



NAME OF POLICY: Code of Conduct for Council Members - Complaint Handling Procedure

POLICY MANUAL: Governance

BACKGROUND

The *Code of Conduct for Council Members* (the Code) was published in the South Australian Gazette on 18 August 2013, pursuant to Section 63 of the *Local Government Act 1999* (the Act), and applies to all Elected Members in South Australia.

The Code sets out the standards of behaviour which every Elected Member must observe when carrying out their functions and duties as a **public officer**.

It is the responsibility of every Elected Member to ensure that they are familiar and comply with, the standards in the Code at all times.

The Code is structured into three (3) Parts, namely:

- Part 1 – Principles
- Part 2 – Behavioural Code
- Part 3 – Misconduct

There is an Appendix to the Code which relates to **Criminal Matters**. These are matters that do not form part of the Code and alleged breaches of these matters are to be reported to the Office for Public Integrity (OPI) in the first instance.

A copy of the Code is contained within **Appendix A**.

The Code provides that each Council will adopt a process for the handling of alleged breaches of Part 2 of the Code, the Behavioural Code.

This Procedure has been prepared in accordance with the Council's obligations under Part 2 of the Code, to ensure a consistent, fair and equitable process for receiving and managing complaints made under the Code.

PRINCIPLES

This Procedure is based on the following principles, each being a relevant consideration in the manner in which the Council will approach the receipt and management of complaints under the Code:

- Integrity and Impartiality
- Fairness
- Equity
- Consistency
- Responsiveness
- Efficiency

SCOPE

Any person may make a complaint about an Elected Member under the Code and this Procedure will apply following the receipt of such a complaint.

It is important to note that a complaint remains an allegation, until it has been found proved, following an impartial investigation process.

CONFIDENTIALITY

All complaints will be treated on a confidential basis, until such time that a finding has been made that an Elected Member has breached the Code. A finding of a breach of the Code is required to be the subject of a report to a public meeting of the Council.

Any release of confidential information that an Elected Member knows, or should reasonably know, to be confidential is a breach of Part 3 of the Code.

Any person to whom information about a complaint, or information in relation to or connected with a complaint, has been disclosed, or is required to be disclosed (including the complainant and the subject Elected Member), **must not**, directly or indirectly, disclose that information, except in the following circumstances:

- for the purpose of making a complaint to the Mayor, Chief Executive Officer or General Manager, Governance & Community Affairs under this Procedure;
- in consultation with the Mayor, Chief Executive Officer or General Manager, Governance & Community Affairs for the purposes of:
 - referring the matter to a relevant authority or External Investigator;
 - obtaining legal advice or legal representation, including in accordance with the Council's *Elected Member Access to Legal Advice Policy*;
 - obtaining medical or psychological assistance from a medical practitioner, psychologist or counsellor;
 - obtaining assistance from a mediator/conciliator engaged under this Procedure;
 - where the information has been made public in accordance with this Procedure; or
 - as required by law;
- where the disclosure is made to a close family member of the complainant or the Elected Member who is the subject of the complaint, as defined in section 54(4) of the *Independent Commissioner Against Corruption Act 2012*, as follows:

*For the purposes of subsection (3)(c), a person is a **close family member** of another person if—*

- (a) 1 is a spouse of the other or is in a close personal relationship with the other; or*
- (b) 1 is a parent or grandparent of the other (whether by blood or by marriage); or*
- (c) 1 is a brother or sister of the other (whether by blood or by marriage); or*
- (d) 1 is a guardian or carer of the other.*

The starting position is that where the complaint is made by a member of the public, the identity of the complainant will be kept confidential, unless the complainant consents to their identity being disclosed.

However, where based on legal advice or the opinion of the External Investigator, the identity of the complainant is required to be disclosed to ensure that the matters to which the allegations relate are properly investigated, the complainant will be advised and the consent of the complainant sought to disclose their identity.

If the complainant does not provide consent in these circumstances, it will be at the absolute discretion of the General Manager, Governance & Community Affairs (or delegate), to determine whether the complaint is capable of further investigation.

Notwithstanding the above, any documentation or information pertaining to a complaint made under the Code, is subject to the *Freedom of Information Act 1991*. Any application made for access to this information is required to be assessed under that statutory framework.

NATURAL JUSTICE

Any investigation of an alleged breach of the Code by an Elected Member, will be carried out in accordance with this Procedure and the principles of natural justice/procedural fairness.

The expressions '*natural justice*' and '*procedural fairness*' are often used interchangeably. *Natural justice* requires that a person receive a fair and unbiased hearing before a decision is made that will negatively affect them.

The three (3) key requirements of natural justice that must be met are: *adequate notice*, *fair hearing* and an *absence of bias*, as detailed below:

- the *adequate notice* requirement means that the subject Elected Member must be informed of the complaint and the nature of the allegations;
- the *fair hearing* requirement means that the parties to the complaint, being the complainant and the subject Elected Member, are provided with a reasonable opportunity to present their point of view and to respond to facts presented. These responses are to be given genuine consideration in the investigation process; and
- the *absence of bias* requirement means that the person making the decision (whether that be the General Manager, Governance & Community Affairs (or delegate) or the External Investigator under this Procedure) must act impartially when considering the matter and not be biased (or be seen to be biased) in any way.

The requirements of procedural fairness focus on fairness in the decision making process. It concerns fairness in the procedure which results in the decision or by which the decision is made, rather than the fairness, in a substantive sense, of the decision.

BREACHES OF THE CODE

Alleged breaches of the Code may relate to behavioural matters, as referred to in Part 2 of the Code, or Misconduct, dealt with at Part 3 of the Code.

Allegations of a breach of Part 2 of the Code will be dealt with in accordance with this Procedure. Allegations of a breach of Part 3 of the Code may not be dealt with by the Council and may be referred to the *Office of the South Australian Ombudsman* (Ombudsman SA) or the *Office for Public Integrity* (OPI).

Allegations of criminal conduct, corruption, misconduct or maladministration in public administration, as defined in Section 5 of the *Independent Commissioner Against Corruption Act 2012*.

A copy of Section 5 of the *Independent Commissioner Against Corruption Act 2012* is contained within **Appendix B**.

PROCEDURE

Making a Complaint

A complaint about an alleged breach of the Code must be in writing, marked as confidential and addressed to the Mayor, Chief Executive Officer or the General Manager, Governance & Community Affairs.

Complaints must, so far as reasonably practicable, include the following information:

- the name of the Elected Member it is alleged has breached the Code;
- the name and contact details of the complainant;
- the name and contact details of the person submitting the complaint (if different to the complainant);
- the name and contact details of any persons able to provide information relating to the complaint;
- the provisions of the Code which the complainant alleges have been breached, including information as to how the provisions have been breached, and when the breach occurred; and
- any supporting evidence that may be available to assist in an investigation of the allegations.

The General Manager, Governance & Community Affairs (or delegate) will, so far as reasonably practicable, provide written acknowledgement to the complainant and the subject Elected Member, of the receipt of the complaint within five (5) business days.

Where the alleged behaviour falls under Part 2 of the Code, the complaint must be made within three (3) months of the alleged conduct, said to be in breach of the Code. This is based on public interest considerations of dealing with alleged breaches of Elected Member conduct in a timely manner.

However, this timeframe may be extended at the discretion of the Mayor, Chief Executive Officer or the General Manager, Governance & Community Affairs (or delegate), where the merits of the case warrant an extension.

Anonymous complaints will not be investigated by the Council unless required by law, or otherwise, at the discretion of the Mayor, Chief Executive Officer or the General Manager, Governance & Community Affairs (or delegate), where the merits of the case warrant investigation.

Complainants can, at any time, refer their complaint to the *Office of the South Australian Ombudsman* (Ombudsman SA) or to the *Office for Public Integrity*, who will assess and refer the complaint as required. This may result in the matter being referred back to the Council for investigation as the relevant authority.

If more information is required to progress the handling of a complaint at any time, the complainant may be contacted by the General Manager, Governance & Community Affairs (or delegate) or an External Investigator with a request for such information.

All parties to a complaint are required to cooperate with and assist with the receipt and investigation of the complaint.

Failure to do so may result in an adverse finding being made against the subject Elected Member, or, otherwise, a decision being made not to progress the handling of a complaint. This may include not referring a complaint for investigation or discontinuing an investigation of a complaint, where a complainant unreasonably fails to cooperate or assist in its management.

Complainants are invited to contact the General Manager, Governance & Community Affairs to discuss their concerns in the first instance, to determine whether the matter is capable of early resolution, prior to lodging a complaint under the Code.

The General Manager, Governance & Community Affairs is located at the Norwood Town Hall, 175 George Street, Norwood and may be contacted directly by telephone on 8366 4549 between 8.30am – 5.00pm, Monday to Friday.

Initial Assessment/Informal Resolution

Upon receipt of a complaint, an initial assessment will be undertaken by the General Manager, Governance & Community Affairs (or delegate), to determine whether the complaint:

- is trivial, frivolous, vexatious, misconceived or lacking in substance, in which case, no further action may be taken;
- relates to behaviour which falls under Part 2 of the Code;
- relates to misconduct or systemic misconduct which triggers action under Part 3 of the Code; or
- relates to criminal conduct, corruption, misconduct or maladministration in public administration.

An initial assessment is not an investigation or adjudication of a complaint and no findings as to the merits of the complaint will be made.

Rather, in undertaking an initial assessment, the General Manager, Governance & Community Affairs (or delegate), will consider whether the complaint discloses prima facie evidence of a breach of the Code and, if so, what action may be required in the circumstances of the matter. In doing so, legal advice may be obtained to assist in the initial assessment of the complaint.

The General Manager, Governance & Community Affairs (or delegate) will, so far as reasonably practicable, undertake the initial assessment of a complaint and advise the complainant and the subject Elected Member of the outcome within ten (10) business days of the receipt of the complaint.

If the matter is determined to be minor in nature, the parties to a complaint may be offered the opportunity to resolve the matter informally, which may include alternative dispute resolution processes such as mediation or conciliation. Informal resolution is only appropriate if all parties to the matter voluntarily agree to explore a resolution.

An independent person with suitable qualifications or experience may be engaged to facilitate this process.

If the matter can be resolved to the satisfaction of all parties at this time, the matter will be closed and no further action taken. All parties will be advised in writing by the General Manager, Governance & Community Affairs (or delegate) that the matter has been resolved.

If the matter cannot be resolved informally, or, otherwise, it is not appropriate for consideration for informal resolution, the matter will be investigated in accordance with this Procedure.

Following the initial assessment and subject to the General Manager, Governance & Community Affairs (or delegate) determining that the complaint discloses prima facie evidence of a breach of the Code, the complaint will be progressed as follows:

- Behaviour which falls under Part 2 of the Code, the Behavioural Code - the Council will maintain jurisdiction of the complaint, which will be dealt with in accordance with the processes set out in this Procedure.
- Behaviour which falls under Part 3 of the Code, the Misconduct provisions - the complaint will be referred to the Ombudsman SA or the OPI as soon as reasonably practicable and guidance will be sought as to whether the complainant may be advised that the complaint has been so referred.
- Criminal conduct, corruption, misconduct or maladministration in public administration, including but not limited to those matters set out in the Appendix to the Code - the complaint will be referred to the OPI as soon as reasonably practicable and guidance will be sought as to whether the complainant may be advised the complaint has been so referred.

External Investigation

Where a complaint has been assessed as disclosing a prima facie breach of Part 2 of the Code and is unable to be resolved informally, or through some other means of alternative dispute resolution, the complaint will be referred to an External Investigator for investigation.

The External Investigator may be but is not required to be, the same person who provided advice on the initial assessment of the complaint.

The External Investigator will conduct an investigation into the allegations, which may include interviewing persons considered to be able to provide relevant evidence in relation to the allegations.

Following the investigation process, the External Investigator will prepare a draft report setting out the factual basis of the allegations, the evidence received, preliminary findings made and any proposed recommendations.

The draft report will be provided to the General Manager, Governance & Community Affairs (or delegate) for information and record management purposes.

In affording the parties natural justice/procedural fairness as part of the investigation process, the complainant and the subject Elected Member will be provided with a copy of the draft report and an invitation to make any further submission to be taken into account in the investigation of the complaint, limited to the facts as stated and the preliminary findings made.

The parties will be provided with a minimum of fourteen (14) days to provide any further submissions to the External Investigator on the draft report.

Following receipt and consideration of any further submission received, the External Investigator will prepare a final report, setting out the findings made and recommendations or whether the allegations were substantiated.

The final report will be provided to the General Manager, Governance & Community Affairs.

Reporting to the Council

In accordance with clause 2.24 of the Code, if, following the investigation process, a breach of Part 2 of the Code, the Behavioural Code, has been substantiated, a report **must** be presented to a public meeting of the Council.

For the avoidance of doubt, this does not require that the final report prepared by the External Investigator is required to be presented to the Council. Rather, a summary report setting out the allegations and findings made may be prepared for the Council's consideration.

This report may recommend to the Council appropriate action in relation to the matter, including the imposition of any of the sanctions available to the Council.

In accordance with Clause 2.25 of the Code, the Council may, by resolution, take any of the following actions upon a finding that an Elected Member has breached Part 2 of the Code:

- take no action;
- pass a censure motion in respect of the Elected Member;
- request a public apology, whether written or verbal;
- request the Elected 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 the Council (not including the Elected Member's elected position on Council); and/or
- request the Elected Member to repay monies to the Council (ie legal fees).

Where the Final Report finds that a breach of the Code has not been substantiated, a report will not be presented to the Council for consideration or for information, with the exception of the following circumstances:

- the Elected Member who was the subject of the complaint requests that a report be presented to the Council. Where such a request is made, a report will be tabled at the next practicable Council meeting; and/or
- where the External Investigator makes observations or recommendations that are of broader application, a summary report may be provided to the Council for the Council's consideration.

If the matter is not presented to the Council, the obligations of confidentiality set out in this Procedure regarding the complaint, as well as the draft and final reports, will continue to apply, unless otherwise determined by the Council.

At the conclusion of the investigation, the complainant and the subject Elected Member will be notified in writing of the outcome.

Where the final report is to be tabled at a Council meeting, the Complainant will be entitled to a copy of the report at, or following, the relevant Council meeting. If the final report is not presented at a Council meeting, the Complainant will not be provided with a copy of the final report of the investigation.

Appeals

As a non-adversarial process, there is no statutory basis to appeal any of the processes or procedures in relation to the receipt and management of complaints made under the Code and dealt with under this Procedure.

However, irrespective of the manner in which the Council determines to deal with a complaint under the Code, it is acknowledged that a complainant has recourse to the Ombudsman if they are dissatisfied.

BREACHES OF PART 3 OF THE CODE - MISCONDUCT

Any alleged breach of Part 3 of the Code that is made to the Council, may be referred to the Ombudsman SA or the OPI for investigation.

An Elected 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, Chief Executive Officer, General Manager, Governance & Community Affairs, the Ombudsman SA or the OPI.

A failure to report an alleged, or suspected, breach of Part 3 of the Code is, in itself, a breach of Part 2 of the Code.

A failure of an Elected Member to co-operate with the Council's process in handling alleged breaches of Part 2 of the Code under this Procedure, may be referred for investigation under Part 3.

A failure of an Elected Member to comply with a finding of inappropriate behaviour by the Council, the External Investigator or the Ombudsman SA under Part 2 of the Code, is grounds for a complaint under Part 3 of the Code.

Repeated or sustained breaches of Part 2 of the Code by an Elected Member may be referred, by resolution of the Council, to the Ombudsman SA as a breach of Part 3 of the Code.

A report from the Ombudsman SA that finds an Elected 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 SA, within two (2) ordinary meetings of the Council following the receipt of the Ombudsman SA's recommendations.

However, any report from the Ombudsman SA that finds an Elected Member has not breached Part 3 of the Code will not be presented to a public meeting of the Council, unless directed by the Ombudsman SA.

APPENDIX TO THE CODE - CRIMINAL MATTERS

The matters set out within the Appendix to the Code of Conduct are matters for which a criminal penalty applies. These matters must be reported to the OPI.

In addition, any alleged breach of a criminal offence provision under the *Local Government Act 1999* must also be reported to the OPI.

The Council's *Fraud, Corruption, Misconduct & Maladministration Prevention Policy* provides guidance regarding reporting requirements for public officers. This Policy ensures that the Council fulfils its responsibilities under the *Independent Commissioner Against Corruption Act 2012*.

The Independent Commissioner Against Corruption (ICAC) has also developed the *ICAC Directions and Guidelines for Public Officers*, setting out the reporting obligations and responsibilities of public officers, which include Elected Members.

Further information about reporting requirements is available on the ICAC website: <https://icac.sa.gov.au>.

REVIEW PROCESS

The Council will review this Procedure within 12 months of the next Local Government General Elections, to be held in November 2022. The Council retains the discretion to review this Procedure and to amend, repeal and to replace it at any time.

INFORMATION

The contact officer for further information at Council is the General Manager, Governance & Community Affairs, telephone 8366 4549.

ADOPTION OF THE POLICY & PROCEDURE

This Procedure was adopted by the Council on 1 March 2021.

TO BE REVIEWED

By November 2023.

APPENDIX A

Code of Conduct for Council Members

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.

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.

APPENDIX B

Section 5 of the *Independent Commissioner Against Corruption Act 2012*

seconded—a police officer or special constable is seconded to assist the Commissioner for the purposes of this Act if the police officer or special constable is employed in accordance with an arrangement whereby the police officer or special constable is granted leave without pay in relation to his or her appointment under the *Police Act 1998* for the purpose of being engaged as an employee under section 12 of this Act;

statement of information—see section 28;

vehicle means a vehicle, vessel or aircraft and includes a caravan, trailer and anything attached to a vehicle.

- (2) For the purposes of this Act, misconduct or maladministration in public administration will be taken to be *serious or systemic* if the misconduct or maladministration—
- (a) is of such a significant nature that it would undermine public confidence in the relevant public authority, or in public administration generally; and
 - (b) has significant implications for the relevant public authority or for public administration generally (rather than just for the individual public officer concerned).

5—Corruption, misconduct and maladministration

- (1) *Corruption in public administration* means conduct that constitutes—
- (a) an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:
 - (i) bribery or corruption of public officers;
 - (ii) threats or reprisals against public officers;
 - (iii) abuse of public office;
 - (iv) demanding or requiring benefit on basis of public office;
 - (v) offences relating to appointment to public office; or
 - (b) an offence against the *Public Sector (Honesty and Accountability) Act 1995* or the *Public Corporations Act 1993*, or an attempt to commit such an offence; or
 - (ba) an offence against the *Lobbyists Act 2015*, or an attempt to commit such an offence; or
 - (c) 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 an attempt to commit such an offence; or
 - (d) any of the following in relation to an offence referred to in a preceding paragraph:
 - (i) aiding, abetting, counselling or procuring the commission of the offence;

- (ii) inducing, whether by threats or promises or otherwise, the commission of the offence;
 - (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
 - (iv) conspiring with others to effect the commission of the offence.
- (2) If the Commissioner suspects that an offence that is not corruption in public administration (an *incidental offence*) may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of corruption in public administration (whether or not the Commissioner has identified the nature of that corruption), then the incidental offence is, for so long only as the Commissioner so suspects, taken for the purposes of this Act to be corruption in public administration.
- (3) *Misconduct in public administration* means—
 - (a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
 - (b) other misconduct of a public officer while acting in his or her capacity as a public officer.
- (4) *Maladministration in public administration*—
 - (a) means—
 - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
 - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
 - (b) includes conduct resulting from impropriety, incompetence or negligence; and
 - (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
- (5) Without limiting or extending the conduct that may comprise corruption, misconduct or maladministration in public administration, this Act applies to conduct that—
 - (a) occurred before the commencement of this Act; or
 - (b) occurs outside this State; or
 - (c) comprises a failure to act; or
 - (d) is conduct of a person who was a public officer at the time of its occurrence but who has since ceased to be a public officer; or
 - (e) is conduct of a person who was not a public officer at the time of its occurrence but who has since become a public officer.
- (6) A reference in subsection (3) to a code of conduct does not include any statement of principles applicable in relation to the conduct of members of Parliament.