

Guidance for councillors on corruption risks associated with overseas travel

Introduction

From time to time, councillors may have reason to travel overseas in connection with their civic duties. Sometimes, overseas travel is undertaken as part of a formal arrangement between councils and foreign entities to achieve economic, cultural and environmental collaboration. Examples include councillors participating in official trade delegations, fact-finding missions and sister city arrangements as representatives of their council and communities.

Councillors also may be asked to participate in overseas activities by virtue of their official position as councillors, even if this involvement is not initiated, funded or approved by their council. For instance, a councillor may travel overseas at their own expense and participate in a cultural event with a village association or community group that has connections to their heritage.

Governance advice to councillors and councils concerning overseas travel often focuses on the potential misuse of ratepayers' money when travel is funded by a council. Overseas travel can, however, create other corruption risks because of the increasingly complex and challenging global environment, or in situations when the travel is not approved by a council and/or is paid for by a third party. These risks include information security concerns arising from foreign influence and interference; the possibility that a council's interests or broader domestic interests will be damaged; and the potential for grooming and bribery to occur.

The information in this guide, provided by the NSW Independent Commission Against Corruption ("the Commission"), aims to help councillors protect the reputation and security of themselves and their councils when travelling overseas.

This guide has been adopted by the departmental chief executive of the Office of Local Government as a guideline under s 23A of the *Local Government Act 1993*. Councils are required to consider the guide before exercising their functions in relation to councillor overseas travel.

Existing policy framework

There are many existing requirements that apply to councillors' overseas travel. For example:

- Council policies concerning the payment of expenses and provision of facilities provide requirements and processes covering council-incurred expenditure. These requirements relate to approval requirements, categories of expenditure and financial limits. Councillors must ensure overseas travel does not amount to a "junket". Among other things, council funds should not be used to pay for personal sight-seeing or entertainment, or activities that are unconnected with official duties. Such activities should be paid for from a councillor's own funds.
- Councils must include in their annual reports details of overseas travel, including the purpose of overseas visits by councillors and details about the total cost of transport, accommodation and other out-of-pocket travelling expenses while representing their council.¹
- *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (Cth) requires all councils to notify or seek approval from the minister for foreign affairs if they propose to negotiate, or enter – or have entered – a written arrangement with a foreign national or entities associated with foreign governments.
- Councils have internal frameworks in place for assessing and approving foreign engagements such as sister city relationships, cultural exchanges and economic partnerships.
- Section 439 of the *Local Government Act 1993* contains a prescribed duty for councillors to act honestly and exercise a reasonable degree of care and diligence when carrying out their functions.

¹ Section 217(1) of the Local Government (General) Regulation 2021.

- Councillors are required to disclose their personal interests in publicly available returns, which include gifts exceeding \$500 in value and contributions to travel exceeding \$250, under clause 4.21 of the *Model Code of Conduct for Local Councils in NSW* (“the Model Code”), which is prescribed by regulation.²
- The Model Code includes various clauses relating to the conduct of councillors with respect to the exercise of their functions, the acceptance of gifts, and requirements to declare and manage conflicts of interest.³

These guidelines do not intend to supplement existing requirements but rather provide additional advice to councillors while travelling overseas on official council business, or otherwise in an official capacity.

Security risks for councillors travelling overseas

Councillors travelling overseas face various security risks, particularly in relation to foreign influence and interference.

Why councillors may be a target of foreign influence and interference

Foreign influence and interference aim to shape the actions of decision-makers and public opinion to be favourable to foreign interests. While all foreign states seek to influence outcomes in their national interests, when these activities are undertaken through coercive, deceptive or corrupting means, it is considered foreign interference.⁴ Suspected foreign interference may involve contact from a foreign state actor that seems ongoing, relentless, unusual or suspicious.

As locally elected representatives, councillors are of interest to foreign states. This is because councillors determine council strategies and policies, and participate in a wide range of council decision-making. Councillors also have access to council staff, the community and other elected officials. This means that councillors can be used to discover knowledge of internal opinions such as points of tension, split outlooks and “off the record” views. Foreign entities may also seek to leverage a councillor’s position as a tool of influence given their ability to sway the attitudes, opinions, and positions of their local communities. Additionally, councillors have access to sensitive information and systems. This information can be used by foreign state actors to undermine social cohesion, democratic values, and freedoms. Councillors may

also become members of the NSW or Australian Parliament at a point in the future, where their ability to influence domestic policy positions may be significant.

Councillors are particularly vulnerable to foreign interference when overseas. This is because foreign state actors have increased opportunities to manipulate environments and there is a reduced risk of discovery of interference activities.

How councillors may be targeted

Foreign intelligence services may be alerted to a councillor’s travel in advance through visa applications, foreign ministries, or itineraries provided by foreign travel agencies or airlines.

Several methods can be used to exploit councillors. Many of the approaches will leverage natural tendencies to build connections and rapport. Foreign state actors can:

- use conferences, networking and social events to make and build contacts
- engineer other opportunities to gain undue influence and leverage through, for example, targeted conversation and gifts, benefits or hospitality, so that elected officials relax their personal security and discuss sensitive matters away from official settings
- intercept public and private wi-fi connections and telephone networks
- physically interfere with possessions such as documents and electronic devices at airports or in hotel rooms
- undertake surveillance, for example, listening devices or covert videoing.

Precautions to take before councillors travel overseas

Councillors should be aware of the geopolitical context in which activities conducted overseas will take place, as well as the destinations’ local laws, customs and practices.

Although it is the role of council staff to seek advice from other areas of government and to undertake a security risk assessment⁵ for council-initiated overseas travel, it is also councillors’ responsibility to be mindful of the risks of travel, such as the potential for foreign interference. Several factors can affect the risk environment, including:

- the cultural or political sensitivity of the overseas activity. A councillor’s actions, perceived as ordinary in the Australian context, may be viewed as controversial or influential in the overseas context

² See also schedule 1 of the *Model Code of Conduct for Local Councils in NSW*.

³ See for example clauses 3.1, 3.2, 3.13 and 3.14 in relation to ethical conduct, clauses 6.3 and 6.5 in relation to gifts, and Parts 4 and 5 in relation to conflicts of interest.

⁴ [Defining foreign interference \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au). Foreign interference can also include cyber attacks, disinformation campaigns and espionage.

⁵ Information relevant to a security risk assessment can be found on the Smart Traveller site, which contains advice levels for countries around the world. See <https://www.smarttraveller.gov.au/destinations>. AUSTRAC also publishes information about high-risk countries in relation to money laundering and terrorism financing risks, see [High-risk countries, regions and groups | AUSTRAC](https://www.austrac.gov.au/high-risk-countries-regions-and-groups).

- a councillor's online public-facing content or commentary. This may increase the risk that a councillor will be targeted for influence or there may be increased risk to a councillor's personal security
- the risk profile of the destination country
- the geo-political implications associated with accepting direct offers of sponsored travel from foreign governments and their associated entities, particularly to destinations that are experiencing volatility or tension.

Precautions to take while travelling overseas

When travelling overseas, elected officials should conduct themselves professionally, respectfully, and responsibly. A council's code of conduct applies in every forum where councillors participate in their capacity as an elected member.

In addition, councillors should be:

- mindful that surveillance or eavesdropping techniques may be used to listen in on conversations in social or public settings, including in public or private vehicles
- wary of drinking alcohol and lowering inhibitions at social events, which may create vulnerabilities
- careful that compromising personal activities or statements, while not illegal, may be used as an opportunity to coerce or blackmail (as discussed below).

Protecting information

Foreign state actors have a range of sophisticated capabilities to access councillors' personal and official communications. Information found on personal devices can be used to target councillors, contacts, and government information. It is essential councillors practice safe cyber security.

Precautions while travelling overseas include:

- ensuring only "clean devices" are used when travelling to countries considered high-risk. For council-initiated travel, it would be the role of staff to provide the expertise and technical support necessary to ensure devices are clean.⁶ In other countries, councillors should only use clean devices or devices provided by their council, rather than their own, when conducting official business.
- keeping all software secure by ensuring security settings are up to date and enabled

- keeping passwords safe and using multi-factor authentication
- not connecting to public wi-fi, and not clicking on any links or opening attachments to any unsolicited or suspicious emails or electronic messages
- never sharing a mobile device
- avoiding using a charger that someone else offers, and not connecting to a USB or other hardware of unknown provenance
- logging out of accounts after use
- not leaving devices unattended, including charging cables, even in hotel safes, where there is credible threat of foreign interference.

Security risk of shared devices

In the Commission's Operation Galley investigation⁷, a councillor was provided with a sim card purchased by a foreign national. For a significant period, it was possible they shared a telephone, which would have compromised the confidentiality of any council information stored on the device.

Smartraveller.gov.au and www.cyber.gov.au provide further advice on how to keep electronic devices and data secure when travelling overseas.

Councillors can contact the National Security Hotline of the Department of Home Affairs on (+61) 1300 1234 01 from outside Australia if they believe they have information on possible foreign interference.⁸

Precautions to take when councillors return from overseas travel

When in Australia, councillors can report incidents of suspected foreign interference to the National Security Hotline on 1800 123 400 or hotline@nationalsecurity.gov.au.⁹

Councillors should also surrender any gifts in line with their code of conduct, to help ensure protection from the perception of undue influence.

Additionally, councillors should not introduce any gifted devices, USB drives, memory storage devices and compact discs to any council or other government IT network.

⁶ Clean devices have not been connected to a government IT network and never will be. For more information on clean devices see [C2016-04-Information Security Policy for Ministers, Ministers' Staff, Department Secretaries and Senior Executives Travelling Overseas \(nsw.gov.au\)](http://C2016-04-Information Security Policy for Ministers, Ministers' Staff, Department Secretaries and Senior Executives Travelling Overseas (nsw.gov.au)).

⁷ NSW ICAC, *Investigation into the conduct of three former councillors of former Hurstville City Council, now part of Georges River Council, and others*, August 2023.

⁸ [Reporting foreign interference \(homeaffairs.gov.au\)](http://Reporting foreign interference (homeaffairs.gov.au)).

⁹ [Reporting foreign interference \(homeaffairs.gov.au\)](http://Reporting foreign interference (homeaffairs.gov.au)).

Promoting council projects while overseas

Councillors must not participate in overseas activities that involve council projects without the express approval of their council. Risks arising from such events include the:

- creation of perceptions that proposals from foreign nationals have council backing, that is, it may be perceived that a councillor's presence and support equate to council endorsement
- generation of misunderstandings or misrepresentations about a councillor's ability to influence project outcomes
- making of inappropriate commitments regarding projects or councillors being perceived as having made promises
- harming of Australia's reputation as a reliable trading and investment partner
- potential for councillors to take advantage of a lack of detailed understanding about NSW processes, such as those relating to development matters and tenders, among foreign parties.

The role of mayor is also quite different in NSW compared to some overseas jurisdictions. These cultural and legislative differences also have the potential to create misunderstandings that can be leveraged for improper purposes.

The different role of mayors and councillors in some overseas jurisdictions

In Operation Galley, a councillor gave evidence that he sometimes acted as a "walking reference" for proponents in China, assisted by his title as "Emeritus Mayor". He said that "a mayor in China has more power than a Premier of a State in Australia" and that if a "Chinese person knows a mayor from Australia ... that raises them up in the ... system so to speak".

The Commission found that the councillor performed such a role when he travelled with a property developer to China in March 2014. The councillor accepted that a likely explanation was that he was invited to China so he could indicate to potential overseas investors that his council was supportive of a proposal involving the development of its carpark. The Commission found that the councillor deliberately failed to disclose his significant non-pecuniary interest, arising from his relationship with the developer, when voting on other development matters associated with the developer.

Similarly, in April 2016, a different mayor of the same council, accompanied by another councillor, undertook a trip to China to endorse and promote other developments in their council area. The trip involved a signing ceremony for the developments and subsequent dinner. The mayor participated in the signing ceremony, and both the mayor and councillor attended the celebratory dinner.

The Commission found that the mayor and councillor were aware that the purpose of their trip was to promote the developments to officials and potential investors, and to help obtain approval for such investments from the relevant overseas officials. Their attendance also left the impression on other participants that the developments were supported by their council. The council, however, had not approved or was even aware of this trip. A matter of days after returning to Australia, the mayor and councillor participated in a council vote concerning the developments.

The Commission made findings that the councillor and mayor's conduct in relation to the trip was serious corrupt conduct.

Potential blackmail

As mentioned above, foreign nationals may be interested in engineering situations to compromise councillors. This can be done to damage the objectives of government entities or to otherwise obtain benefits, such as support for a matter going before a council. Engaging in inappropriate activities, even if they are not illegal in Australia or overseas, could place councillors in personally compromising situations, leaving them vulnerable to coercion.

The threat of blackmail

Operation Galley exposed that, for a significant period of time, two councillors travelled overseas on "boys' weekends" with development proponents. At these boys' weekends, the councillors' personal activities, involving compromising circumstances, were secretly filmed by a foreign national. The foreign national was able to reach into the councillors' private lives and obtain material that could be used for nefarious purposes, including blackmail, because of the misplaced trust and friendship.

One councillor's evidence was that he believed the videos were intended as a "blackmail tool". The Commission agreed with this view.

The existence of the videos in this matter provides a telling illustration of the vulnerability of public officials

to the threat of blackmail arising from inappropriate and undisclosed relationships with persons who have an interest in how official functions might be exercised.

Potential corrupt conduct

Overseas travel raises several corruption risks, particularly when councillors are individually targeted with offers to pay for a trip and associated costs, in circumstances where the travel has not been initiated, funded or approved by a council.

Inappropriate gifts, bribery and grooming

Corruption risks associated with councillors' acceptance of gifts include:

- the tendency for councillors to feel a sense of indebtedness and reciprocation after receiving something, even where the gift is of a modest value
- the conflict of interest that could be created between a councillor's public duty and their personal interests because of the relationship that could form with the gift-giver, particularly when multiple gifts are received or hospitality is involved.

For these reasons, gifts can be offered to councillors to establish a connection or "grooming" to help secure improper benefits. As such, councillors need to be cautious about accepting offers to fund overseas travel and hospitality, and only act in accordance with the provisions of their codes of conduct. The Model Code contains several relevant clauses in this regard, including:

- Clause 6.3 – councillors must avoid situations that would give rise to the appearance that a person or body is attempting to secure favourable treatment from the councillor or from the council, through the provision of gifts or benefits (including contributions to travel) or hospitality of any kind to councillors or someone personally associated with them
- Clause 6.5(a) – councillors must not seek or accept a bribe or other improper inducement
- Clause 6.5(c) – councillors must not accept any gift or benefit that may create a sense of obligation on the part of the councillor, or that may be perceived to be intended or likely to influence them in carrying out their public duty
- Clause 6.5(d) – councillors must not accept any gift or benefit of more than token value.¹⁰

¹⁰ Clause 6.7 provides an exception where a councillor receives a gift or benefit of more than token value that cannot reasonably be refused or returned. In such cases, the gift or benefit must be surrendered to the council, unless the nature of the gift or benefit makes this impractical.

If a councillor is offered a gift or benefit where they believe the intention of the person was to bribe them or influence the way they work, they should report it immediately to their general manager and the Commission.

Bribery and conflicts of interest

In Operation Tolosa¹¹, the Commission found that, between November 2015 and February 2019, a mayor engaged in serious corrupt conduct by accepting benefits from a development company whose directors were foreign nationals. The benefits included overseas flights and accommodation, to the value of at least \$18,800. The benefits were an inducement or reward for the mayor exercising his official functions to favour the interests of the developer in relation to planning matters that came before the council.

The mayor also enjoyed close personal relationships with associates of the developer, spanning more than three years. The contact between the mayor and the developer's representatives was frequent and often social in nature, including socialising while on trips to China. For example, the mayor enjoyed hospitality provided by the developer on six occasions when in China. On two different occasions, he also attended weddings of the developer's representatives.

The Commission found that the mayor engaged in serious corrupt conduct by deliberately failing to disclose a conflict of interest arising from his relationships with representatives of the developer, when he knew he was required to do so.

Abuse of office

Councillors must not leverage their office for their own personal gain, or the personal gain of others. An obvious example of this conduct would be a mayor misusing the status of their position, and the prestige attached to this position, in an overseas jurisdiction to promote their own pecuniary interests. Such conduct would be a breach of the duty imposed on councillors not to misuse their position for private gain.¹²

Similarly, a councillor should not use their office to benefit the interests of a third party, as occurred in Operation Galley, where the mayor used his position while in China to promote investment in a project that required his council's approval. This was to the benefit of a third party, with whom the mayor had a relationship amounting to a private interest.

¹¹ NSW ICAC, *Investigation into the conduct of the City of Canada Bay Council mayor and others*, November 2023.

¹² Clause 3.1(f) of the Model Code.

Leveraging public office for private gain

In Operation Keppel¹³, an elected official was able to leverage his public office for personal gain while conducting business activities overseas. The Commission found that the elected official engaged in serious corrupt conduct by abusing his position through using the weight of his office, and the diplomatic and consular ties it afforded him, with the ultimate hope to gain personal profits for himself. The use of his office was an attempt to advance business interests linked to a foreign entity, which risked damaging Australia's consular and diplomatic relations with another (friendly) nation and trade partner.

Further information

The Commission's corruption prevention staff are available to provide guidance for councillors and overseas travel.

Telephone 02 8281 5999 or 1800 463 909
or **email** advice@icac.nsw.gov.au.

¹³ NSW ICAC, *Investigation into the conduct of the then member of Parliament for Wagga Wagga and then premier and others*, June 2023.



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