Framework for the development and review of Council Staff Codes of Conduct
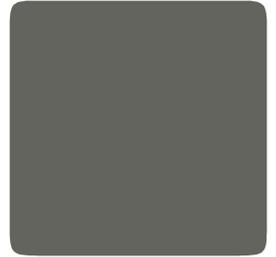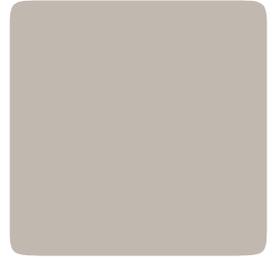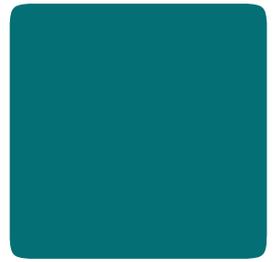
September 2011

State Government Victoria
Department of Planning
and Community Development

Contents

Codes of Conduct coverage statement

Codes of Conduct are required by the Local Government Act 1989 to be developed and will apply to Council staff. Council staff include the Chief Executive Officer (CEO), Senior Executives, Directors, Managers, full-time, part-time and casual staff employed by the CEO to enable a Council's (or the CEO's) functions to be performed.

Codes of Conduct should also extend to include contractors working in-house, staff on exchange, volunteers, work experience students or graduate placements who perform work for a Council.

Councillors are not subject to Codes of Conduct for staff: under Section 76C of the Local Government Act 1989 a separate Code is required for Councillors.

Foreword

Since 2008 the Local Government Act 1989 (the Act) has required that the CEO of each Council develop and implement a Code of Conduct for Council Staff (Staff Code). The Act also requires that the Staff Code is accessible to all staff.

The legislated requirement for a Staff Code was in response to recommendations from the Victorian Ombudsman in the March 2008 report Conflict of Interest in Local Government.[1] Also introduced in the Act were improvements to the conflict of interest provisions and four high-level principles. Underpinning these are the values of impartiality, integrity, accountability and responsiveness.

Codes of Conduct are beneficial and essential to Councils wishing to reinforce their desired culture. Codes also spell out specific conduct standards and make clear the consequences of any breaches of their ethics and values. It is important that links between values and behaviour are clear.

Following Local Government Victoria's Review of Councils' Staff Codes (Review) in 2010 a Reference Group was convened to assist the Department of Planning and Community Development to produce guidance material for Councils in developing and reviewing their own Staff Codes.

A model code was initially considered. However, recognising that there is not one specific model that would be relevant for each Council, a framework approach was adopted.

The Framework for the Development and Review of Council Staff Codes of Conduct is intended to assist CEOs in developing and reviewing their own Staff Code to meet the legislated requirements outlined in the Act. Overarching values in the Framework are drawn from both the Act and the 2010 Review of Council Codes. Introduced through the Framework are advisory standards on organisations' codes of conduct.

Also highlighted are key reports of the Victorian Ombudsman and Local Government Victoria. These reports provide additional practical support for the development and review of Staff Codes by providing practical examples and raising critical issues on risk mitigation – focused on conflict of interest and associated risks to ethical public service.

In developing the Framework, Local Government Victoria acknowledges the valuable contribution made by the members of the Reference Group.
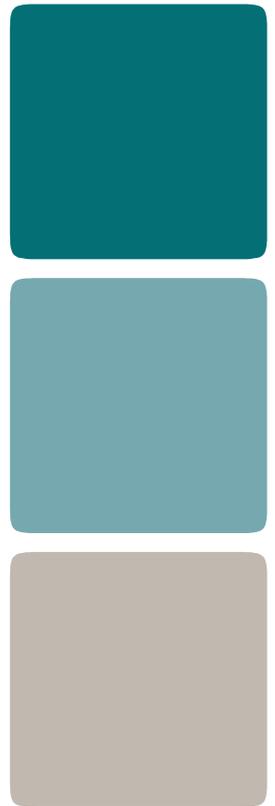
We are confident this Framework will be a most useful resource for all of Victoria's Councils.

Liz Roadley
Chair, Reference Group

John Watson
Executive Director,
Local Government Victoria

1. Introduction

Purpose of the Framework

The Framework for the Development and Assessment of Staff Codes of Conduct aims to support CEOs in fulfilling their responsibilities to develop and implement Staff Codes under the Act. It has been designed as a resource for those Council officers across Victoria involved in governance, human resources and risk management that have a lead role to play.

The Framework – a summary

The Framework seeks to highlight issues Councils should consider in the development and review of their Staff Codes.

The Framework endeavours to address a number of questions raised, such as whether Staff Codes should be more focused on values or rules, or both.

The various factors influencing Code-making are represented in a Framework diagram which can be found in Section 2. For instance, many Councils may be more focused on compliance issues when developing their Staff Codes and in turn will address values in their Council Plan.

In order to address issues related to content, the Framework highlights the wider legislative and standards environment, as well as the depth and breadth of a Council's policy position for mitigating risk. In addition, the Framework addresses the level of development of a Council's compliance programs with regard to maintenance and oversight, including disciplinary procedures.

Overall the interplay of all of these factors affects a Council's Code in two key ways:

*   they influence where a Code might sit on the spectrum between values and rules; and
*   they affect the amount of content and depth of explanation that is required in the Code itself.

The Framework makes a distinction between Code essentials – what must be included in a Code based on what the Act requires – and what should be considered to assist with implementation of the Act and supporting best practice.

The Act and Staff Code essentials: what must be considered

Code coverage

The Act requires a Code to be developed for staff. The Framework provides an accepted legal definition of staff to ensure that Staff Codes apply to all levels of a Council organisation.

CEO responsibilities and requirements

Sections 94A (Functions of the CEO), and 95AA (Code of Conduct for Council Staff) set out the requirements for CEOs to develop, adopt and disseminate a Staff Code. In addition the CEO must ensure that all staff have access to the Staff Code.

Values / Principles

Section 95 (Conduct Principles) states that staff, in the course of their employment, act impartially, act with integrity – including avoiding conflicts of interests – accept accountability for results and provide responsive service. Underpinning these principles are the values of impartiality, integrity, accountability and responsiveness.
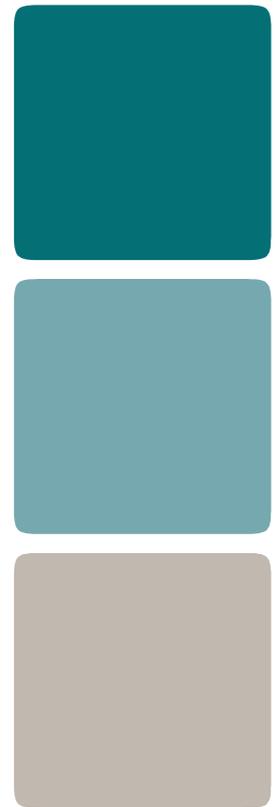
Other related provisions

While Councils are not required under the Act to incorporate other provisions of the Act in their Codes, section 80B, 80C and 81 are mandatory provisions that relate to declarations of conflict of interest and these are highlighted.

Building on the essentials: what should be considered

There are a number of other issues that Councils should consider when developing and reviewing their Staff Codes. Section 4 of the Framework outlines these and they include:

Extension of Code coverage

AS8002 and other sources recommend that a Code of Conduct apply to employees and to external suppliers and other contractors and subcontractors and that it be a condition of contract that they comply with a Council's Code.

The 2010 Review identified a number of non-employee categories that Councils already apply their Codes to.

Based on legal advice, the Framework provides a coverage statement that is recommended for all Staff Codes.

An overarching set of representative values

It is recommended that the legislated high level values of impartiality, integrity, accountability and responsiveness which underpin section 95 (Conduct Principles) are complemented with the values of leadership and respect that featured strongly in Councils' Staff Codes in the 2010 Review.

The Framework recognises that each Council will determine its own terms for these values and that overall, Councils often work with broader sets of values.

A checklist for identifying risk topics

The high level values are complemented in a practical way in the Framework with the introduction of Australian Standard 8002-2003 Corporate Governance – Organisational Codes of Conduct (AS8002). AS8002 outlines the minimum recommended requirements that Staff Codes should address. These include a checklist of Code rules, topics for common risks, such as conflict of interest, gifts and gratuities, dealing with business information and outside employment.

AS8002 is a useful resource for advice about a range of concerns, from managing the development of a Code to conducting a regular review. There is also information regarding the requirements for compliance and review support for the CEO, including audit and review committees. Important compliance program elements such as procedures for reporting breaches, disciplinary procedures and communications, training and induction programs are also covered.

The Framework recommends AS8002 as a reference for Councils. It is recognised as part of a suite of Standards that advocate for best practice in the private sector and government.

Factors influencing content

- Council plan: The Framework recognises that for many Councils their Plan is the key document that announces and explains the values that support Councils' vision statements and strategic objectives. As these values guide Staff conduct, it will be optional for Councils whether their Staff Code contains both values and rules, or is largely rules based. Regardless of

1. Introduction (continued)

the preferred option, the Framework recommends that connectivity exists between values expressed in separate Council documents and the rules of conduct in the Staff Code. Instilling values-based thinking is important for reinforcing or bringing about culture change.

- Legal: the wider legislation affecting employment as well as standards that pertain to compliance and governance issues such as corporate social responsibility, fraud control and whistle blowing.
- Policy development: the extent and depth of stand-alone policy support for risk mitigation.
- Programs for oversight and review: the sophistication and status of organisational structures with respect to integrated compliance programs.

The Framework diagram presented in Section 2 represents the factors and issues to be considered. It is deliberately flexible to accommodate Councils that may wish to be more compliance focused in the Staff Codes, and those Councils that already have well-developed policy and compliance programs which cover these issues: these Councils may only need to refer to these issues in their Staff Codes. Other Councils that have not as yet developed these policies and compliance systems may need to incorporate greater detail and explanation of primary policy, procedures and mechanisms to support their Staff Codes' objectives.

Preparing and publicising a Code

The development and review of Staff Codes will usually be led by Governance or HR staff, but will benefit from broader staff participation. It is recommended that staff be given the opportunity to own the outcome. Ideally the CEO is a leading presence in the process at appropriate times and underscores its importance by his/her participation.

Accessibility is also featured in the Framework. Section 95 of the Act specifically outlines that the Staff Code must be made accessible and disseminated to all staff. In addition to distribution, Section 5 of the Framework outlines how Staff Codes may be written and presented so that they are user friendly and appropriate for Council staff's use. The Framework recommends that the existence of Staff Codes are promoted and made available for Staff on intranets.

LGV supports the publication of Codes of Conduct on the Internet to make it transparent to customers and the community at large what the Council expects of its Staff and its conduct and service standards. The Framework, however, acknowledges that content such as HR policy may be sensitive and not suitable for public access. In this circumstance, the publication of Customer Service Charters with sufficient detail on values and standards that guide staff conduct is recommended.
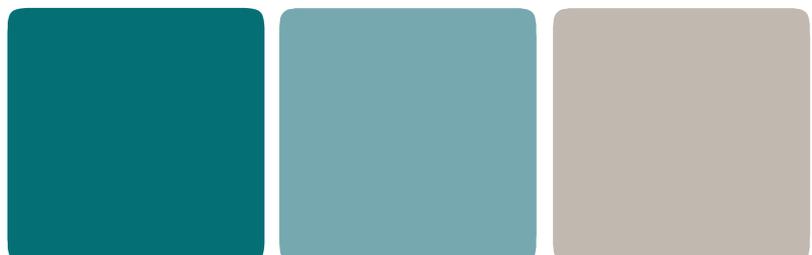
Review of a Code

A checklist for deciding on the timing of reviewing Staff Codes is also incorporated and the Framework recommends reviews take place no longer than at three-yearly intervals.

Where to find additional support

Appendices to the Framework provide additional support and information:

- Appendix 1: provides an extract from the 2010 Review analysis that shows how Council Staff Codes were addressing risks using as a reference the code rules recommended under AS8002.

- Appendix 2: includes a link to access a licence for AS8002 and summary of contents. Information about relevant Ombudsman's and Local Government Victoria reports are provided along with links to other sources and key international websites that support best practice in code making.

- Appendix 3: itemises the Victorian and Commonwealth legislation that was referred to in the Review.

Key recommendations of the Framework

- Codes of Conduct apply to employees and a range of non-employees as defined in the Framework Code Coverage Statement.

- Legislated values/principles of impartiality, integrity, accountability and responsiveness are complemented by additional values of leadership and respect as identified in the 2010 Review.

- AS8002-2003 is a key reference for risk identification and supporting best practice.

- Strategies are adopted to maintain connectivity between values and rules especially where values are developed and promoted separately in a Council Plan.

- Staff have the opportunity to participate in Code development and review.

- Coordination takes place between different Council departments in Code-making.

- Reviews of Codes take place within three years and a Review date in the Code is included.

- Codes are written in a user friendly style and are accessible on Council intranets.

- Preferably Codes of Conduct are to be published on the Internet. Where this is not practical due to the incorporation of internal HR policy, Customer Service Charter elements of Staff Codes should be published on the Internet along with sufficient detail about the values and standards guiding staff conduct and service.

- Intranet and Internet versions of Codes of Conduct must be the most recent version of a Code.

2. The Framework Diagram

An individual Council's Staff Code can be expected to vary in how it is positioned between an integrity and compliance focus (shown on the vertical axis). They can also be expected to vary in content detail and depth of explanation, depending on the effect of four factors groupings at the corners of the diagram. A final Staff Code outcome will depend on a Council's culture and the interaction of the factors highlighted in the Framework[2] below.

Influences on Code of Conduct development, focus, depth and breadth of content

Policy / Procedures Protecting Values Against Risks
e.g. Conflict of Interest. Fraud etc

Value / Ethics
Council Plan
Local Government Act Values

Integrity Focus

For the Philosophers
Integrity ethics regime
• Broad   • Aspirational   • Unenforceable

Risks

Council Plan

Organisational Culture

Staff Code of Conduct

Politics

Legal / Compliance
Laws and Regulations
Local Government Act
Australian Standards
Employment Contracts

Legal

Support Systems

Oversight / Maintenance
Ethics and Audit Committees
Reviews Reporting
Disciplinary / Sanctions
Education / training
Communication

Compliance Focus

For the Auditors
Compliance-based ethics regime
• Specific (rules, detail)   • Enforceable

3. The Act and code essentials: what must be considered

Code coverage – definition of Staff

Codes of Conduct are required by the Local Government Act 1989 to be developed and will apply to Council staff. A Code coverage statement that includes a definition of staff appears at page 4 of the Framework.

Requirements of the *Local Government Act* 1989

When changes were introduced to the Local Government Act 1989 in September 2008, section 94A Functions of a Chief Executive Officer was amended to include 94A(1)(ca) and two new sections added: Section 95 Conduct Principles and Section 95AA Code of Conduct for Council Staff.

These provisions of the Act follow:

- 94A Functions of the Chief Executive Officer

    (1) A Council's Chief Executive Officer is responsible for— (ca) developing, adopting and disseminating a code of conduct for Council staff;

- 95 Conduct principles

    (1) Council staff must in the course of their employment–act

    (a) impartially

    (b) act with integrity including avoiding conflicts of interest

    (c) accept accountability for results

    (d) provide responsive service

- 95AA Code of conduct for Council staff

    (1) A Chief Executive Officer must develop and implement a code of conduct for Council staff.

    (2) A code of conduct for Council staff must include any matters which are prescribed for the purposes of this section.

    (3) The Chief Executive Officer must ensure that members of Council staff have access to the code of conduct for Council staff.

Underpinning the principles contained in Section 95 are the high-level values of impartiality, integrity, accountability and responsiveness. The Act does not specifically define these terms or what is required to put them into practice.

While Councils are not required under the Act to incorporate other provisions of the Act in their Codes, the Act contains other mandatory provisions that relate to requirements on declarations of conflict of interest. These are:

- Section 80B - Members of Council staff to disclose conflicts of interest in respect of delegated function

- Section 80C - Persons to disclose interests to Council when providing advice

- Section 81 - Register of interest

4. Building on the essentials, issues to consider

Extension of Code coverage

Sections 94A, 95AA and 95 of Local Government Act[3] 1989 are concerned with the application of a Staff Code to staff.

Good practice extends the coverage of a Staff Code more broadly than staff. A definition of staff and others recommended to be included in the application of a Staff Code appears on page 4 of the Framework.

Australian Standard 8002 advocates application to all employees including Directors and management as well as extension of the Staff Code to volunteers, suppliers, contractors and subcontractors who should be required to comply with the Staff Code as a condition of engagement.

Some Councils have expressly stated that their Staff Code also apply to work experience students, graduate placements, agency staff, representatives, agents, partner organisations and other third parties.

The Framework recommends that Codes of Conduct should also extend to include contractors working in-house, staff on exchange, volunteers, work experience students or graduate placements who perform work for a Council.

Staff Codes do not apply to Councillors. Under section 76C of the Act a separate Code of Conduct is required for Councillors.

Values, ethics and rules: What is the difference?

Codes of Ethics and Codes of Conduct are terms often used interchangeably.

Both these Codes typically address both values and rules. What is the difference? A distinction is generally made between:

Values (the ethical aspirations)

Values help Staff work out what is the right thing to do. They can guide Staff in determining their conduct and are particularly important in situations that are not covered by rules.

In the absence of specific rules, a values system or focus on integrity and ethics provides the overall context to guide conduct.

This aspect of Code-making has also been described as the "philosopher's approach" as it involves the use of broad, aspirational and unenforceable statements.

The requirements of Section 95 of the Act are expressed in these terms. On their own they are not able to be used as a specific measure of behaviour, rather they require more explanation and detail as to what they mean in practice. High level and aspirational statements are also likely to appear in a Council Plan.

Rules – the conduct standards expected in practice to realise the cultural aspirations

Rules tell Staff what are the right or required things to do.

A risk assessment and compliance-based focus encompasses rules-based elements that are designed to mitigate risks to a business enterprise.

This aspect of Code-making has been regarded as the "auditor's approach" as it involves the use of specific rules and details that are measurable and enforceable.

Codes function as compliance documents and are required to be written in a way that can be used as a measure of staff conduct. Compliance-based statements are quite specific and represent easily recognisable standards of behaviour.

These differences[4] and emphases in Code-making are reflected on the vertical axis of the Framework diagram.

A level of connection is required between these two ends of the spectrum to help determine how effective a Code may be in reinforcing or bringing about culture change.

Council plans and values

Sources and guides for the development of Staff Codes will usually recommend that values and rules, which are expressed in the Framework as integrity ethics and compliance ethics, be brought together in the one document. This is specifically recommended in the AS8002 standard.

In developing the Framework, the Reference Group acknowledges that while some Councils will follow this practice in creating their Staff Codes, other Councils will not.

Some Councils communicate their values and ethics through their Council Plan or other similar strategic documents rather than in their Staff Code.

For this reason the Framework diagram highlights that the Council Plan may be the vehicle that best demonstrates the values, ethics and vision of the organisation.

For Councils that use their Council Plan in this manner, this could mean the Staff Code is principally used for code rules. For example, the Staff Code will focus on the compliance-oriented items such as the specific and measurable rules that govern what is acceptable behaviour. This is common practice among a number of large, private enterprises.

Where the values and ethics of a Council's culture are addressed separately in the Council Plan, other strategies are required to create a strong link between the compliance-focused Staff Code and the cultural vision.

A simple but effective private enterprise example of how this is done is illustrated in the Shell Corporation's Code of Conduct. The Company values aren't explained in the Code of Conduct but they stand out clearly on every page acting as a reinforcement of the cultural and values aspirations of the company.[5]

This connection between values and rules reinforces the Council's desired culture and encourages staff to be values and ethics-based in their thinking. Doing so provides a meaningful context to the Codes they must abide by in their day-to-day interactions with colleagues, customers and Councillors.

It is important to keep in mind these different practices and approaches when considering how best to comply with the essential requirements of the Framework which are described in the following sections.

A representative set of values to be canvassed

The essential values and principles drawn from the Act which must be considered when developing a Staff Code are listed in Table 1a below.

One particular finding from the 2010 Review was that the values of leadership and respect (or like terms) featured strongly in Staff Codes. These are listed in Table 1b below and are included for consideration in the Framework.

Table 1a: Values and principles mandated by s95 of the Local Government Act to be covered in Staff Codes

Implied Value	Stated Principle
Impartiality	act impartially
Integrity	act with integrity – (including avoiding conflicts of interest)
Accountability	accept accountability for results
Responsiveness	provide responsive service

Table 1b: Additional values/principles drawn from the 2010 Review of Council Staff Codes recommended to be covered in Staff Codes

| Value	Principle
Leadership	take leadership
Respect	treat others with respect

The Framework avoids creating new layers of values that Councils have to work with.

Rather, it recognises that Councils use matching or other similar terms: examples of these may be found in Table 2.

Depending on local preferences, there may be different interpretations used by Councils to describe how their values and terminology might relate to the Framework.

Table 2: Sample correlations between Framework values and value terms used by Councils in their Staff Codes

Framework Value	Possible corresponding values from Council Codes
Impartiality	Fairness / Equitable Access to Services / Objective / Neutral
Integrity	Honesty / Good Faith / Truth / Responsibility / Genuine / Trust
Accountability Excellence	Efficient / Timely / Value for money / Transparent / Open / / Continuous Improvement
Responsiveness	Customer Focused / Diligence / Local Engagement / Participation / Democracy / Public above personal interest / Selflessness
Leadership	Innovation / Courage / Initiative / Progressive / Strategic / Encourage community of interest
Respect Encourage	Support Council / Reasonable Care / Punctual / Loyalty / confidence in system of government / Open Communication / Environmentally Responsible / Courtesy / Collaboration / Teamwork / Accept and Give Feedback
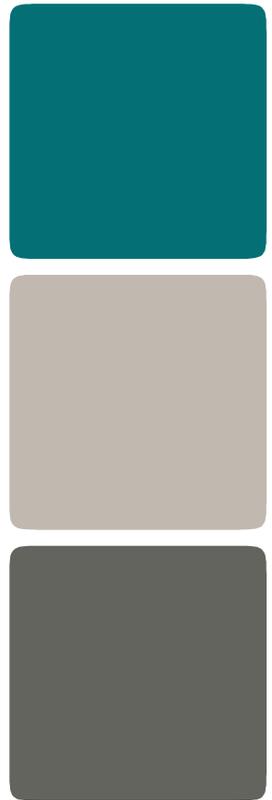
Australian Standard 8002 – a checklist for risk topics

Organisational values are safeguarded when risks to them are identified along with steps that will need to be taken that will reduce the threat to them.

Risks are subject to legal controls under a number of Acts. Some of the Acts identified in Staff Codes may be found in Appendix 3, Table 4.

Councils vary in the resources available to them to meet their legal obligations. Standards Australia develops a range of standards to assist organisations to do so.

AS8002 is recommended for identifying risks that may need to be covered in a Staff Code. Particularly helpful is Part 2 of AS8002 as it provides a useful checklist of common risk topics.

A summary of risk topics from AS8002 and additional risks that were identified in the Review may be found in Appendix 1, Tables 3a and 3b. These Tables show the percentage of Councils dealing with these risks in their Codes.

The amount of attention these topics receive in a Staff Code may depend on the level of risk they present to any individual Council and on the factors described below.

Further information about AS8002 and other related standards and how to obtain a licence for these is available at Appendix 2.

Other factors affecting Code content

Depth and breadth of policy development

The amount of detail in a Council's Staff Code can be expected to be proportional to the level of detail in the policy and compliance systems supporting the Staff Code and how Council seeks to mitigate identified business risks.

The Framework takes into account that Councils differ in this regard.

For those Councils that do not have a substantial set of stand alone policies in place, it can be expected that their Staff Codes may be either used as a vehicle for primary policy, or will spell out policy in greater detail.

In the 2008 report Conflict of Interest in Local Government the Victorian Ombudsman recommended that Councils develop specific policies or rules on gifts and hospitality, seeking consent for outside employment and outside activities that could reasonably relate to an employee's Council duties and policies to manage information (Recommendations 11, 14 and 17).

Appendix 1b provides an indication from the Review of progress on some of these as standalone policies.

Depth of compliance programs for oversight and review

A parallel to policy development is the depth of organisational development in compliance programs. These programs influence the depth of content that may be required in a Staff Code. For Councils able to rely on well developed compliance systems that provide established mechanisms for oversight, remedy and review, summary information in the Staff Code may suffice.

For those Councils without robust compliance programs and procedures in place, the Staff Code can act as the primary resource that explains how conduct policies are monitored and reviewed and how breaches are reported and dealt with in the organisation.

Effect of the factors on Codes

The effect of one of the factors is described above under "Council Plan and values". The Framework accommodates Councils with stated values and expectations in other documents and may find they wish to use their Staff Code to spell out rules of conduct. Alternatively other Councils may choose to reflect their values in both the Council Plan and their Staff Code.

These differences in approach will influence where a Staff Code sits on the vertical axis of the Framework in terms of the balance it may have between values (integrity ethics) and rules (compliance ethics).

With respect to the remaining factors, generally speaking, the more developed a Council's policy and compliance areas become and the greater the resources available to meet a Council's wide legislative responsibilities, the more likely it is that a Staff Code need only be a summary roadmap that references these policies and compliance mechanisms. Outcomes will be different for each Council.

Councils with well-developed, comprehensive policy and compliance programs may produce a Staff Code that can be quite brief. Other Councils will have yet to achieve this level of support. For those Councils, they may rely on their Staff Code to serve as the main vehicle to convey its values and it will function as the Council's primary policy for risk mitigation with greater details supporting procedures and disciplinary processes.

The Framework recognises that each Staff Code will be a unique reflection of the Council's culture and resources.

Employment contracts

Care must be taken when referencing policies such as a Code of Conduct in an employment contract. It is very important that there is no contradiction between a Council's Letter of Offer and a Council's Staff Code.

A recommended approach is to include a statement in the employment contract that clarifies that Council's policies and procedures in force from time to time are not incorporated as terms of the Contract / Agreement. However, the incoming Officer must adhere to the terms of these policies and procedures because they are lawful and reasonable directions of the Council.[6]

Coordination across Council

The participation of senior Council staff, from human resource, governance and risk management is strongly encouraged in leading the development and review of a Council's Staff Code with all staff. The combined expertise and insight of staff from across the organisation can result in a comprehensive identification of risks and the rules required to mitigate them.[7]

5. Preparing and publishing a Code of Conduct

Accessibility–writing a Code of Conduct

The Act requires that Codes of Conduct be developed and accessible to staff. The Act does not define what is meant by accessibility.

AS8002 states that Codes should be "drafted in positive terms using a personal tone and plain English". The Ethics Resource Centre (ERC) is often referred to by lead organisations as a useful online resource for advice and support on Staff Codes. The ERC provides a list of tips on writing a Code of Conduct.[8]

The Victorian Ombudsman acknowledged in 2008 that some Councils had put in place simple, clear and well-developed practices and urged "that each Council provide a clear statement, in simple language, of the obligations of officers".[9]

Accessibility and currency – intranet and Internet

The Review found that the majority of Councils made their Codes available on Councils' intranets.

It is vital that the version of a Code placed on an intranet (and if applicable, the Internet) should always be the most recent version of a Code. Hard copies of Codes should be made available (eg on notice boards) for outdoor staff who do not work at computer work stations.

LGV supports Codes of Conduct being published on the Internet noting several Councils have already done so.

The Framework, however, acknowledges that as many Council Codes of Conduct incorporate internal HR policy, it may not be desirable for these policies to be published on the Internet.

Where this applies, the Framework recommends that the Customer Service Charter elements that underpin a Council's Staff Codes are published on the Internet and contain sufficient detail about the values and standards guiding staff conduct and service.

This demonstrates to the community and local businesses a Council's ethical culture, values and behavioural standards.

6. When is it time to review a Staff Code?

It is also recommended that Councils promote that they have a Code of Conduct in place in the Annual Report and other relevant corporate documents.

The Act does not specify any particular review period and the Review showed that CEOs have adopted different timeframes.

It is recommended that Reviews take place no longer than every three years and that a Review date is incorporated in the Staff Code.

The Queensland Crime and Misconduct Commission provides a checklist that can assist in deciding on the timing of a Review.[10]

When developing and reviewing Staff Codes, Councils are encouraged to share their expertise and different approaches to using the Framework.
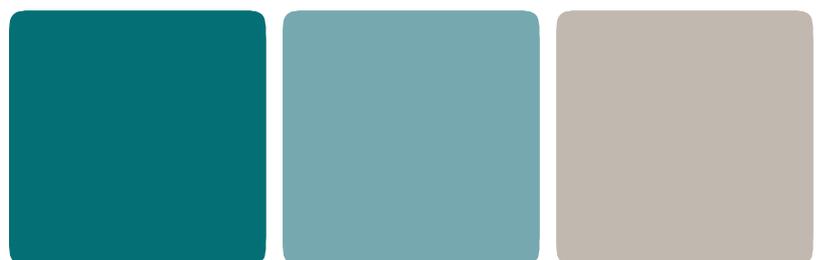
Appendix 1: The 2010 Review

1. The 2010 Review of Councils' Codes of Conduct – excerpts

The work of the Reference Group was informed by a preliminary survey and review of Council Codes conducted by Local Government Victoria (LGV) in October-November 2010.

Following distribution of Circular 22/2010 to all Councils, 57 Councils provided their Staff Codes to LGV with information on stand alone supporting policies, where relevant.

2. Results of the Review

The Review demonstrated that a large number of Councils' Staff Codes are supported by stand alone policies:

Bullying, Harassment, EEO	41	(75%)
Fraud	41	(75%)
Information Privacy	37	(67%)
Whistleblower	37	(67%)
Records Management	18	(33%)
Information Confidentiality	16	(29%)
Information Security	14	(27%)
Hospitality and Gifts	12	(22%)
Conflict of Interest	6	(11%)

The following table summarises the extent to which Council Staff Codes aligned with AS8002.

The areas shown in italics are extensions of the rule as used by Councils.

Table 3a
AS8002 Code topics / rules and percentage of Councils that addressed these in their Code

AS8002 Part 2 Heading*	Numbers and % of the 57 Codes
Conflict of interest	50 (88%)
Responsibilities for dealing with stakeholders (Councillors / suppliers / customers)	37 (65%)
Improper use of company information /confidentiality (Information Confidentiality)	42 (74%)
Intellectual property	23 (40%)
Record keeping	3 (5%)
Business records not to be falsified or destroyed	8 (14%)
Insider trading (e.g. dealings in land)	5 (9%)
Outside employment	30 (53%)
Leaving Council	16 (28%)
Pre-employment disclosures	1 (.02%)
Gifts and entertainment	49 (86%)
Financial inducements	10 (18%)
Financial probity / accountability	10 (18%)
The use and accounting of company resources	45 (79%)
Political contributions and activities	8 (14%)
Alcohol drug and tobacco use, and gambling	30 (53%)
Non discriminatory practices/EEO	37 (65%)
Confidentiality (Information Privacy)	28 (49%)
Compliance with laws (lawful directions statement, lists legislation and related policies that apply)	27 (47%)
Treatment of colleagues (commitment to staff statement) (see also values analysis)	21 (37%)
Sponsorships	0
Environmental	12 (21%)
Conducting business overseas	0

*Italicised headings are topics drawn from the Review

The following Table shows code rules adopted by Councils that were largely additional to AS8002.

Table 3b
Code topics/rules additional to AS8002 and used by Councils

Headings additional to AS8002 used by Councils*	Numbers and % of the 57 Codes
Compliance with Occupational Health and Safety[11]	36 (63%)
Dealing with the Media/Representing Council / Public comment / Public Speaking and Advice	35 (61%)
Appearance	27 (47%)
Nepotism, favouritism and patronage	22 (39%)
Improper and undue influence	21 (39%)
Performance	17 (30%)
Linking the Code to Council's EBA	10 (18%)
Charter of Human Rights	14 (25%)
Dispute resolution	6 (11%)
Claiming expenses	10 (18%)
Requirement to notify of Involvement in criminal offences outside of Council work (reporting)	14 (25%)
Personal identification	10 (18%)
Description of what is wilful misconduct, fraud, corrupt behaviour	11 (19%)

*This list is not exhaustive. Other code rules for instance included behavioural standards for working with young children

Appendix 2: Resources

1. Australian Standards AS8002-2003

AS8002 is available under licence from Standards Australia at the following website

http://infostore.saiglobal.com/store/Details.aspx?DocN=AS075182719308

AS8002 sets out to:

(a) provide the mechanisms for an organisation to maintain an ethical culture through a committed self-regulatory approach and

(b) provide a framework for an effective Code of Conduct program, the performance of which can be monitored and assessed in order to act as a deterrent against misconduct.

AS8002 is not written in mandatory terms and is not prescriptive. AS8002 contains the minimum and recommended elements for establishing, implementing and managing an effective organisational Code of Conduct and conducting a regular review. There is also information regarding the requirements for administrative support for the CEO, including audit and review committees. Important compliance program elements such as procedures for reporting breaches, disciplinary procedures and communications, training and induction programs are also covered.

It was designed for use by the private and public sectors. It complements legislation and existing guidelines produced by the Investment and Financial Services Association (IFSA) and the Australian Securities Exchange (ASX) Corporate Governance Council.

AS 8002 is in four parts: introduction, code rules, administration and FAQs. The elements of each part are summarised below:

(a) AS8002 Part 1–Introduction

Includes the requirement for a statement of support from the CEO, description of underlying values, objectives, scope and application of the Code, definitions and policy date (and review date).

(b) AS8002 Part 2–Code rules

This part requires aspirational values to be described and include the list of Code rules that should be covered in a Code (refer Appendix 1, Table 3a for an indication of the Code Rules).

(d) AS8002 Part 3–Administration

This section requires that a Code describe the role of the Ethics Committee, that it specify mandatory attendance at Code of Conduct training session, describes how to go about reporting of non-compliance and what the consequences of non-compliance.

(e) AS 8002 Part four—Frequently asked questions (FAQs)

AS8002-2003 is section of a five-part suite of Corporate Governance Standards. The other parts are:

- AS 8000-2003 Corporate governance - Good governance principles
- AS 8001-2008 Corporate governance - Fraud and corruption control
- AS 8003-2003 Corporate governance - Corporate social responsibility
- AS 8004-2003 Corporate governance - Whistleblower protection programs for entities

2. Australian Standard AS3608-2006

AS3608-2006 Compliance programs "provides guidance on the principles of effective management of an organisation's compliance with its legal obligations, as well as any other relevant obligations such as industry and organisational standards, principles of good governance and accepted community and ethical norms. The principles cover commitment to achieving compliance, implementation of a compliance program, monitoring and measuring of compliance, as well as continual improvement.

AS3608 recognises "that the implementation and management of an effective compliance program which complies with those principles will differ for each organisation depending on the size, nature and complexity of its operations and its specific circumstances".

AS3608 is available under licence from Standards Australia at the following website: http://infostore.saiglobal.com/store/Details.aspx?productid=304437

3. Reports and sources

Ombudsman reports

In 2008 various risk areas in local government and the public sector came under particular scrutiny and investigation by the Victorian Ombudsman.

The Victorian Ombudsman's reports *Conflict of interest in Local Government* and *Conflict of interest in the Public Sector* are resources for developing and reviewing a Code and supporting policy and procedures. Among the recommendations of the Victorian Ombudsman were that Councils develop specific policies or rules on

gifts and hospitality, seeking consent for outside employment and outside activities that could reasonably relate to an employee's Council duties and policies to manage information (Recommendations 11, 14 and 17).

The Victorian Ombudsman's reports contain useful case studies drawn from both sectors.

These scenarios provide practical examples of risks. Pitfalls and misunderstandings are highlighted on what is conflict of interest. Also covered are related risks such as gifts and hospitality, outside employment, misuse of position, misuse of information, relations with Councillors, post-employment business and activities, employment and private interests of friends and associates, membership of community groups and organisations and inappropriate/personal relationships.

The reports clarify what is a conflict of interest and directions for addressing it.

Links for the reports are:

Conflict of Interest in Local Government, Ombudsman Victoria, March 2008, Melbourne, Victoria

http://www.ombudsman.vic.gov.au/resources/documents/Conflict_of_interest_in_local_government_March_2008.pdf

Conflict of interest in the Public Sector, Ombudsman Victoria, March 2008, Melbourne, Victoria

http://www.ombudsman.vic.gov.au/resources/documents/Conflict_of_interest_in_the_public_sector_March_2008.pdf

The Annual Report 2007-2008 by the Victorian Ombudsman contains a further case study and discussion related to conflict of interest and misuse of position. Annual Report 2007-2008, Ombudsman Victoria

http://www.ombudsman.vic.gov.au/resources/documents/Annual_Report_07-08_1.9mb1.pdf

All of the above reports and other resources are available on the website of the Ombudsman Victoria.

A report by the New South Wales Ombudsman, Good Conduct and Administrative Practice, Guidelines for State and Local Government, New South Wales Ombudsman's Office Sydney, May 2006 is available online at:
http://www.ombo.nsw.gov.au/publication/PDF/guidelines/Good%20Conduct%202nd%20edition.pdf

Local Government Victoria publications

In the period following the release of the Ombudsman's reports, Local Government Victoria consulted with Councils and published in February 2009 Conflict of Interest in Local Government – a guide. The guide describes the rules about disclosing conflicts of interest that apply to Councillors, Council officers, members of Council committees and Council contractors. It includes many examples as well as advice about how to understand and apply the rules that are useful for the development and review of a Code of Conduct.

Conflict of Interest – a guide for Councillors (June 2011), Local Government Victoria, Melbourne is available online at http://www.dpcd.vic.gov.au/__data/assets/pdf_file/0011/76583/2011-Conflict-of-Interest-Guide-for-Councillors-June-2011.pdf

(Pending) Conflict of Interest- a guide for Council staff (2011), Local Government Victoria

Other governance resources available online

Queensland Crime and Misconduct Commission

Building Capacity Series, Queensland Crime and Misconduct Commission, Various items available at http://www.cmc.qld.gov.au/asp/index.asp?pgid=10818

Creating and Maintaining an Effective Ethics and Business Conduct Program, Canadian Defence Industry Initiative on business ethics and conduct, http://www.dii.org/files/dii-toolkit.pdf

Other sources

Resolving Ethical Problems, International Association for Chartered Accountants, (ICAEW), http://www.icaew.com/en/technical/ethics/resolving-ethical-problems/other-frameworks-for-resolving-ethical-problems

Ethics Codes and Codes of Conduct as Tools for Promoting an Ethical and Professional Public Service: Comparative Successes and Lessons, Stuart Gilman PhD, Prepared for the PREM, the World Bank, Washington DC, Winter 2005. http://www.oecd.org/dataoecd/17/33/35521418.pdf

4. Useful links – Websites

Ethics Resource Centre
www.ethics.org

Institute for Global Ethics
www.globalethics.org

International Business Ethics
www.ibe.org.uk

Victorian State Services Authority – Behaviours and Culture
www.ssa.vic.gov.au

Appendix 3:

Legislation commonly referred to in Council Codes of Conduct

Table 4 Legislation referred to in Codes

Victorian State Legislation	Commonwealth Legislation
Charter Human Rights and Responsibilities Act 2006	Age Discrimination Act 2004
Crimes Act 1958	Charter Human Rights and Responsibilities Act 2006
Electronic Transactions (Victoria) Act 2000	Copyright Act 1968
Equal Opportunity Act 1995	Disability Discrimination Act 1992
Equal Opportunity Act 2010	Equal Opportunity for Women in the Workplace Act 1999
Freedom of Information Act 1982	Fair Work Australia Act 2009
Health Records Act 2001	Human Rights and Equal Opportunity Commission Act 1986
Information Privacy Act 2000	Privacy Act 1988
Local Government Act 1989	Racial Discrimination Act 1975
Occupational Health and Safety Act 2004	Sex Discrimination Act 1984
Planning and Environment Act 1987	Superannuation Act 2005 and others (various)
Public Records Act 1973	
Racial and Religious Tolerance Act 2001	
Whistleblowers Act 2001	
Taxation Act 1936 and others (various)	
Telecommunications Act 1997 and others (various)	
Trade Practice Act 1974	
Workplace Relations Act 1994	
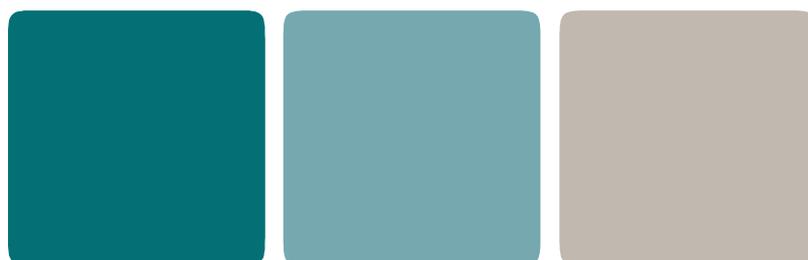
Appendix 4: The Reference Group on Council (Staff and Others) Codes of Conduct

Project Reference Group

Liz Roadley	Reference Group Chair, Director, Enterprising Results
Peter Jones	Director Community Services, Glen Eira City Council
Frank Rog	Executive Manager Human Services, Yarra City Council
Pauline Bennett	Manager Organisational Development, Whitehorse City Council
Fiona Shanks	Manager Organisational Development, Indigo Shire Council
David Preiss	Chief Executive Officer Local Government Professionals Inc.
Ron Exiner	Director Governance, Victorian Local Governance Association
Geoff Pawsey	Manager Workforce Development, Municipal Association of Victoria
Paul Rozario	Governance and Legislation Adviser, Municipal Association of Victoria

Project Management and Research

Shirley Strachan	Project Manager, Senior Governance and Legislation Analyst, Governance and Funding Branch, Local Government Victoria

Endnotes

1   Recommendation 16, p.35 & p.41 for a Code of Conduct for Staff to be included in the Local Government Act 1989 can be found in Conflict of Interest in Local Government, Ombudsman Victoria, Melbourne, March 2008. http://www.ombudsman.vic.gov.au/resources/documents/Conflict_of_interest_in_local_government_March_2008.pdf

2   A key source that informed the development of the Framework was the paper by Stuart Gilman PhD, Ethics Codes and Codes of Conduct as Tools for Promoting an Ethical and Professional Public Service: Comparative Successes and Lessons, Prepared for the PREM, the World Bank, Washington DC, Winter 2005. http://www.oecd.org/dataoecd/17/33/35521418.pdf

3   Victorian legislation is available online at www.parliament.vic.gov.au by following the legislation links to Victorian Law Today

4   The references to "philosophers approach" and "auditors approach" are drawn from Cornelius von Baeyer, Codes of Conduct, Panacea or Bunk?, http://www.workplaceethics.ca/codes.html (page last visited 19 April 2011)

5   The Shell Company Code of Conduct is available online at http://www-static.shell.com/static/aboutshell/downloads/who_we_are/code_of_conduct/code_of_conduct_english_2010.pdf

6   Wording courtesy of Whitehorse City Council, based on legal advice provided to the Council

7   Evident in the 2010 Review was the low occurrence of rules in Codes relating to financial probity and accountability (Refer Table 3a at Appendix 1) yet this is a high risk area that would affect staff across a Council organisation

8   An example of writing tips for creating an effective code of conduct has been published by Ethics Resource Centre - a web based organisation that offers a range of resources and support for Codes of Conduct. The link to code writing tips is at http://www.ethics.org/resource/ten-writing-tips-creating-effective-code-conduct

9   p.31 in Conflict of interest in Local Government, Ombudsman Victoria, Melbourne, March 2008

10 The checklist to assist with timing of reviews is available from the Queensland Crime and Misconduct Commission, Keeping your Code of Conduct relevant, A Best Practice Checklist, Building Capacity Series, Number 13, November 2007 (last accessed 16 May 2011) http://www.cmc.qld.gov.au/asp/index.asp?pgid=10818 (item 11.2007)

11 Regarded as part of the "Environment" code provision in private enterprise codes consulted

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