

18.4 Code of Conduct

Report Reference	GC210914F18.4
Originating Officer	Manager Office of the Chief Executive – Kate McKenzie
Corporate Manager	N/A
General Manager	Chief Executive Officer - Tony Harrison

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 persons: Chief Executive Officer, Manager Office of the Chief Executive, Unit Manager Governance and Council Support and Governance Officer, be excluded from the meeting as the Council receives and considers information relating to Code of Conduct, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential, given the information relates to the conduct of Elected Members.

REPORT HISTORY

Question on notice was considered at the 24 August 2021 General Council Meeting.

Report Reference	Report Title
GC210824Q15.2	Fraud and Corruption Matter – Investigation Status

REPORT OBJECTIVE

For the Council to consider a complaint relating to Councillor Hull and determine how to proceed in accordance with the Council Member Code of Conduct Procedure for Investigating Complaints.

EXECUTIVE SUMMARY

A complaint (Attachment 1) has been raised regarding the conduct of Councillor Hull in relation to statements provided to The Advertiser on the termination of a former employee and the lack of information provided to Council Members in a timely manner of the situation.

The former employee was terminated from Council after a misconduct matter was substantiated and referred to South Australia Police (SAPOL). SAPOL investigated the matter which resulted in charges owing to the forging of liquor licensing documents. As a result, the previous Chief Executive Officer provided verbal advice to Elected Members about the status of the matter and subsequent email advice addressed to Councillor Hull and cc'ed to all Elected Members on 14 December 2020. Councillor Hull is quoted in part in the newspaper article published on Monday 23 August:

“He had “great concern” that elected members were not advised about the situation involving Mr O’Hanlon “in a timely fashion by staff and that we were ultimately awkwardly advised by a community deputation at a council meeting”.

At the General Council meeting on Tuesday 24 August 2021, in reference to quotations being provided to The Advertiser by Councillor Hull, he stated in the chamber:

“Mr Mayor, well may the public wonder whether they can have trust and confidence in this council, after the way we found out about this information and that’s refuted that answer by the way…….”

Council is required to consider the complaint in line with the Code of Conduct (Attachment 2) and the Council Member Code of Conduct Procedure for Investigating Complaints (Attachment 3). Council must determine what category the complaint falls within - either behavioural, misconduct or criminal. Behavioural matters are dealt with by Council (including dismissal of the complaint), misconduct matters must be referred to the Office of Public Integrity and Criminal matters must be referred to the relevant authority.

Councillor Hull will be provided with an opportunity to make a personal explanation prior to the item being considered. This personal explanation will be recorded within the meeting minutes.

RECOMMENDATION

That Council determines how it wishes to deal with the Code of Conduct complaint for Councillor Hull:

- 1. No breach has occurred, or breach has occurred?**
- 2. In accordance with Section 91 (7) and (9) of the Local Government Act 1999 the Council orders that the report, attachments and minutes of the report having been considered in confidence under Section 90(2) 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 2021.**

GENERAL ANALYSIS

On 24 August 2021, a complaint was raised regarding Councillor Hull failing to act in a way that generates community trust and confidence in the Council by providing information to Mr Colin James, Advertiser Newspaper journalist.

The matter has been raised with Mayor Hanna and Councillor Hull has been advised of the alleged complaint.

Copies of the Council Member Code of Conduct and the Council Member Code of Conduct Procedure for Investigating Complaints are included as Attachments 2 and 3.

Council is required to consider the complaint and determine how to proceed.

Code of Conduct

The Code of Conduct for Council Members is separated into three parts:

1. Behaviour which falls under part 2
2. Misconduct which triggers action under part 3 of the Code
3. Criminal and corrupt behaviour.

The first step for Council is to determine what section of the Code the complaint relates to: 1. behaviour, 2. misconduct or 3. criminal.

Behavioural matters can be dealt with either internally by Council directly, an independent person or the Local Government Governance Panel. Misconduct matters must be referred to the Office of Public Integrity and Criminal matters must be referred to the relevant authority.

Procedure:

Section 3.1 of the Procedure raises several items for Council to consider when making its determination.

If the matter is deemed to be behavioural, Section 4 of the Procedure then provides Council with four (4) options to consider if the matter relates to a behavioural code:

1. seek to resolve the matter internally
2. refer the matter to an independent person of Council's choice
3. refer the complaint to the Local Government Governance Panel or
4. dismiss the allegation

Options for Council to consider:

After determining the type of Code of Conduct, if Council determines that the matter is behavioural, Council then needs to consider if Councillor Hull has breached the Code of Conduct.

Option 1 - further information required

If Council feels that further information is required to assess if a breach has occurred, it may:

- Request further information be brought to Council before a determination is made
- Refer the matter to an independent person for further advice or investigation.
- Refer the matter to the Local Government Governance Panel for investigation. The Panel Manager will make an initial assessment and may form a provisional conclusion or else recommend the matter proceed to a full investigation. The Panel will only invest those matters that relate to behaviour.

If this option is progressed, the Council must keep the report, minutes, and referral confidential until such time as the report is finalised.

Option 2 - no breach

If Council determines that no breach of the Code of Conduct has occurred, it may resolve to dismiss the matter. This dismissal (including the reasoning for the dismissal) must be recorded in the minutes. The Procedure requires the minutes, together with this report needs to remain confidential unless authorisation is sought from the parties involved for the matter to be released.

Note: if Council wishes to dismiss the allegation, Council must be certain that no breach has occurred.

Option 3 - breach has occurred

If Council determines that a breach of the Code has occurred and requires no further information, in accordance with the procedure, the Council must detail its decision making and by resolution determine:

- To take no further action
- Pass a censure motion in respect of the Council member
- Request a public apology, whether written or verbal
- Request the Council member to attend training on the specific topic found to have been breached.
- Resolve to remove or suspend the Council member from a position within the Council (not including the member's elected position on Council)
- Request the member to repay monies to the Council.

If Council does determine a breach has occurred, it must be recorded in the Conduct register available on Council's website

ATTACHMENTS

1. Code of Conduct Attachment 1 [**18.4.1** - 5 pages]
2. Code of Conduct for Council Members [**18.4.2** - 5 pages]
3. Council Member Code of Conduct Procedure for Investigating Complaints [**18.4.3** - 5 pages]

Complaint

Mr James O'Hanlon, was employed by the City Of Marion.

On 27 May 2021 allegations were made that Mr O'Hanlon was responsible for the theft of property from the site of the Edwardstown Memorial Recreation Club.

As a result, senior City of Marion managers met with him in relation to the allegations and he made admissions confirming the substance of the allegations. His employment was terminated, and the matter was referred to the South Australia Police (SAPOL) and the Independent Corruption Against Commission (ICAC). SAPOL determined the theft matter would not be investigated and subsequently filed. Reference No: SAP2000126565.

It was identified that Mr O'Hanlon made false statements in applications to the liquor licensing commission whilst employed by and on behalf of the City of Marion. These matters were pursued by SAPOL and settled in the Christies Beach Magistrates Court on 22 February 2021. They are on the public record. A penalty of; without conviction, 12-month good behaviour bond was imposed by the court.

On Monday 14 December 2020, the Chief Executive, Mr Adrian Skull, forwarded an email to Cr Hull and cc'ed; same to all council members, subject; *Staff Matter raised at the Council meeting of 08 December 2020.*

STAFF IN CONFIDENCE

Dear Bruce

In last week's Council meeting you asserted that that I have breached the Fraud & Corruption policy by not telling Members about incidents that were raised in a deputation on the Edwardstown club.

I noted that I have informed Members (verbally) of the dismissal of the staff member in question for theft. SAPOL were advised and did not deem it to be their domain given the staff member had been terminated.

Since then SAPOL have launched a significant investigation into another matter. I have been instructed by the investigating officer to keep it confidential pending the investigation. I have done that.

As CEO, my obligation under the Fraud and Corruption Policy is to:

- *Provide adequate resources and security for the prevention and detection of Fraud and Corruption.*
- *Ensure an effective framework and supporting policy and procedures are in place for the prevention and management of Fraud and Corruption.*
- *Ensure timely reporting of fraud and corruption issues to Council (consideration will be given to the method of reporting in line with the nature of the incident and the confidentiality obligations ie ICAC).*
- *Provide leadership and ensure appropriate resourcing, training and delegations are in place for effective fraud and corruption management.*

In reply to you, I had been informed of the matter referred to the within the deputation under confidential instructions from SAPOL whilst the investigation was pending. Council had been briefed on the matter via an Elected Member briefing however, there were certain items that I was not able to disclose at the time.

I trust that this explains my situation.

On 13 August 2021, Councillor Hull submitted a Question on Notice to the current Chief Executive Officer:

Please acknowledge the following Question on Notice for the next Council Meeting. “In terms of the Council fraud policy (*Ensure timely reporting of fraud and corruption issues to Council (consideration will be given to the method of reporting in line with the nature of the incident and the confidentiality obligations ie ICAC).* What is the status of the investigation of the former staff member Unit Manager, James O’Hanlon. If charges are pending or a prosecution/convictions have been made, can this be detailed to Council with a clear time line of any such findings?”

On 17 August 2021, (Elected Member Forum) the Chief Executive Officer spoke with Councillor Hull to determine whether he would prefer a personal update on the Mr O’Hanlon matter, once obtained, or continue with the Question on Notice. On 19 August 2021, Copuncillor Hull responded via email to the Manager, Office of Chief Executive:

Please proceed as per the Council’s Fraud Policy please. All Elected Members need to be formally advised about this outcome. As you would be aware, I have been consistent about this. A formal answer to my question would be appreciated please.

Kind regards

On 19 August 2021, a response to the Question on Notice was uploaded onto the City of Marion web-site as part of the agenda for the General Council Meeting scheduled for Tuesday 24 August 2021.

On the afternoon of Monday 23 August 2021, an article titled, ***Marion councillors not told about prosecution of council manager over forged documents***, Colin James, featured electronically on Adelaide Now. The same article in full was published in The Advertiser print media on Tuesday 24 August 2021.

Marion councillors not told about prosecution of council manager over forged documents

An Adelaide council is under fire for not telling elected members a senior manager was prosecuted for forging documents involving a \$8.8m sporting facility.

[Colin James](#)

A metropolitan council has been accused of trying to cover up the prosecution of a senior manager who forged documents for a liquor licence. Marion Council has been asked to explain why elected members were not told former recreational and community facilities manager James O’Hanlon received a good behaviour bond in February after pleading guilty in the Christies Beach Magistrates Court.

Mr O’Hanlon, 44, was arrested late last year following a police investigation into allegations he fabricated letters from several sporting clubs supporting a liquor licence application for a new \$8.8m sports centre at the Edwardstown Memorial Oval. The fabricated letters bore the football, bowling, cycling, cricket and triathlon clubs’ logos and signatures from their presidents, which were forged by Mr O’Hanlon.

The clubs had become embroiled in a dispute with the council over a profit-sharing agreement for food and alcohol sold at the two-storey complex, built

using a \$4m federal grant secured by Mr O'Hanlon. The police inquiry culminated in a Saturday morning raid on Mr O'Hanlon's Port Noarlunga home last October when 10 officers used search warrants to seize his computer and other electronic devices.

The former Anglicare SA manager was arrested in front of his wife and four teenage children and taken away for questioning. The existence of the investigation remained confidential until last December, when a representative from one of the sporting clubs told a council meeting about the forged letters. This prompted long-serving councillor Bruce Hull to question the council's former chief executive, Adrian Skull, who said information could not be provided for legal reasons.

"I asked the previous CEO for an explanation during that council meeting when a representative from the Edwardstown Bowling Club shocked us with some of the news about Mr O'Hanlon," he said. "Elected members should never become aware of such serious matters in this way."

Mr Hull has formally sought an update on the matter from Mr Skull's replacement, former assistant police commissioner Tony Harrison, through a question on notice. "I am particularly concerned that now this former staff member has apparently been to court and convicted, council still has not been advised of this by our administration," Cr Hull said. "I have put a question on notice asking about the status of the investigation of Mr O'Hanlon, if charges are pending or a prosecution or convictions have been made and if this can be detailed to council with a clear time line of any such findings."

In his response, Mr Harrison said councillors "were informed verbally of this incident via a confidential elected member forum in late 2020". "This was confirmed via a confidential email to council members in December 2020 when Councillor Hull queried if the fraud and corruption policy had been complied with." Mr Harrison said members "were notified that the matter was referred to SAPOL and was being investigated". "In March 2021, the administration was formally advised that Mr O'Hanlon was arrested in November 2020 and charged with dishonest dealings with documents in relation to letters which were believed to be forged," he said. "Prosecution subsequently amended those charges laid at court to reflect a false statement in an application to a licensing authority." Mr Harrison said Mr O'Hanlon had pleaded guilty "at the first opportunity". "(He) subsequently entered a good behaviour bond for a period of 12 months and was ordered to pay court costs, without conviction."

Contacted for comment, Mr Hull said he had "great concern" that elected members were not advised about the situation involving Mr O'Hanlon "in a timely fashion by staff and that we were ultimately awkwardly advised by a community deputation at a council meeting".

"Not all elected members were there when we were supposedly told by Mr Skull about the investigation last December, some had already left or had not even attended the meeting," he said. "I am particularly concerned that now this former staff member has been to court and convicted, council still has not been advised of this by our administration six months later."

At the General Council on Tuesday 24 August 2021, the following conversation transpired:

Mayor Hanna: *The only thing I'll raise there is discussions have been had and amongst managers and the Mayor, as to whether there's been a breach of the code of conduct, as a result Cr Hull, the question arises in the event that you contacted Colin James about a newspaper article?*

Cr Hull: *(Shakes Head).*

Mayor Hanna: *So if Mr James contacted you, the question then is about the content of your conversation and whether you were accurately quoted and whether you made statements inconsistent with maintaining public trust and confidence in the council, do you want to speak that?*

Cr Hull: *Mr Mayor, well may the public wonder whether they can have trust and confidence in this council, after the way we found out about this information and that's refuted that answer by the way and I've made that clear to Mr Harrison and Mr Skull and other elected members have bought into it as well Saying, what's going on and they should be because this is not the way elected members should be treated, its not the way the policy for corruption and notification of these fraud issues, should be dealt with, when we find out, when we find out, from a member of the bowling club from Edwardstown, and then I have to ask a question on notice to find out what the ultimate outcome was with the pursuit of this man, not only that I don't even think we have been told the full story, I think there is other issues that we should be aware of, I won't divulge now with the microphone on, but if you want to pursue me on this, do it properly, do a proper code of conduct process, not a kangaroo court hearing, here in this fashion.*

Mayor Hanna: *I asked the question and gave you the opportunity to answer so that will be taken into account no doubt but what you've said in particular in relation to the fraud policy is debatable to say the least, particularly when the manner of offending was not necessarily what is intended with the fraud policy which is directed against the council.*

Cr Crossland: *Can I just jump in there, with a procedural question?*

Mayor Hanna: *Yes Cr Crossland?*

Cr Crossland: *Can I just clarify, cause I wasn't aware we're gonna have a cross-examination in the middle of a council meeting on an item that I never knew was gonna come to counsel, can I just,... is that appropriate or can we wait until we've got a code of conduct and then deal with the report?*

Kate McKenzie: *Through the chair, usually questions on notice, they are taken as read, if there is a point of clarification we can take them at the time.*

Mayor Hanna: *I don't intend to take it further Cr Crossland, often I do allow comment or question when a question on notice comes up, particularly when it is contentious material.*

The Local Government Act, 1999, Part 2-Behavioural Code, states 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.
- 2.6 Comply with all Council policies, codes and resolutions

22 August 2013]

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

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

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.

22 August 2013]

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

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;
 - 3.7.8 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)).

22 August 2013]

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

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.
-
-

Council Member Code of Conduct Procedure for Investigating Complaints



1. RATIONALE

- 1.1 The Code of Conduct for Council Members is set by regulation and applies to all Council Members across local government in South Australia. Depending on the nature of an alleged breach of the Code, a matter may be subject to a Council investigation or an investigation by the Ombudsman or Office of Public Integrity (OPI). This procedure applies when the Council receives a complaint against a Council Member under the Code of Conduct for Council Members as gazetted on 29 August 2013. A copy of the Code is available on the City of Marion's website www.marion.sa.gov.au

2. ALLEGED BREACH

- 2.1 Breaches of the Code of Conduct may relate to behaviour (in Part 2 of the Code) or misconduct (in Part 3 of the Code). Criminal or corruption matters, which are subject to separate legislation, do not form part of the Code of Conduct for Council Members but are referred to in the Appendix of the Code of Conduct.
- 2.2 Where an alleged breach occurs the complainant should report the allegation, in writing to the Chief Executive Officer. The allegation should:
- 2.2.1 Be specific
 - 2.2.2 Provide as much supporting evidence as possible to assist an investigation
 - 2.2.3 Provide the name of the Council Member who has allegedly breach the Code.
- 2.3 Complainants can, at any time, take the alternative option of lodging the complaint with the Ombudsman or Office of Public Integrity (OPI), which will direct the complaint in accordance with the ICAC Act.
- 2.4 On receipt of a complaint, the CEO will be responsible for advising the Mayor and referring the complaint to Council.
- 2.5 When no allegations have been substantiated, Council will consider the matter in confidence.
- 2.6 The Council will consider the matter, in conjunction with legal advice if required, and determine whether the complaint relates to:
- 2.6.1 Behavioural which falls under Part 2 of the Code
 - 2.6.2 Misconduct which triggers action under Part 3 of the Code, or
 - 2.6.3 Criminal or Corrupt behaviour.
- 2.7 Complaints relating to misconduct or criminal behaviour must be referred to the appropriate authorities immediately.
- 2.8 As soon as practical after the receipt of an allegation and prior to the complaint being referred to Council, the Mayor will advise the Council Member who is the subject of the complaint and its substance. If the complaint is about the Mayor, the Deputy Mayor will undertake this function.
- 2.9 A copy of the complaint will be provided to the Council Member and will also be provided to confidentially Council. This may be done in person, via email and/or a Council report.

3. Complaint Assessment

City of Marion 245 Sturt Road, Sturt SA 5047
PO Box 21, Oaklands Park SA 5046
T 08 8375 6600
F 08 8375 6699
www.marion.sa.gov.au

Category: Legislative
Owner: Manager Corporate Governance
Authorisation Date: 23 July 2019
Review Date: November 2023

Council Member Code of Conduct Procedure for Investigating Complaints



- 3.1 In undertaking the preliminary assessment of a complaint, the Council may have regard to the following considerations:
- a) whether the complaint is a “code of conduct complaint”,
 - b) whether the complaint is trivial, frivolous, vexatious or not made in good faith,
 - c) whether the complaint discloses prima facie evidence of a breach of the code,
 - d) whether the complaint raises issues that would be more appropriately dealt with by another agency or body,
 - e) whether there is or was an alternative and satisfactory means of redress available to the complainant in relation to the conduct complained of,
 - f) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation or apology,
 - g) whether the issue/s giving rise to the complaint have previously been addressed or resolved,
 - h) whether the conduct complained of forms part of a pattern of conduct,
 - i) whether there were mitigating circumstances giving rise to the conduct complained of,
 - j) the seriousness of the alleged conduct,
 - k) the significance of the conduct or the impact of the conduct for the council,
 - l) how much time has passed since the alleged conduct occurred, or
 - m) such other considerations that the Council considers may be relevant to the assessment of the complaint.

4. ALLEGED BREACH UNDER PART 2

Having regard to the seriousness of the allegation and information provided, the Council will:

- a) seek to resolve the matter internally, including through conciliation or mediation,
- b) refer the matter to an independent person of Council’s choice,
- c) refer the complaint to the Local Government Governance Panel or
- d) dismiss the allegation.

4.1 Internal Response

- 4.1.1 Only matters which are determined to be of a minor nature will be dealt with internally and only with the agreement of the parties.
- 4.1.2 Council may request that the Mayor facilitate a meeting with the complainant and the Council Member and may seek mediation and conciliation between the parties in an attempt to resolve the matter to the satisfaction of all parties. This may be appropriate, for example, where the complainant is also a Council Member.
- 4.1.3 The Mayor must ensure that the principles of natural justice and procedural fairness are observed.

City of Marion 245 Sturt Road, Sturt SA 5047
PO Box 21, Oaklands Park SA 5046
T 08 8375 6600
F 08 8375 6699
www.marion.sa.gov.au

Category: Legislative
Owner: Manager Corporate Governance
Authorisation Date: 23 July 2019
Review Date: November 2023

Council Member Code of Conduct Procedure for Investigating Complaints



- 4.1.4 Where the matter is resolved by the Mayor to the satisfaction of all the parties the matter will be closed and no further action will be taken. The Mayor will send written confirmation to all the parties confirming that the matter has been resolved and provide report the outcome to a public meeting of the Council if appropriate.

Where the matter cannot be resolved in this manner, it will be referred back to Council for further consideration.

- 4.1.5 Where the Mayor is the complainant or the subject of the complaint the internal response will be facilitated by the Deputy Mayor or other Council Member as resolved by Council.
- 4.1.6 If Council determines to resolve a complaint internally, it must be satisfied that it has all relevant facts have been obtained. If Council has outstanding questions, relating to the matter, these must be addressed prior to finalising the complaint.

4.2 Referral to independent person of Council's choice

- 4.2.1 A complaint may be referred by Council to an independent person for investigation.
- 4.2.2 Complaints to an independent person will specify:
- The grounds of the complaint
 - Set out the circumstances of the complaint
 - Be accompanied by any other material that is available to support the complaint.
- 4.2.3 The independent person must ensure that the principles of natural justice and procedural fairness are observed.
- 4.2.4 Following the investigation, a report will be prepared by the independent person and will be provided to Council. The report may recommend to the Council appropriate action in relation to the matter, including the imposition of any of the sanctions available to a Council under clause 2.25 of the Code of Conduct.

4.3 Referral to the Local Government Governance Panel

- 4.3.1 Complaints referred to the Governance Panel will specify the ground/s of the complaint, set out the circumstances of the complaint and be accompanied by any other material that is available to support the complaint. A copy of the Governance Panel's procedures is available on the Governance Panel webpage on the LGA's website under Rules of Engagement. [www.lga.sa.gov.au]
- 4.3.2 The matter will be assessed initially by the Panel Manager who will determine the process to be followed and the person who will deal with the matter. The matter may be dismissed if it is frivolous, vexatious, misconceived or lacking in substance.
- 4.3.3 A complaint that is forwarded to the Governance Panel will be assessed by the Panel Manager in the first instance. The Panel Manager will consider the applicable facts from the material provided and may form a provisional conclusion that further investigation is unnecessary, as it would be unlikely to result in a breach finding. In these circumstances,

City of Marion 245 Sturt Road, Sturt SA 5047
PO Box 21, Oaklands Park SA 5046
T 08 8375 6600
F 08 8375 6699
www.marion.sa.gov.au

Category: Legislative
Owner: Manager Corporate Governance
Authorisation Date: 23 July 2019
Review Date: November 2023

Council Member Code of Conduct Procedure for Investigating Complaints



Council will consider the recommendation from the Panel Manager and determine whether to proceed to a full investigation.

- 4.3.4 Where a complaint progresses to an investigation, a report will be prepared by the Panel and will be provided to the Council. The report may recommend to the Council appropriate action in relation to the matter, including the imposition of any of the sanctions available to a Council under clause 2.25 of the Code of Conduct.

4.4 Dismiss the allegation.

- 4.4.1 The Council may choose to dismiss a matter only in the circumstances where it is evident that the complaint is frivolous, vexatious, misconceived or lacking in substance. The Council must provide reasoning for undertaking this action.

5. REPORTING TO COUNCIL

- 5.1 At the conclusion of an investigation, Council must resolve if a breach of part 2 of the Code is found, the breach must be the subject of a report to a public meeting of the Council. The Council may, by resolution, take any of the following actions:
- 5.1.1 Take no action and provide the reasons as to why
 - 5.1.2 Pass a censure motion in respect of the Council Member
 - 5.1.3 Request a public apology, whether written or verbal
 - 5.1.4 Request the Council Member to attend training on the specific topic found to have been breached
 - 5.1.5 Resolve to move or suspend the Council Member from a position within the Council (not including the Members Elected position on Council)
 - 5.1.6 Request the member to repay monies to the Council.

6. APPEALS

- 6.1 The Council will not enter into any process of appeal in relation to Part 2 of the Code. If an Council Member is aggrieved by the process and or outcome, they may refer the matter to the Ombudsman for review.

7. PART 3 – MANDATORY CODE (MISCONDUCT)

- 7.1 Any person may report an alleged breach of Part 3 of the Code to the Council, the Ombudsman or Office of Public Integrity. Alleged breaches of this Part made to Council or to the Office of Public Integrity may be referred to the Ombudsman for investigation.
- 7.2 Under the Code of Conduct, a Council Member who is of the opinion that a breach of Part 3 of the Code has occurred, or is currently occurring, must report the breach to the Mayor of the Council or Chief Executive Officer, the Ombudsman or the Office of Public Integrity.
- 7.3 A failure to report an alleged or suspected breach of Part 3 of the Code is in itself a breach under Part 2 of the Code.

City of Marion 245 Sturt Road, Sturt SA 5047
PO Box 21, Oaklands Park SA 5046
T 08 8375 6600
F 08 8375 6699
www.marion.sa.gov.au

Category: Legislative
Owner: Manager Corporate Governance
Authorisation Date: 23 July 2019
Review Date: November 2023

Council Member Code of Conduct Procedure for Investigating Complaints



- 7.4 A failure of a Council Member to co-operate with the Council's process for handling alleged breaches of Part 2 of the Code may be referred for investigation under Part 3.
- 7.5 A failure of a Council Member to comply with a finding of an investigation under this procedure may be referred for investigation under Part 3 of the Code.
- 7.6 Repeated or sustained breaches of Part 2 of the Code by the same Council Member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.
- 7.7 A report from the Ombudsman that finds a Council Member has breached Part 3 of the Code of Conduct must be the subject of a report to a public meeting of the Council. The Council must pass a resolution to give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council following the receipt of these recommendations.

8. CRIMINAL MATTERS – APPENDIX TO THE CODE OF CONDUCT

- 8.1 The matters within the Appendix to the Code of Conduct are matters for which a criminal penalty applies. These matters must be reported to the Office of Public Integrity. In addition, allegations of a breach of any of the offence provisions in the *Local Government Act 1999* must be reported to the Office of Public Integrity.
- 8.2 In compliance with the *Independent Commissioner against Corruption Act 2012*, referral of such complaints to the Office of Public Integrity will remain confidential.

9. REFERENCES

Adopted by Council:	23 July 2019
Next Review:	November 2023 (within 12 months of general election)
Version:	1.2
Previous Version:	Adopted 27 March 2018
Owner:	Manager Corporate Governance
Applicable Legislation:	Local Government Act 1999 (sections 59-63) Local Government (General) Variation Regulations 2013 Independent Commissioner against Corruption Act 2012
Related Documents:	Code of Conduct for Council Members Directions of Guidelines issued by ICAC
Related Policies:	Caretaker Policy

10. REVIEW AND EVALUATION

Review November 2023 (within 12 months of general election)

City of Marion 245 Sturt Road, Sturt SA 5047
PO Box 21, Oaklands Park SA 5046
T 08 8375 6600
F 08 8375 6699
www.marion.sa.gov.au

Category: Legislative
Owner: Manager Corporate Governance
Authorisation Date: 23 July 2019
Review Date: November 2023