

## Code of Conduct

<b>Originating Officer</b>	Manager Corporate Governance - Kate McKenzie
<b>Corporate Manager</b>	Manager Corporate Governance - Kate McKenzie
<b>General Manager</b>	Chief Executive Officer - Adrian Skull
<b>Report Reference</b>	GC180814F04

### Confidential



### Confidential Motion

That pursuant to Section 90(2) and (3)(a) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following, Adrian Skull, Chief Executive Officer, Kate McKenzie, Manager Corporate Governance and Jaimie Thwaites, Unit Manager Governance and Records, be excluded from the meeting where the Council will receive and consider information pertaining to the item Code of Conduct upon the basis it is satisfied that the requirements for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration other matter confidential on the ground that the report contains information relating to personal affairs.

## REPORT OBJECTIVE

For Council to determine the next steps regarding the Code of Conduct complaint for Councillor Hull regarding the allegation of breach of confidence.

## EXECUTIVE SUMMARY

At its meeting of 10 July 2018, Council considered a Code of Conduct complaint relating to Councillor Hull. Two matters were reported in the same complaint. One complaint was resolved at the time and the other complaint relating to breach of confidence was referred to the Local Government Governance Panel for review/investigation.

A preliminary response has been received from the Governance Panel and is attached in **Appendix 1**. In summary, the Panel has advised that they are unable to investigate a code of conduct complaint under part 3 of the Code, however if Council determined, they could investigate this matter under part 2.6 and 2.7 of the Code and progress with the requested interviews.

A copy of the Code of Conduct is attached as **Appendix 2**.

## RECOMMENDATION

### That Council:

1. Refers the matter to the Ombudsman for investigation pursuant to Part 3 of the Code of Conduct for Elected Members or
1. Requests the Local Government Governance Panel progress with the investigation pursuant to sections 2.6 and 2.7 of the Code of Conduct or

1. **Appoint an independent investigator to complete the investigation and commence interviews with relevant parties as soon as possible.**
2. **In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report *Code of Conduct*, the minutes arising from this report and any attachments to the report, having been considered in confidence under Section 90(2) and (3) (a) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2018.**

## GENERAL ANALYSIS

Based on the information within the initial assessment from the Panel, Council has three options regarding how to progress:

### Option 1 - refer the matter to the Ombudsman

If Council determines to continue the investigation under part 3 of the Code of Conduct, the matter may be referred to the Ombudsman for investigation. Part 3 of the Code states "*Alleged breaches of this part made to a Council or the Office of Public Integrity may be referred to the Ombudsman for investigation under section 263 of the Local Government Act 1999*". If Council determined to refer the matter, it is estimated an investigation could take 2 - 4 months (based on previous experience).

### Option 2 - Continue with the investigation with the LG Governance Panel

As highlighted within the initial assessment, the Governance Panel can continue its investigations under part 2.6 and 2.7 of the Code of Conduct. These sections state:

*"Responsibilities as a member of Council:*

*2.6 - Comply with all Council policies, codes and resolutions*

*2.7 - Deal with information received in their capacity as Council members in a responsible manner".*

If Council determined to progress with this option, the interviews can occur imminently.

Once the investigation is complete, Council can still make a finding under part 3 if there is sufficient evidence to do so.

A cost estimate of \$4,000 - \$6,000 has been provided within the initial assessment.

### Option 3 - refer to an independent investigator

Council may determine to refer the matter to an independent investigator to complete the investigation and required interviews. Quotes have been obtained from the following organisations:

- Norman Waterhouse = \$5500 (plus GST)

- EMA Consulting = \$1,200 (plus GST) for interviews and transcripts only. EMA Consulting have indicated that they cannot provide a report/opinion regarding if the Code of Conduct has been breached in this matter as it is outside of the framework of experience and qualifications and the jurisdiction in which EMA Consulting provides advice, as the allegation does not have any relationship to employment matters. EMA Consulting is not indemnified or insured if it were to act outside of this framework. The transcripts could then be provided to another party for advice. This may be a slightly cheaper options but is likely to take long due to multiple parties being involved in the process.

## Timeline

If Council determines to progress with either option 2 or 3, it is estimated that this matter could be finalised by the 11th September 2018 Council Meeting. If finalised earlier, the matter will be brought to the next available Council meeting.

## Current Budget Allocation

The total cost of the investigation is estimated to be up to \$6k. This will be incorporate within the Corporate Governance budget.

## DISCUSSION

To date, this matter has been managed in accordance with Council's previous resolution and the Procedure for investigating Code of Conduct Complaints.

## Attachment

#	Attachment	Type
1	Initial Assessment dated 2 August 2018	PDF File
2	EM Code of Conduct	PDF File

# Initial Assessment

## Investigation

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<b>Complainant:</b>	<b>Mayor Kris Hanna</b>
<b>Council members:</b>	<b>Cr Bruce Hull</b>
<b>Council:</b>	<b>City of Marion</b>
<b>Issues:</b>	<b>Alleged breach of Part 2 – Code of Conduct for Elected Council Members</b>
<b>Matter No:</b>	<b>180241</b>
<b>Dated:</b>	<b>2 August 2018</b>

## Summary of Complaint

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The complainant alleges a breach of the Code of Conduct for Elected Council Members (**the Code**)<sup>1</sup>. The allegations are made against Cr Hull who has allegedly breached clause 3.3 of the Code. The provision allegedly breached, Clause 3.3, is located in Part 3 of the Code ('Misconduct'). It is outside the Panel's jurisdiction to investigate. Consequently, this Initial Assessment does not consider whether it may have been breached. The Panel has considered, however, whether the subject matter of the Complaint is within its jurisdiction to consider under Part 2 of the Code, that is, whether the alleged conduct may amount to a breach of one or more of clauses 2.6 or 2.7 of the Code.

## Documentation

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- Documentation provided by Council on 11 July 2018
- Code of Conduct complaint emailed by Mayor Hanna to Ms McKenzie 1 July 2018 at 10:58am.
- Cr Hull's email to Ms McKenzie 24 July 2018 at 10:06am.

## Assessment Process

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My assessment has involved:

- Assessing the information provided by Council, including Mayor Hanna's email complaint and Cr Hull's email declining to submit a formal response; and
- Preparing this Initial Assessment.

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<sup>1</sup> made pursuant to section 63 of the *Local Government Act 1999*.

**Initial Assessment**

Complainant: Mayor Hanna

**Investigation**

Council: Cr Hull

Reference: 180241

**Approach**

The Complaint has been assessed on the papers. Cr Hull has declined the opportunity to respond to the Complaint by way of a Form 2 Response. My consideration is confined to the documents provided by Council.

I have not conducted any interviews nor gathered any information beyond that with which I have been provided. The purpose of the Initial Assessment is only to identify whether some or all of the matters raised in the Complaint taken at their highest should be investigated or otherwise dismissed and not investigated.

A finding that an investigation should take place does **not** indicate any view as to whether or not any of the alleged Code breaches are substantiated.

**Initial Assessment****Overview and Background**

Information provided by Council indicates the following general background:

- Council owns a large plot of land at 287 Diagonal Road, Oaklands Park (**the Land**).
- The Land hosts, among other things, the Marion Cultural Centre (**MCC**) complex.
- Council has been approached by a developer contemplating the development of an international standard hotel on the site (**the Proposal**). Council resolved in its meeting of 8 May 2018 to authorise the CEO to investigate the feasibility of such a development.
- Council considered a number of matters relating to the Proposal in its meeting of 12 June 2018 (**the Meeting**). Such matters were considered in confidential session and resulted in Council adopting a resolution (**the Resolution**) which, among other things, authorised an Expression of Interest (**EOI**) process relating to the Proposal.
- Cr Hull was one of three elected members present who opposed the motion.
- Also adopted as part of the Resolution was the following:

*In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that the minutes, Commercial Development within Regional Centre Zone, having been considered in confidence under Section 90(2) and (3)(b and d) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection until the close of business on 14 June 2018...[Confidentiality Order]*

- The Complaint alleges that Cr Hull breached the Confidentiality Order. Mayor Hanna refers in the Complaint to information provided to him by Council staff to the effect that the [REDACTED] had been informed about the Motion by Cr Hull prior to a scheduled stakeholder engagement meeting and therefore prior to the scheduled expiry of the Confidentiality Order.

## Initial Assessment Investigation

Complainant: Mayor Hanna  
Council: Cr Hull  
Reference: 180241

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### Consideration

I note there is no particular time at which the confidentiality of the information, other than 'close of business on 14 June 2018' was specified in the minutes. Although those concerned may have understood 'close of business' to be 5:00pm, Courts have noted that as a matter of law the phrase has no commonly accepted or settled meaning.<sup>2</sup> This requires investigation.

It will be necessary to identify if, what and (significantly) when any disclosure was made. These matters require investigation. Assuming a disclosure was made contrary to the order for confidentiality then this *may* amount to conduct in breach of the following clauses of the Code:

*Clause 2.6 Comply with all Council policies, codes and resolutions*

*Clause 2.7 deal with information received in their capacity as Council members in a responsible manner*

Given the potential seriousness of the alleged breach, the matter could not be considered trivial or frivolous, and the Panel has no information to suggest the complaint is vexatious.

The Panel recommends that an investigation by an investigator nominated by the Panel be appointed to determine the relevant factual circumstances with a view to:

- Attending on and interviewing relevant witnesses. At this stage we identify them as Mayor Hanna, Cr Hull, [REDACTED] (Council employee), [REDACTED] (Council employee), [REDACTED] (Council employee) and [REDACTED]. The Panel preparing a Preliminary Report for distribution to the complainant and Cr Hull for comment and response (if any)
- Taking account of any responses to the preliminary report and the Panel preparing a Final Report.

Please note that a failure of a Council member to co-operate with Council's process for handling an alleged breach of Part 2 of the Code may be referred for investigation under Part 3 of the Code

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<sup>2</sup> See e.g. *Jalun Pool Supplies Pty Ltd v Onga Pty Ltd* [1999] SASC 20 at [14] per DeBelle J and at [15]: 'Although in past years, close of business might have meant 5 o'clock in the afternoon, I do not think it can be assumed that in the modern business world the expression still has that meaning.'



## Initial Assessment

## Investigation

Complainant: Mayor Hanna

Council: Cr Hull

Reference: 180241

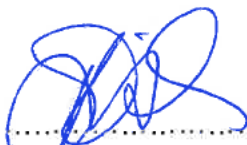
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### Next steps

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The Panel recommends that:

- a. A copy of this Initial Assessment be provided by the administration to Mayor Hanna and Cr Hull.
- b. Allegations relating to potential breach(s) of the Code be further investigated by interviews with the Mayor and others on a relevant (but limited) basis to be facilitated by the administration directly with the investigator;
- c. An indicative fee estimate on standard terms to be provided to the administration (likely in the broad range of \$4,000 to \$6,000 plus GST, but dependent on the complexity of the investigation).



Kaye Smith  
Panel Manager – Governance Panel

Dated: 2 August 2018

## **CODE OF CONDUCT FOR COUNCIL MEMBERS**

*Local Government Act 1999: Section 63 (1)*

NOTICE under Clause 3.10 of the Code of Conduct for Council Members published by the Minister for Planning for the purposes of Section 63 (1) of the Local Government Act 1999.

For the purposes of Clause 3.10 of the Code of Conduct for Council Members adopted for the purposes of Section 63 (1) of the Local Government Act 1999 and published in the *Gazette* on the day on which this Notice is made, the value of \$100 is specified.

Dated 18 August 2013.

JOHN RAU, Deputy Premier, Minister for Planning

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## **Code of Conduct for Council Members**

*Published by the Minister for Planning for the purposes of Section 63 (1) of the  
Local Government Act 1999.*

### **This Code of Conduct is to be observed by all Council members.**

Council members must comply with the provisions of this Code in carrying out their functions as public officials. It is the personal responsibility of Council members to ensure that they are familiar with, and comply with, the standards in the Code at all times.

## **PART 1—PRINCIPLES**

### **1. Higher principles—Overarching Statement**

*This part does not constitute separate enforceable standards of conduct.*

Council members in South Australia have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times.

Council members will work together constructively as a Council and will uphold the values of honesty, integrity, accountability and transparency, and in turn, foster community confidence and trust in Local Government.

As representatives of open, responsive and accountable government, Council members are committed to considering all relevant information and opinions, giving each due weight, in line with the Council's community consultation obligations.

In the performance of their role, Council members will take account of the diverse current and future needs of the local community in decision-making, provide leadership and promote the interests of the Council.

Council members will make every endeavour to ensure that they have current knowledge of both statutory requirements and best practice relevant to their position. All Councils are expected to provide training and education opportunities that will assist members to meet their responsibilities under the Local Government Act 1999.

Council members will comply with all legislative requirements of their role and abide by this Code of Conduct.

## **PART 2—BEHAVIOURAL CODE**

### **2. Behavioural Code**

In line with 'Part 1—Higher Principles' of this Code, the following behaviour is considered essential to upholding the principles of good governance in Councils.

This Part is for the management of the conduct of Council members that does not meet the reasonable community expectations of the conduct of Council members. It deals with conduct that does not, and is not likely to, constitute a breach of Part 3—Misconduct or criminal matters such as those contained in the Appendix to this document.

Robust debate within Councils that is conducted in a respectful manner is not a breach of this Part.

It is intended that each Council will adopt a process for the handling of alleged breaches of this Part. This process will be reviewed within 12 months of a general Local Government election.



Council members must:

**General behaviour**

- 2.1 Show commitment and discharge duties conscientiously.
- 2.2 Act in a way that generates community trust and confidence in the Council.
- 2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.
- 2.4 Show respect for others if making comments publicly.
- 2.5 Ensure that personal comments to the media or other public comments, on Council decisions and other matters, clearly indicate that it is a private view, and not that of the Council.

**Responsibilities as a member of Council**

- 2.6 Comply with all Council policies, codes and resolutions.
- 2.7 Deal with information received in their capacity as Council members in a responsible manner.
- 2.8 Endeavour to provide accurate information to the Council and to the public at all times.

**Relationship with fellow Council Members**

- 2.9 Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.
- 2.10 Not bully or harass other Council members.

**Relationship with Council staff**

- 2.11 Not bully or harass Council staff.
- 2.12 Direct all requests for information from the Council administration to the Council's Chief Executive Officer or nominated delegate/s.
- 2.13 Direct all requests for work or actions by Council staff to the Council's Chief Executive Officer or nominated delegate/s.
- 2.14 Refrain from directing or influencing Council staff with respect to the way in which these employees perform their duties.

**Requirement to report breach of Part 3**

- 2.15 A Council member who is of the opinion that a breach of Part 3 of this Code (Misconduct)— has occurred, or is currently occurring, must report the breach to the Principal Member of the Council or Chief Executive Officer, the Ombudsman or the Office for Public Integrity.
- 2.16 A failure to report an alleged or suspected breach of Part 3 of this Code is in itself a breach under this Part (Behavioural Code).

**Complaints**

- 2.17 Any person may make a complaint about a Council member under the Behavioural Code.
- 2.18 Complaints about behaviour alleged to have breached the Behavioural Code should be brought to the attention of the Principal Member or Chief Executive Officer of the Council, or nominated delegate/s.
- 2.19 A complaint may be investigated and resolved in any manner which that Council deems appropriate in its process for handling alleged breaches of this Part. This can include, but is not limited to: a mediator or conciliator, the Local Government Governance Panel, a regional governance panel or an independent investigator.
- 2.20 A complaint may be considered within this process to be trivial, vexatious or frivolous, and accordingly not investigated.
- 2.21 A failure of a Council member to cooperate with the Council's process for handling alleged breaches of this Part may be referred for investigation under Part 3.
- 2.22 A failure of a Council member to comply with a finding of an investigation under this Part, adopted by the Council, may be referred for investigation under Part 3.
- 2.23 Repeated or sustained breaches of this Part by the same Council member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.
- 2.24 A breach of the Behavioural Code must be the subject of a report to a public meeting of the Council.

## **Findings**

- 2.25 If, following investigation under the Council's complaints handling process, a breach of the Behavioural Code by a Council member is found, the Council may, by resolution:
  - 2.25.1 Take no action;
  - 2.25.2 Pass a censure motion in respect of the Council member;
  - 2.25.3 Request a public apology, whether written or verbal;
  - 2.25.4 Request the Council member to attend training on the specific topic found to have been breached;
  - 2.25.5 Resolve to remove or suspend the Council member from a position within the Council (not including the member's elected position on Council);
  - 2.25.6 Request the member to repay monies to the Council.

## **PART 3—MISCONDUCT**

### **3. Misconduct**

Failure by a Council member to comply with this Part constitutes misconduct. The provisions within this Part may refer to statutory matters under the Local Government Act 1999. Any breach of these provisions will be investigated under that legislation.

Any person may report an alleged breach of this Part to the Council, the Ombudsman, the Electoral Commissioner (for alleged breaches of Code 3.8) or the Office for Public Integrity. Alleged breaches of this Part made to a Council or to the Office for Public Integrity may be referred to the Ombudsman for investigation under Section 263 of the Local Government Act 1999, by the Council's Chief Executive Officer or by the Independent Commissioner Against Corruption, where he or she so determines.

A report from the Ombudsman that finds a Council member has breached this Part (Misconduct) of the Code of Conduct must be provided to a public meeting of the Council. The Council must pass resolutions, that give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council following the receipt of these recommendations.

An investigation under Part 3 of this Code does not preclude an investigation being launched as a potential breach of the criminal matters listed in the Appendix to this document.

#### **Member duties**

Council members must:

- 3.1 Act honestly at all times in the performance and discharge of their official functions and duties;
- 3.2 Perform and discharge their official functions and duties with reasonable care and diligence at all times;
- 3.3 Not release or divulge information that the Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information that is considered by Council in confidence;
- 3.4 Not exercise or perform, or purport to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform;
- 3.5 Not attempt to improperly direct a member of Council staff to act in their capacity as a Local Government employee for an unauthorised purpose;
- 3.6 Ensure that relationships with external parties cannot amount to interference by improper influence, affecting judgement, decisions and/or actions.

#### **Gifts and benefits**

3.7 Council members must not:

- 3.7.1 Seek gifts or benefits of any kind;
  - 3.7.2 Accept any gift or benefit that may create a sense of obligation on their part or may be perceived to be intended or likely to influence them in carrying out their public duty;
  - 3.7.3 Accept any gift or benefit from any person who is in, or who seeks to be in, any contractual relationship with the Council.
- 3.8 Notwithstanding Code 3.7, Council members may accept campaign donations as provided for in the Local Government (Elections) Act 1999.

- 3.9 Notwithstanding Code 3.7.3, Council members may accept hospitality provided in the context of performing their duties, including:
- 3.9.1 Free or subsidised meals, beverages or refreshments of reasonable value provided in conjunction with:
    - 3.9.1.2 Council work related events such as training, education sessions workshops and conferences;
    - 3.9.1.3 Council functions or events;
    - 3.9.1.4 Social functions organised by groups such as Council committees and community organisations.
  - 3.9.2 Invitations to, and attendance at, local social, cultural or sporting events.
- 3.10 Where Council members receive a gift or benefit of more than a value published in the *Government Gazette* by the Minister from time to time, details of each gift or benefit must be recorded within a gifts and benefits register maintained and updated quarterly by the Council's Chief Executive Officer. This register must be made available for inspection at the principal office of the Council and on the Council website.

#### **Register of Interests**

- 3.11 Council members must lodge with the Council a complete and accurate primary return of their interests, and subsequent ordinary returns, as required by legislation.

#### **Campaign donation returns**

- 3.12 Council members must ensure that following each election an accurate campaign donation return is provided to the Chief Executive Officer of the Council as required by legislation.

#### **Conflict of interest**

- 3.13 Council members must be committed to making decisions without bias and in the best interests of the whole community and comply with the relevant conflict of interest provisions of the Local Government Act 1999.

#### **Misuse of Council resources**

- 3.14 Council members using Council resources must do so effectively and prudently.
- 3.15 Council members must not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate.
- 3.16 Council members must not use public funds or resources in a manner that is irregular or unauthorised.

#### **Repeated or sustained breaches of Part 2**

- 3.17 At the discretion of the Council to which the member is elected, repeated or sustained inappropriate behaviour, as listed in Part 2, may be escalated to an allegation of misconduct under this Part.
- 3.18 A failure to comply with a finding of inappropriate behaviour (by the Council, independent investigator or Ombudsman) under Part 2 is also grounds for a complaint under this Part.

## **APPENDIX—CRIMINAL MATTERS**

The matters within this Appendix are matters for which a criminal penalty attaches. As separate legislation operates to cover such conduct, this part does not form part of the Code of Conduct for Council Members.

Allegations of conduct breaching these matters will be investigated in accordance with the legislation governing that conduct and they are included within this document only in order to provide a complete overview of the standards of conduct and behaviour expected of Council members.

Alleged breaches of matters outlined in this Appendix should be reported to the Office for Public Integrity in the first instance.

#### ***Breaches of the Local Government Act 1999***

##### **Member duties**

A member of a Council must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council (Section 62 (3)).

A member of a Council must not, whether within or outside the State, make improper use of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council (Section 62 (4)).

### **Provision of false information**

A member of a Council who submits a return under Chapter 5 Part 4 (Register of interest) and Schedule 3 of the Local Government Act 1999, that is to the knowledge of the member, false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence (Section 69).

### **Restrictions on publication of information from Register of Interests**

A Council member must not publish information, or authorise publication of information, derived from a Register unless the information constitutes a fair and accurate summary of the information contained in the Register, and is published in the public interest, or comment on the facts set forth in a Register, unless the comment is fair and published in the public interest and without malice (Section 71).

### ***Breaches of other Acts***

Acting in his or her capacity as a public officer, a Council member shall not engage in conduct, whether within or outside the state, that constitutes corruption in public administration as defined by Section 5 of the Independent Commissioner Against Corruption Act 2012, including:

An offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:

- bribery or corruption of public officers;
- threats or reprisals against public officers;
- abuse of public office;
- demanding or requiring benefit on basis of public office;
- offences relating to appointment to public office.

Any other offence, including an offence against Part 5 (Offences of dishonesty) of the Criminal Law Consolidation Act 1935, committed by a public officer while acting in his or her capacity as a public officer, or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or to an attempt to commit such an offence.

Any of the following in relation to an offence referred to in a preceding paragraph:

- aiding, abetting, counselling or procuring the commission of the offence;
- inducing, whether by threats or promises or otherwise, the commission of the offence;
- being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- conspiring with others to effect the commission of the offence.