. For periods less than a full year, for example, after a local government general election, a council may choose to apply a limit for each expense worked out on a pro rata basis.

Identifying and publishing monetary limits allows members of the public to know the expected cost of providing services to councillors and to make comment during the public consultation phase of making or amending the policy. Having clear limits also avoids situations where councillors incur costs that are unforeseen or considered unreasonable by other councillors and the public.

1.6.7 Approval

The policy must set out approval arrangements for all expenses and facilities provided. It should ensure that, where possible, approval is sought and gained prior to expenses being incurred. In particular it should avoid any one person from being the sole decision maker.

Approval for discretionary trips, attendance at conferences and/or for other significant expenses and facilities should occur, where possible, at a full meeting of the council.

Where approval at a full council meeting is not possible or appropriate then approval should be given jointly by the mayor and the general manager. If the mayor requires approval it should be given jointly by the deputy mayor or another councillor and the general manager.

Councils should establish and document an appropriate process to resolve any disputes that arise about the provision of expenses and facilities. This could

include a mechanism for disputed decisions to be reviewed by an independent person and/or by a full council meeting.

1.6.8 Reconciliation and reimbursement

Council expenses and facilities policies must include processes for the reconciliation and reimbursement of expenses, including a time limit for councillors to seek reimbursement for their expenses.

However, it is up to individual councils to determine the most appropriate procedure for reconciling and reimbursing costs and expenses taking into consideration issues of accountability and transparency as well as internal systems and resourcing.

Incidental expenses may not require specific receipts provided it can be demonstrated that expenditure was incurred and is not general in nature. Where receipts are not required it would be appropriate for councillors to certify that the expenditure was for the purpose intended. The level of supporting documentation should be commensurate with the nature of expenditure. For example expenditure on parking, tolls, refreshments and the like may only require a signed statement listing the payments.

1.6.9 Advance payments

When requested by a councillor, consideration should be given to the provision of an advance payment for the cost of a service associated with a civic duty. Advance payments can help ensure that councillors are able to fully participate in their civic duties without financial disadvantage.

Advance payments must always be reconciled at a future date within a timeframe stated in the policy. It is up to individual councils to determine the most appropriate means of reconciling such advance payments taking into account issues of accountability and transparency as well as internal systems and resourcing.

1.6.10 Recognising local differences

Individual policies should be sufficiently flexible and tailored to allow individual councils to determine what they can afford to pay and what is acceptable to their communities. They need to recognise the differences between councils in terms of levels of complexity of their governance, population size, the local economic and development environment, proximity to state borders and so on. These differences are broadly reflected in the various categorisations of councils, which have been determined by the Local Government Remuneration Tribunal to derive the level of annual fees paid to mayors and councillors.

1.6.11 Reasonable expenses, rates and facilities

These guidelines do not specify specific levels, rates or standards for the provision of expenses and facilities to councillors.

It is the responsibility of councils to define and establish in their policies what is reasonable, appropriate, responsible and acceptable based on considerations of what is required to enable councillors to effectively carry out their civic duties and what is acceptable to their communities.

Policies must adequately provide for councillors to be reimbursed for actual expenses incurred, or to be incurred, in the performance of their civic duties. Examples of appropriate expenses include training and development, conferences and seminars, travel, childcare, legal expenses and insurance.

Facilities, equipment and services should be provided that are appropriate to support mayors and councillors in undertaking their role as elected members of the council. Facilities should be provided to ensure the safety of councillors, for example the allocation of a safe and secure designated parking space at or near the council premises.

Council facilities, equipment and services are not to be used to produce election material or for any other political purposes.

Policies should also specify appropriate rates. For example, rates for childcare may be based on an appropriate employment award and rates for mileage or meals may be based on Australian Tax Office determinations. These should be clearly provided for and, where appropriate, justified in councils' policies.

It is expected that the needs of different councils would be reflected in the scale, scope and nature of expenses and facilities provided. It is expected that councils of an equivalent Local Government Remuneration Tribunal category would generally make similar provisions for expenses and facilities.

1.6.12 Participation, equity and access

Councillor expenses and facilities policies should be non-discriminatory, equitable and encourage participation on council of people from diverse backgrounds that represent the demographics of the local community. They should allow councillors to represent the community in different ways and take account of, as much as possible, individual differences.

Policies should encourage all members of the community from different walks of life, particularly under-represented groups such as those in primary caregiver roles, to seek election to council by ensuring that they would not be financially or otherwise disadvantaged in undertaking the civic duties of a councillor.

Policies should also take account of and make reasonable provision for the special needs of councillors to allow appropriate access to council premises

and facilities, and to maximise participation in the civic duties and business of council. Policies should include, for example, provision for sight or hearing impaired councillors and those with other disabilities. They should also make reasonable transportation provisions for those unable or unwilling to drive.

1.6.13 Relationship between annual fees and expenses

Policies prepared under these guidelines are not required to deal with councillors' annual fees. However, it is acknowledged that there is likely to be some correlation between the annual fees paid to mayors and councillors and the level and scope of expenses and facilities required and provided for in a councillor expenses and facilities policy.

Councillor expenses and facilities policies should set levels of expenses and facilities to realistically account for costs incurred by councillors independent of the level of their annual fees. This is consistent with the Local Government Remuneration Tribunal position that expenses reasonably incurred by councillors are outside provisions made under the annual fee determinations.

It is noted that some small country councils have in the past set a policy that requires councillors to pay for some or all of their expenses from their annual fee. This practice is strongly discouraged as it can have the effect of financially disadvantaging councillors. It may also have the effect of discouraging potential candidates from standing for election to councils.

In relation to annual fees, it should be noted that councils may only pay a deputy mayor part of the mayor's annual fee where a deputy mayor demonstrably acts in the role of the mayor. Such payment must only be done at the direction of the council and any amount paid to the deputy mayor must be deducted from the mayor's annual fee (section 249 of the Local Government Act).

Notes about specific expenses and facilities to assist councils in the development of a councillor expenses policy follow in Part Two. These notes do not form part of the mandatory guidelines.

1.7 Development, implementation, review and reporting requirements

1.7.1 Development and adoption of the policy

In accordance with section 253 of the Local Government Act, councils must give public notice of its intention to adopt or amend a councillor expenses and facilities policy and allow at least 28 days for public submissions.

Councils must consider any submissions received and make any appropriate changes to the policy. Councils do not need to give public notice of a proposed amendment to the policy, if the amendment is not substantial.

Within 28 days of adopting or amending the policy, the policy and details of submissions must be forwarded to the Deputy Director General (Local Government), Division of Local Government, Department of Premier and Cabinet.

Councils must submit their current, adopted policies to the Division by 30 November each year.

1.7.2 Implementation

Consistent with the principles outlined in these guidelines, councillor expenses and facilities policies should include clear provisions that assist in the equitable, transparent and accountable implementation of the policy.

The policy should clarify that the payment of general expense allowances is not allowed. The policy should also disallow, other than incidental, private benefit to councillors for expenses and facilities, unless a reasonable and clear mechanism for reconciliation and reimbursement of the private benefit gained is expressly outlined in the policy.

The policy should include clear limits for all expenses and facilities, where practicable.

It is particularly important that the policy includes a clear approval process for all expenses and facilities, where practicable, to avoid situations in which a councillor incurs and makes a claim for an expense considered to be outside the scope of the policy by the council.

1.7.3 Promotion and availability of the policy

Councils should promote their policies on the payment of expenses and the provision of facilities to councillors and to the community by placing these policies on their websites and making them readily accessible. Councils should ensure that the policy is easy to locate for viewing by the public.

1.7.4 Review

Councils are required to review their councillor expenses and facilities policies on an annual basis. Public notice must be given prior to the annual policy adoption process, even if the proposed amendments are not substantial.

Policies must also be submitted to the Deputy Director General (Local Government), Division of Local Government, Department of Premier and Cabinet within 28 days of adoption by a council, even if the policy remains unchanged.

Councils need not give public notice of a proposed amendment to their policies at other times if the council is of the opinion that the proposed amendments are

not substantial. The term 'not substantial' should be taken to mean minor changes to wording of the policy or changes to monetary provisions or rates that are less than 5%. It also means minor changes to the standard of the provision of equipment and facilities. Substantial amendments to the policy that could include larger changes to monetary limits than the limit noted above, and/or major changes to the standard of provision of equipment and facilities, will require public notice of the amendment. Any new category of expenses, facilities and equipment included in the policy will also require public notice.

1.7.5 Annual Reporting

In accordance with clause 217 of the Regulation and for the purposes of transparency and accountability, councils are required to include detailed information in their annual reports about the payment of expenses and facilities to councillors. This should not be seen as a disincentive for the payment of appropriate expenses and the provision of appropriate facilities to councillors.

Councils are required to report separately on:

General

- the total cost of expenses and the provision of facilities for the mayor and all councillors, as well as:

Provision of facilities

- the cost of the provision of dedicated office equipment allocated to councillors on a personal basis such as laptop computers, mobile phones, telephones and facsimile machines and Internet installed in the councillors' homes (including line rental and internet access). This item does not include the costs of using this equipment, such as calls.

Expenses

- the cost of phone calls including mobiles, home located landlines, facsimile and internet services
- spouse/ partner/ accompanying person expenses (limited to circumstances outlined in Part Two of these Guidelines)
- conference and seminar expenses
- training and skill development expenses
- interstate travel expenses (including subsistence and out-of-pocket expenses)
- overseas travel expenses (including subsistence and out-of-pocket expenses)
- care and other related expenses (of dependants to enable a councillor to undertake his or her civic functions).

Whether the above information is reported for each councillor or all councillors as a group is a matter for council to determine. This may be based on considerations of what is appropriate and what the community expects.

1.7.6 Reporting of additional expenses and facilities

In addition to the statutory reporting requirements, councils should report other costs where these are significant.

For example, councils should report the cost of any additional significant expenses and/or facilities provided for in their policy.

Further details of relevant legislative provisions for development, implementation, review and reporting of councillor expenses and facilities policies are in Appendix I to these guidelines.

Part Two

Notes to assist councils to develop a councillor expenses and facilities policy

The following notes do not form part of the guidelines. They are provided to clarify various issues and provide examples in relation to specific expenses and facilities to assist councils to prepare their councillor expenses and facilities policies. Councils should use these notes as appropriate to need and circumstances.

2.1 Policy control information

As for any council policy, standard information about the date the policy was adopted, amendment date/s and the responsible council division should be included to make it easy to track changes and to ensure good policy version control.

Related policies, procedures or other documents should also be clearly identified, where appropriate.

2.2 General provisions for inclusion

Consistent with the principles outlined in these guidelines, councillor expenses and facilities policies should include:

statement disallowing the payment of general expense allowances

statement disallowing, other than incidental, private benefit from expenses and facilities - unless the policy expressly allows this and there is a reasonable and clearly outlined mechanism for reimbursement of the private benefit gained

clear limits for all expenses and facilities, where practicable

clear processes for approval, reconciliation and reimbursement for all expenses and facilities, where practicable.

2.3 Provisions for specific expenses

2.3.1 Attendance at seminars and conferences

Councils may provide specific guidance in their policies in regard to the type of seminars and conferences that may be attended, the number of councillors who may attend and approval arrangements.

Requests for attending conferences should generally be in writing outlining the benefits for council. After returning from the conference the councillor/s, or a member of council staff accompanying the councillor/s, should provide a written report to council on the aspects of the conference relevant to council business and/or the local community. No written report should be required for the Annual Conferences of the Local Government and Shires Associations.

Councils should pay conference registration fees charged by the conference organisers including the costs of related official lunches and dinners, and associated tours where they are relevant to the business and interests of the council.

Councils should meet the reasonable cost of transportation and accommodation associated with attendance at the conference, and meals when they are not included in the conference fees.

2.3.2 Training and development

Councils should provide for training and development in their policies and make separate provision in their budgets for the payment of training and development expenses for councillors.

This is in accordance with NSW Government policy, which aims to ensure that councillors have adequate training and skills development to ensure they carry out their functions effectively. The Division of Local Government is currently implementing a Councillor Development Strategy to ensure that councillors have access to the training and resources needed to understand and undertake their role effectively and to facilitate continuing professional development opportunities.

Councils are also being encouraged to develop, fund and implement a councillor training and development program based on a systematic skills analysis and assessment of professional development needs of their councillors. The nature of this program will vary from council to council depending on resources and need. Guidance on the preparation of professional development programs for councillors may be found in the Division's *Councillor Induction and Professional Development Guide* on our website at www.dlg.nsw.gov.au.

Councillor expenses and facilities policies should support and encourage an active learning process and skills development in addition to providing for

attendance at seminars and conferences related to council functions. It is essential where council is paying these expenses that the training or educational course is directly related to the councillor's civic functions and responsibilities.

2.3.3 Travel

General travel

The policy should clarify that all travel by councillors should be undertaken by utilising the most direct route and the most practicable and economical mode of transport subject to any personal medical considerations.

Local travel

The policy should provide for the payment of reasonable travel expenses for local travel relating to defined council business.

For example, the policy could include arrangements for the use of a private vehicle and provisions for the use of public transport, taxis, hire cars, travel using a council vehicle and associated other costs such as parking and road tolls. The policy should clarify that the driver is personally responsible for all traffic or parking fines incurred while travelling in private or council vehicles on council business.

Intrastate travel

Councils should decide whether it is reasonable to require prior approval for intrastate travel depending on factors such as the purpose, travel distance and whether flights and/or overnight accommodation is required. For example, travel to a conference in a distant local government area may require an application for approval including full details of the travel, such as itinerary, costs and reasons for the travel. Travel to a neighbouring local government area may generally be treated as local travel.

Interstate travel

Prior approval of travel should generally be required for interstate travel. The application for approval should include full details of the travel, including itinerary, costs and reasons for the travel. An exception would be for situations in which border councils travel to meetings or forums in neighbouring councils across the border. In such cases this may be treated as local travel.

Overseas travel

It is strongly recommended that councils scrutinise the value and need for councillors to undertake overseas travel. Councils should avoid international visits unless direct and tangible benefits can be established for the council and the local community.

Detailed proposals for overseas travel should be developed, including nomination of the councillors undertaking the trip, purpose of the trip and expected benefits. The duration, itinerary and approximate total costs of each proposed visit, should also be provided.

Overseas travel must be approved by a meeting of the full council prior to a councillor undertaking the trip. Travel must be approved on an individual trip basis. Councils should not allow the retrospective reimbursement of overseas travel expenses unless prior authorisation of the travel has been obtained.

Travel proposals should be included in the council business papers. The use of a mayoral minute to obtain council approval for travel is not appropriate as it is not consistent with principles of openness and transparency.

After returning from overseas, councillors, or an accompanying member of council staff, should provide a detailed written report to council on the aspects of the trip relevant to council business and/or the local community. Councillors are also strongly encouraged to report back on their overseas travel to a full meeting of the council.

Details of overseas travel must also be included in councils' annual reports. Councils are also required to report on the benefits of any proposed overseas sister city relationships.

2.3.4 Accommodation costs

Councils may make specific provision in the policy in regard to an appropriate standard of accommodation for councillors attending conferences, seminars and other functions.

2.3.5 Incidental expenses

Reasonable out of pocket or incidental expenses associated with councillors attending conferences, seminars or training courses may be reimbursed provided that it can be demonstrated that the expenses were actually incurred and that established reconciliation procedures are followed, for example, the completion of a claim form. A claim form must include an itemised account of expenditure and should not be general in nature.

Incidental expenses could reasonably include telephone or facsimile calls, refreshments, internet charges, laundry and dry cleaning, newspapers, taxi fares and parking fees. In addition, the cost of meals not included in the registration fees for conferences or similar functions may be reimbursed after reconciliation. It is expected that councils would specify daily limits to these out of pocket or incidental expenses in their policy. All advanced payments are required to be reconciled.

2.3.6 Legal expenses

Where a council decides to include provisions in its councillor expenses and facilities policy to indemnify or reimburse a councillor's reasonable legal costs properly incurred, the policy should specify that the reasonable legal expenses of a councillor may only be met for legal proceedings being taken against a councillor in defending an action arising from the performance in good faith of a function under the Local Government Act (section 731 refers) or defending an action in defamation, provided that the outcome of the legal proceedings is favourable to the councillor.

Reasonable legal costs may also be available for an inquiry, investigation or hearing into a councillor's conduct by an appropriate investigative or review body including:

- (i) Local Government Pecuniary Interest and Disciplinary Tribunal
- (ii) Independent Commission Against Corruption
- (iii) Office of the NSW Ombudsman
- (iv) Division of Local Government, Department of Premier and Cabinet
- (v) NSW Police Force
- (vi) Director of Public Prosecutions
- (vii) Council's Conduct Review Committee/Reviewer.

This is provided that the subject of the inquiry, investigation or hearing arises from the performance in good faith of a councillor's functions under the Act and the matter before the investigative or review body has proceeded past any initial assessment phase to a formal investigation or review. In the case of a conduct complaint made against a councillor, legal costs should only be made available where a matter has been referred by a general manager to a conduct reviewer/conduct review committee to make formal enquiries into that matter in accordance with the procedures in the Model Code of Conduct. In the case of a pecuniary interest or misbehaviour matter legal costs should only be made available where a formal investigation has been commenced by the Division of Local Government.

In addition, legal costs must only be provided where the investigative or review body makes a finding that is not substantially unfavourable to the councillor. This may include circumstances in which a matter does not proceed to a finding. In relation to a councillor's conduct, a finding by an investigative or review body that an inadvertent minor technical breach had occurred may not necessarily be considered a substantially unfavourable outcome.

A council must not meet the legal costs of legal proceedings initiated *by* a councillor under any circumstance.

A council must not meet the legal costs of a councillor seeking advice in respect of possible defamation, or in seeking a non-litigious remedy for possible defamation.

Legal costs must not be met for legal proceedings that do not involve a councillor performing their role as a councillor.

A council may lawfully obtain insurance cover against the risk of having to meet the reasonable legal costs of a councillor, or to reimburse those costs, provided that the costs or reimbursements are ones that the council is authorised to meet.

It is important that council has a clear approvals process in place to ensure approval is sought and gained, where possible, prior to legal expenses being incurred.

The above information is in accordance with and replaces the provisions in relation to legal expenses for councillors in Circular to Councils 05/08 *Legal assistance for councillors and council employees* and of the model policy set out in the *Local Government Law Guide*, Sly and Weigall in association with Deacons, Graham & James (June 1994) p 322, point 252.3(6).

2.3.7 Insurance

Section 382 of the Act requires a council to make arrangements for its adequate insurance against public liability and professional liability.

The policy should include a section outlining insurance provisions for councillors and as a minimum these insurances should cover:

- Public liability (for matters arising out of councillors' performance of their civic duties and/or exercise of their council functions)
- Professional indemnity (for matters arising out of councillors' performance of their civic duties and/or exercise of their functions).

Councils could also give consideration to providing additional insurance for councillors to cover:

- Personal injury while on council business. Note that councillors are not covered by workers' compensation payments or arrangements.
- Travel insurance for approved interstate and overseas travel on council business.

All insurances are to be subject to any limitations or conditions set out in the council's policy of insurance.

2.3.8 Communication expenses

The Division advises against councils including provision in their policies for expenses for individual councillors or groups of councillors to produce and disseminate personalised pamphlets, newsletters and the like.

Regardless of intention such activities may be perceived as using council resources for private political benefit and would therefore be contrary to the spirit of the Local Government Act and the Model Code of Conduct.

This is particularly the case in the lead up to local government elections. Not only is it likely that the community would perceive pamphlets and newsletters by individual councillors at this time to be a misuse of resources for private re-election benefit, but the use of council resources for such a purpose inequitably raises the profile of current councillors over other prospective candidates.

While the facilitation of communication between the community and the council is acknowledged as an important role of a councillor, there are many other more appropriate ways that councils do this effectively, including via corporate publications and community newsletters, surveys, focus groups, websites and public meetings.

However, if communication expenses are to be provided to individual councillors, policies should include strict limits, guidelines and controls to manage the content, format and approval process for any publications produced, not least because such materials will appear to be council endorsed. Councils should also consider setting a reasonable and appropriate timeframe for ceasing payment of expenses for communication activities by individual councillors prior to their ordinary elections until after the elections.

2.3.9 Telecommunications

Councils should establish a monthly monetary limit for the cost of official mobile, landline and facsimile calls made by councillors. A system should also be established to reconcile all telephone call costs claimed with account statements. Councils should also consider limiting expenses for internet use.

2.3.10 Attendance at dinners and other non-council functions

The policy may address the issue of councillors' attendance at formal dinners and other non-council functions.

Consideration may be given to meeting the cost of councillors' attendance at dinners and other non-council functions that provide briefings to councillors from key members of the community, politicians and business. Approval to meet expenses should only be given when the function is relevant to the council's interest. Only the cost of the service provided should be met.

No payment should be made by a council for attendance by a councillor at any political fundraising event, for any donation to a political party or candidate's electoral fund, or for some other private benefit. Councils should ascertain whether any expenses to be incurred would be directed towards such events and activities prior to approving expenditure.

2.3.11 Care and other related expenses

Councils are strongly encouraged to make provision for the reimbursement of the reasonable cost of care arrangements, including childcare expenses and the care of elderly, disabled and/or sick immediate family members of councillors, to allow councillors to undertake their council business obligations. This is in accordance with the principles of participation, access and equity outlined earlier in these guidelines. This is considered by the Division of Local Government to be a legitimate expense and councillors claiming the care expense should not be subject to criticism for doing so.

Consideration should be given to the payment of other related expenses associated with the special requirements of councillors such as disability and access needs to allow performance of normal civic duties and responsibilities.

2.3.12 Expenses for spouses, partners and accompanying persons

There may be limited instances where certain costs incurred by the councillor on behalf of their spouse, partner or accompanying person are properly those of the councillor in the performance of his or her functions. An accompanying person is a person who has a close personal relationship with the councillor and/or provides carer support to the councillor.

Meeting the reasonable costs of spouses and partners or an accompanying person for attendance at official council functions that are of a formal and ceremonial nature, is considered appropriate when accompanying councillors within the local government area. Such functions would be those that a councillor's spouse, partner or accompanying person could be reasonably expected to attend. Examples could include but not be limited to Australia Day award ceremonies, citizenship ceremonies, civic receptions and charitable functions for charities formally supported by the council.

Limited expenses of spouses, partners or accompanying persons associated with attendance at the Local Government and Shires Associations' annual conferences could be met by councils. These expenses should be limited to the cost of registration and official conference dinners. Travel expenses, any additional accommodation expenses, and the cost of partner/accompanying person tours etc would be the personal responsibility of individual councillors.

Consideration should also be given to the payment of expenses for the spouse, partner or accompanying person of a mayor, or a councillor when they are representing the mayor, when they are called on to attend an official function of council or carry out an official ceremonial duty while accompanying the mayor outside the council's area, but within the State. Examples could include charitable functions to which the mayor has been invited and award ceremonies and other functions to which the mayor is invited to represent the council.

The above circumstances should be distinguished from spouses, partners or accompanying persons who accompany a councillor at any event or function

outside the council area, including interstate and overseas, where the costs and expenses of the spouse or partner or accompanying person should not be paid by council (with the exception of attendance at the Local Government and Shires Associations annual conferences, as noted above).

The above examples should also be distinguished from circumstances where spouses, partners or accompanying persons accompany councillors at seminars and conferences and the like. In these situations all costs, including any additional accommodation costs, must be met by the councillor or the spouse/partner/accompanying person.

The payment of expenses for spouses, partners or accompanying persons for attending appropriate functions as permitted above should be confined specifically to the ticket, meal and/or the direct cost of attending the function. Peripheral expenses incurred by spouses, partners or accompanying persons such as grooming, special clothing and transport are not considered reimbursable expenses.

2.4 Provision of facilities, equipment and services

2.4.1 Provision of facilities, equipment and services for councillors

The following are examples of equipment, facilities and services that could be included in the policy and provided to mayors and councillors. The provision of facilities, equipment and services is not limited to this list:

- Office equipment (phones, fax, photocopier)
- Mobile phone
- Internet
- Dedicated computer equipment including a desktop and/or laptop, printer, scanner and software
- Furnished councillors' room
- Secretarial and administrative support
- Stationery, office supplies, postage, business cards and other consumables
- Non-dedicated council vehicle
- Car parking set aside for the sole use of councillors
- Meals and refreshments
- Meals on evenings of council meetings and official dinners, light refreshments at committee and working party meetings
- Corporate clothing and protective clothing and equipment.

2.4.2 Provision of additional facilities, equipment and services for mayors

In addition to the facilities, equipment and services provided to councillors, certain additional facilities may be provided to a mayor to recognise the special

role, responsibilities and duties of the position both in the council and in the community.

Provision of a motor vehicle

Generally, a fully serviced and maintained vehicle, including a fuel card, should be provided for the sole use of the mayor. The type of motor vehicle and all conditions of use should be specified in the policy.

Councillors, including the mayor, should only obtain incidental private benefit from the provision of a motor vehicle for official use unless the policy specifically provides for private use and has a mechanism in place for a payment to be made for that private use. This mechanism should be outlined in a council's expenses and facilities policy. For an example of an appropriate method of reconciling private usage see 1.6.11.

Other equipment, facilities and services

Other equipment to be provided for the use of the mayor may include, but is not be limited to:

- Ceremonial clothing including mayoral robes, chains of office
- Dedicated staff support, including secretarial services
- Furnished mayoral office
- Allotted parking space at the council premises.

2.4.3 Acquisition and return of equipment and facilities by councillors

Councils should provide details of arrangements for councillors to return equipment and other facilities to the council after the completion of their term of office, extended leave of absence or at the cessation of their civic duties.

The policy should provide the option for councillors to purchase council equipment previously allocated to them at the cessation of their duties. If the item is for sale it should be purchased at an agreed fair market price or written down value.

Appendix I

Legislative and policy requirements

3.1 Provisions under the Local Government Act 1993

3.1.1 General policy-making requirements

Section 252 of the Local Government Act requires councils to adopt or amend a policy annually for the payment of expenses and the provision of facilities to mayors, deputy mayors and other councillors. Mayors and councillors can only be reimbursed for expenses and provided with facilities in accordance with this policy.

Section 252 also makes provision for a council to reduce the amount payable to mayors and councillors (under sections 248-251 of the Act) by the amount representing any private benefit of a facility provided by the council to them. It also requires that the policy be made under the provisions of this Act, the Regulation and any relevant guidelines issued under section 23A of the Act (these guidelines).

Section 252 (Payment of expenses and provision of facilities) states:

(1) Within 5 months after the end of each year, a council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office.

(2) The policy may provide for fees payable under this Division to be reduced by an amount representing the private benefit to the mayor or a councillor of a facility provided by the council to the mayor or councillor.

(3) A council must not pay any expenses incurred or to be incurred by, or provide any facilities to, the mayor, the deputy mayor (if there is one) or a councillor otherwise than in accordance with a policy under this section.

(4) A council may from time to time amend a policy under this section.

(5) A policy under this section must comply with the provisions of this Act, the regulations and any relevant guidelines issued under section 23A.

3.1.2 Policy development, review and submission requirements

Section 253 of the Act specifies actions that council must undertake before a policy concerning expenses and facilities can be adopted or amended. It requires councils to make and submit their expenses and provision of facilities policies annually to the Division of Local Government.

Section 253 (Public notice of proposed policy or amendments concerning expenses and facilities) states:

(1) A council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.

(2) Before adopting or amending the policy, the council must consider any submissions made within the time allowed for submissions and make any appropriate changes to the draft policy or amendment.

(3) Despite subsections (1) and (2), a council need not give public notice of a proposed amendment to its policy for the payment of expenses or provision of facilities if the council is of the opinion that the proposed amendment is not substantial.

(4) Within 28 days after adopting a policy or making an amendment to a policy for which public notice is required to be given under this section, a council is to forward to the Director-General:

(a) a copy of the policy or amendment together with details of all submissions received in accordance with subsection (1), and

(b) a statement setting out, for each submission, the council's response to the submission and the reasons for the council's response, and

(c) a copy of the notice given under subsection (1).

(5) A council must comply with this section when proposing to adopt a policy each year in accordance with section 252 (1) even if the council proposes to adopt a policy that is the same as its existing policy.

Section 254 of the Act requires that a part of a council or committee meeting which considers the adopting or amending of such a policy must not be closed to the public.

3.1.3 The role of a councillor

Section 232 of the Local Government Act defines the role of a councillor. It provides that councillors have two distinct roles; as a member of the governing body of the council; and as an elected person. Councils as members of the governing body should work as part of a team to make decisions and policies that guide the activities of the council. The role as an elected person requires councillors to represent the interests of the community and provide leadership. Councillor expenses and facilities policies should facilitate and assist councillors to carry out their role.

Section 232 (What is the role of a councillor?) states:

(1) *The role of a councillor is, as a member of the governing body of the council:*

- *to direct and control the affairs of the council in accordance with this Act*
- *to participate in the optimum allocation of the council's resources for the benefit of the area*
- *to play a key role in the creation and review of the council's policies and objectives and criteria relating to the exercise of the council's regulatory functions*
- *to review the performance of the council and its delivery of services, and the management plans and revenue policies of the council.*

(2) *The role of a councillor is, as an elected person:*

- *to represent the interests of the residents and ratepayers*
- *to provide leadership and guidance to the community*
- *to facilitate communication between the community and the council.*

3.1.4 Other requirements

Section 12 provides that the public is able to inspect during office hours at the council, and at no charge, the current version and the immediately preceding version of the council's expenses and facilities policy. The public are also entitled to a copy of the policy either free of charge or on payment of a reasonable copying charge.

Section 23A makes provision for the Director General of the former Department of Local Government to prepare, adopt or vary guidelines that relate to the exercise by a council of any of its functions. It also requires that a council must take the relevant guidelines into consideration before exercising any of its functions.

3.2 Provisions under the Local Government (General) Regulation 2005

Clause 217 of the Regulation requires councils to include detailed information in their annual reports about the payment of expenses and facilities to councillors.

Clause 217 (Additional information for inclusion in annual reports) states in part:

(1) *For the purposes of section 428 (2) (r) of the Act, an annual report of a council is to include the following information:*

- (a) *details (including the purpose) of overseas visits undertaken during the year by councillors, council staff or other persons while representing the council (including visits sponsored by other organisations),*

(a1) details of the total cost during the year of the payment of the expenses of, and the provision of facilities to, councillors in relation to their civic functions (as paid by the council, reimbursed to the councillor or reconciled with the councillor), including separate details on the total cost of each of the following:

(i) the provision during the year of dedicated office equipment allocated to councillors on a personal basis, such as laptop computers, mobile telephones and landline telephones and facsimile machines installed in councillors' homes (including equipment and line rental costs and internet access costs but not including call costs),

(ii) telephone calls made by councillors, including calls made from mobile telephones provided by the council and from landline telephones and facsimile services installed in councillors' homes,

(iii) the attendance of councillors at conferences and seminars,

(iv) the training of councillors and the provision of skill development for councillors,

(v) interstate visits undertaken during the year by councillors while representing the council, including the cost of transport, the cost of accommodation and other out-of-pocket travelling expenses,

(vi) overseas visits undertaken during the year by councillors while representing the council, including the cost of transport, the cost of accommodation and other out-of-pocket travelling expenses,

(vii) the expenses of any spouse, partner or other person who accompanied a councillor in the performance of his or her civic functions, being expenses payable in accordance with the Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors for Local Councils in NSW prepared by the Director-General from time to time,

(viii) expenses involved in the provision of care for a child of, or an immediate family member of, a councillor, to allow the councillor to undertake his or her civic functions.

Clause 403 disallows the payment of a general expense allowance and for a vehicle to be made available for the exclusive use of a councillor other than the mayor.

Clause 403 (Payment of expenses and provision of facilities) states:

A policy under section 252 of the Local Government Act 1993 must not include any provision enabling a council:

(a) to pay any councillor an allowance in the nature of a general expense allowance, or

(b) to make a motor vehicle owned or leased by the council available for the exclusive or primary use or disposition of a particular councillor other than a mayor.

3.3 Other NSW Government policy provisions

3.3.1 Division of Local Government Guidelines

As noted above under section 252(5) of the *Local Government Act 1993* the council expenses policy must comply with these guidelines issued under section 23A of the Act.

3.3.2 Circulars to Councils

The policy must take into account the following Circulars.

- Circular 08/24 *Misuse of council resources.*
- Circular 08/37 *Council decision making prior to ordinary elections*

As previously stated, these guidelines replace any previous versions of these Guidelines and Circular 04/60 *Policy on payment of facilities to the mayor, deputy mayor and other councillors.*

3.3.3 The Model Code of Conduct for Local Councils in NSW (DLG)

The policy should be consistent with the *Model Code of Conduct for Local Councils in NSW, Department of Local Government – June 2008.* The following parts of the code are particularly relevant to s252 policies:

Use of council resources (pp 23-24)

10.12 You must use council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.

10.14 You must be scrupulous in your use of council property, including intellectual property, official services and facilities and should not permit their misuse by any other person or body.

10.15 You must avoid any action or situation, which could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.

10.16 The interests of a councillor in their re-election is considered to be a personal interest and as such the reimbursement of travel expenses incurred

on election matters is not appropriate. Council letterhead, council crests and other information that could give the impression it is official council material must not be used for these purposes.

10.17 You must not convert any property of the council to your own use unless properly authorised.

3.3.4 Councillor Induction and Professional Development Guide (DLG)

The policy provisions on training and development should integrate with any training and development policy, plan or program developed by the council. The Division has produced a *Councillor Induction and Professional Development Guide* (September 2008) to assist councils to develop these programs.

3.3.5 No Excuse for Misuse, preventing the misuse of council resources (ICAC)

Councils should also be aware of and take account of the Independent Commission Against Corruption (ICAC) publication *No Excuse for Misuse, preventing the misuse of council resources (Guidelines 2)* November 2002. This publication is available on the ICAC website in at www.icac.nsw.gov.au.

Appendix II

A suggested format for a policy for the payment of expenses and the provision of facilities for mayors and councillors

Part 1 INTRODUCTION

- **Title and commencement of the Policy**
- **Purpose of the Policy**
The purpose of the policy is to ensure that councillors receive adequate and reasonable expenses and facilities to enable them to carry out their civic duties. It ensures that these are provided in an accountable and transparent manner.
- **Objectives and scope of the Policy**
- **Making and adoption of the Policy**
- **Legislative provisions**
Local Government Act 1993 and Local Government (General) Regulation 2005
- **Other Government policy provisions**
*DLG Guidelines for the payment of expenses and the provision of facilities to Mayors and Councillors, Model Code of Conduct for Local Councils in NSW and Circulars to Councils
ICAC publications*

Part 2 PAYMENT OF EXPENSES

GENERAL PROVISIONS

- **Payment of expenses generally (principles and processes)**
No general expense allowance
Monetary limits for all expenses
No private benefit unless payment made
No use of council resources for political purposes
Gifts and benefits to be of token value
Participation, equity and access
Approval and dispute resolution processes
Reimbursement and reconciliation of expenses processes
Payment in advance process

SPECIFIC EXPENSES FOR COUNCILLORS (including limits)

- **Attendance at seminars and conferences**
- **Training and educational expenses**
- **Local travel arrangements and expenses**
- **Travel outside the LGA including interstate travel, accommodation and incidental expenses**
- **Legal expenses**
- **Insurance expenses**
- **Telecommunications/internet**
- **Care and other related expenses**
- **Spouse and partner expenses**

ADDITIONAL EXPENSES FOR MAYORS

- **Additional expenses provided**

Part 3 PROVISION OF FACILITIES

GENERAL PROVISIONS

- **Provision of facilities generally (principles and processes)**
Private use of facilities and mechanism for reimbursement

PROVISION OF EQUIPMENT AND FACILITIES FOR COUNCILLORS

- **Equipment and facilities provided**

PROVISION OF ADDITIONAL EQUIPMENT AND FACILITIES FOR MAYORS

- **Additional equipment and facilities provided**

Part 4 OTHER MATTERS

- **Acquisition and returning of facilities and equipment by Councillors**
- **Status of the Policy**