

CODE OF CONDUCT FOR ELECTED MEMBERS

First Approved	Published by the Minister for Planning in the Government Gazette on 29 August 2013 for the purposes of s.63 (1) of the <i>Local Government Act (SA) 1999</i>
Status	Mandatory
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Next Review Due	<i>As required if legislation changes</i>
File Number	18.63.001/PL202021
Responsible Division	Office of the Chief Executive
Related Documents	Elected Members Code of Conduct Complaint Handling Procedure Elected Members Allowances, Benefits, Support and Facilities Policy Elected Members Induction of New Councils Policy Elected Member Training & Development Policy and Plan Information Technology (IT) Usage Guidelines and Agreement Communications Policy Community Donations Policy Community Grants Policy
Applicable Legislation	<i>Local Government Act 1999 (SA) s63(1)</i> <i>Local Government (Elections) Act 1999</i> <i>Independent Commissioner Against Corruption (ICAC) Act (2012)</i>

This Code of Conduct is to be observed by all Elected Members.

Elected Members must comply with the provisions of this Code in carrying out their functions as public officials. It is the personal responsibility of Elected 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.

Elected 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.

Elected 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, Elected 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, Elected 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.

Elected Members will make every endeavour to ensure that they have current knowledge of both statutory requirements and best practices 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*.

Elected 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 Elected Members that does not meet the reasonable community expectations of the conduct of Elected 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.

Elected 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 are consistent with the Council’s Communications Policy, or 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 By-laws, policies, codes and other resolutions
- 2.7 Deal with information received in their capacity as Elected 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 Elected Members

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



- 2.14 Refrain from directing or influencing Council staff with respect to the way in which these employees perform their duties.

Requirements to report breach of Part 3

- 2.15 An Elected 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 (Mayor), the Chief Executive Officer, to 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 an Elected 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, the 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
 - 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 an Elected 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 an Elected 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 Elected 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 an Elected Member is found, the Council may, by resolution:
- Take no action
 - Pass a censure motion in respect to the Elected Member
 - Request a public apology, whether written or verbal



- Request the member to attend training on the specific topic found to have been breached
- Resolve to remove or suspend the Elected Member from a position within Council (not including the member's elected position on Council)
- Request the member to repay monies to Council.

Part 3 – Misconduct

3 Misconduct

Failure by an Elected 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 all 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 (ICAC), where he or she so determines.

A report from the Ombudsman that finds an Elected 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 resolution that gives 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 Appendix 1 (Criminal Matters) to this document.

Member Duties

Elected 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 to be kept confidential, or that the Elected 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 Elected Members must not:
- Seek gifts or benefits of any kind
 - 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
 - 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, Elected Members may, however, accept campaign donations as provided for in the *Local Government (Elections) Act 1999*
- 3.9 Notwithstanding 3.7, Elected Members may also accept hospitality provided in the context of performing their duties, including:
- Free or subsidised meals, beverages or refreshments of reasonable value provided in conjunction with:
 - Council work related events such as training, education sessions, workshops and conferences
 - Council functions or events
 - Social functions organised by groups such as Council committees and community organisations
 - Invitations to, and attendance at, local social, cultural or sporting events.
- 3.10 Where Elected Members receive a gift or benefit, details of each gift or benefit must be recorded within the gifts and benefits register maintained and updated quarterly by the Council's Chief Executive Officer (see example at Appendix 2). Regardless of nominated value as published in the Government Gazette dated 18 August 2013 (\$100), it is Council's preferred option that all gifts received by Elected Members are recorded in the Gift Register. This register must be made available for inspection at the principle office of the Council and on the Council website.

Register of Interests

- 3.11 Elected 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 Elected 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 Elected 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 Elected Members using Council resources must do so effectively and prudently.
- 3.15 Elected 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 Elected 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.

Availability of Policy

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.alexandrina.sa.gov.au. Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.



APPENDIX 1 – CRIMINAL MATTERS

The matters within this appendix are matters for which a criminal penalty attaches. As separate legislation operates to cover such conduct, this party does not form part of the Code of Conduct for Elected 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 Elected 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 (SA) 1999

Elected Member duties

An Elected Member 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)).

An Elected Member 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

An Elected Member 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

An Elected 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 their capacity as a public officer, an Elected 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 on 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.



Elected Members Gifts and Benefits Register 2018-2019

Extract from “Code of Conduct for Council Members”:

APPENDIX 2

“Part 3 – Misconduct

3 Misconduct

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:*

3.9.1.1 *Council work related events such as training, education sessions, workshops and conferences;*

3.9.1.2 *Council functions or events;*

3.9.1.3 *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 time¹, 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 principle office of the Council and on the Council website.”*

¹ That being \$100 (as published in the Government Gazette dated 18 August 2013) – however, in accordance with this Code of Conduct, it is Councils preferred option that all gifts are recorded in the Gift Register, regardless of value.

Please Note: It is Council’s preferred option that all gifts received by Elected Members are recorded in the Gift Register, regardless of value.

EXAMPLE:

Name of Elected Member (print)	Date Given or Received	Name of Donor	Description of Gift or Benefit	Value \$	Reason for Offer and Acceptance
Mayor	00/00/2018	..... Football League	Tickets	\$50	General Invitation
Cr	00/00/2018	..... Pty Ltd	Wine	\$40	Representing Council at a related event
Mayor	00/00/2018	..... Government Association	Model Truck	\$135	Raffle Prize at Conference
Cr	00/00/2018	..... Society	Meal and Drinks for Cr and Partner	\$100	Guest Speaker