



# COUNCIL POLICY

## Employee Code of Conduct

<b>Policy Number:</b>	PO014		
<b>Strategic Plan Objective</b>	Goal 5 - Responsible Governance		
<b>Policy Owner:</b>	Chief Executive Officer	<b>Record Number:</b>	16/13873[v5]
<b>Responsible Officer:</b>		<b>Minute Reference:</b>	163/2020
<b>Date Adopted:</b>	08/07/2020	<b>Next Review Date:</b>	08/07/2024

### 1. POLICY OBJECTIVES

This policy sets out the standards of behaviour expected of Yorke Peninsula Council (Council) employees and any person who carries out work in any capacity for the Council (Council Work) in the performance of their duties and in carrying out their functions as public officers.

The purpose of this policy is ensure a high level of integrity in the conduct of Council business and to contribute to good organisational culture.

### 2. SCOPE

Council employees must comply with the provisions of this Employee Code of Conduct (Code of Conduct) in carrying out their functions as public officers.

Other persons working on behalf of Council are also expected to comply with the provisions of the Code of Conduct, including:

- Employees of a labour hire company;
- Apprentices or trainees;
- Student or work experience placements; and
- Volunteers.

### 3. DEFINITIONS

Definitions are provided in Attachment 1.

### 4. POLICY STATEMENT

This policy operates in addition to the Code of Conduct for Employees, as per Section 110 of the Local Government Act 1999 (the Act) as provided at Attachment 2 and Local Government (General) Regulations 2013, as provided in Attachment 3.

This policy is based upon the following principles, which are fundamental to ensuring integrity in public administration and good governance:

1. Integrity, impartiality and good decision making;
2. Promotion of the aims and objectives of local government; and
3. Accountability and transparency.

It is the personal responsibility of Council employees to ensure that they are familiar with, and comply with, this policy at all times.

Nothing in this policy in any way derogates from the rights of an employee or duties of an employer under the Fair Work Act 1994, other legislation, an award, an industrial agreement or contract of employment.

All Council employees have a reporting responsibility to ensure fellow employees are held accountable for inappropriate conduct, if they become aware of such conduct. In addition, in accordance with the Independent Commissioner Against Corruption Act 2012 (ICAC), employees are required to report serious or systemic corruption, misconduct or maladministration that comes to their attention. This policy should be read in conjunction with other Public Officer responsibilities including:

- PO148 Fraud and Corruption Prevention Policy;
- PO150 Gifts and Benefits Policy;
- PO171 Public Interest Disclosure Policy;
- PR152 Public Interest Disclosure Procedure
- PO026 Fair Treatment Policy; and
- PO037 Internal Review of Council Decision Policy.

A failure to comply with this policy, can constitute a ground for disciplinary action against the employee, including dismissal in line with Councils Support, Disciplinary and Performance Management Policy (PO146).

### 4.1. Integrity, Impartiality and Good Decision Making

The principle of integrity, impartiality and good decision making underpins confidence in the dealings of local government and assists Council in meeting its legislative obligations.

In keeping with this principle, Council employees must:

1. Act honestly, ethically, impartially and with integrity in the performance of their duties by:
  - Ensuring decision making processes are fair, transparent, objective, impartial, justifiable and lawful;
  - Ensuring advice provided is objective, impartial, justifiable and lawful;
  - Not influencing, in an improper manner, the making of decisions by others; and
  - Not seeking or accepting gifts or benefits except as permitted by the Code of Conduct for Employees (Attachment 2) and Council's Gifts and Benefits Policy PO150.
2. Ensure that personal interests, including financial interests, do not influence or interfere with the performance of Council work by:
  - Ensuring that relationships with external parties do not improperly influence, affect judgement, decisions and/or actions;
  - Identifying, disclosing and managing Conflicts of Interest in accordance with the Act (Section 120);

- Abstaining from carrying out any secondary employment for which a Conflict of Interest exists in line with the Secondary Employment Policy (PO159), unless the CEO determines otherwise.
  - Abstaining from carrying out Council Work in relation to any matter for which a Conflict of Interest exists, unless the CEO determines otherwise.
    - In the case that the CEO has an interest in a matter in relation to which they are required or authorised to act in the course of official duties, the CEO must disclose the interest to the Elected Body and must not, unless the Elected Body otherwise determines during a Council meeting that is open to the public, act in relation to the matter; or
    - Where a Council employee (other than the CEO) has an interest in a matter in relation to which he or she is required or authorised to act in the course of official duties, must disclose the interest to the CEO and must not, unless the CEO otherwise determines, act in relation to the matter; or
    - If an employee or any other person undertaking Council Work is entitled to act in relation to a matter and the employee is providing advice or making recommendations to the Council or a Council committee on the matter, the Council employee must also disclose the relevant interest to the Council or Council committee.
3. Demonstrate reasonable, just, respectful and non-discriminatory behaviour when dealing with all people that:
- Generates and fosters community trust and confidence in the Council;
  - Provides a fair and balanced representation of the decisions and policies of the Council;
  - Supports the decisions and policies of the Council and does not adversely reflect on the reputation of the Council;
  - Does not adversely affect the health and safety of other persons, as required by the Work Health and Safety (WHS) Act 2012 and Council's WHS policies and procedures; and
  - Employees and any other person who carry out Council Work must not publically criticise an Elected Member or any another person who carries out Council Work.

#### **4.2. Promotion of Aims and Objectives of Local Government**

The principle supporting the promotion of the aims and objectives of Local Government ensures programs, services and resources are consistently managed and delivered to the community as intended by Council.

Council employees must:

- Comply with all Council resolutions, policies, procedures, processes and codes;
- Remain accountable and responsible for the use and collection of public funds;
- Use their best endeavours to provide accurate information at all times;
- Base decisions or actions on information that is factually correct, and after obtaining and considering all relevant information;

- Comply with all lawful and reasonable directions;
- Not release or divulge information that the Council or CEO of the Council has ordered be kept confidential, or that the Council employee should reasonably know is information that is confidential, including information that is considered by the Council or the CEO in confidence, subject to the Ombudsman Act 1972 and the ICAC Act 2012 (ICAC Act);
- Only make public comment when specifically authorised to do so by the CEO or the Mayor, and restrict such comment to factual information and professional advice;
- Take responsibility for the health and safety of themselves and others when carrying out their duties and activities, which includes general wellbeing and physical injury;
- Maintain adequate documentation to support important decisions and actions; and
- Commit to the continuous improvement of Council's capacity and performance, its planning, processes and service delivery.

#### **4.3. Accountability and Transparency**

The principle supporting accountability and transparency contributes to community trust and confidence and ensures a high level of integrity in the conduct of Council business.

Council Employees will:

- Deal with information received in a responsible manner, including after having carried out the Council Work;
- Not make improper use of information, including confidential information, acquired by virtue of their position;
- Use Council resources effectively and prudently;
- Must not use Council resources, including the services of Council staff, for private purposes, unless legally or properly authorised to do so and payments are made where appropriate; and
- Must not use public funds or resources in a manner that is irregular or unauthorised.

## **5. CONFIDENTIALITY**

The identity of the person(s) making a complaint (Complainant) will be maintained as confidential. The rights of individuals must be protected and all complaints, including any subsequent investigations, will be managed in the strictest confidence.

The identity of a Complainant or the person who is the subject of the complaint may only be divulged where:

- Doing so is necessary for the matter to be properly investigated (but only to the extent necessary to ensure proper investigation);
- The Complainant consents to his/her identity being disclosed;
- There is a legislative requirement for disclosure; and
- The recipient believes on reasonable grounds that it is necessary to divulge the identity of the Complainant in order to prevent or minimise an imminent risk of serious physical injury or death to any person.

A Complainant may wish to remain anonymous, but in that event must ensure that the allegation is sufficiently supported by the provision of necessary details and evidence to enable the matter to be properly investigated.

The Council will take action as appropriate in the circumstances to protect Complainants from Victimisation.

## **6. COMPLAINTS**

Any person may make a complaint about a Public Officer under this Policy. Complaints must be in writing, identify which provision of this policy is alleged to have been breached and provide all available evidence to support the allegation(s). Complaints will be managed in accordance with Council's Public Interest Disclosure Policy PO171 and Public Interest Disclosure Procedure PR152.

Complaints about a Council volunteer must be made in writing, identify which provision of this policy is alleged to have been breached and provide all available evidence to support the allegation(s). Complaints will be managed in accordance with Council's Volunteer Policy PO137.

In considering the lodgement of a complaint about a breach of this policy, the Independent ICAC Act and Public Interest Disclosure Act 2018 must be considered.

Complaints about this policy that do not relate to behavioural matters will be managed in accordance with Council's Complaints Policy (PO147).

## **7. RIGHTS TO APPEAL DECISIONS ABOUT COMPLAINTS**

A Council employee has the right to appeal decisions about complaints in accordance with Council's Fair Treatment Policy (PO026). This policy does not prevent complaints of unfair treatment being made directly to an appropriate external body or other legal processes at any time.

Members of the community have the right to seek an external review of internal decisions through the OPI, Ombudsman, or other legal processes at any time.

## **8. RECORDS MANAGEMENT**

Records shall be maintained as required by Councils Records Management Policy (PO063) and relevant legislation.

## **9. REVIEW**

This policy will be reviewed every four (4) years, in consultation with employees and/or their nominated representative(s). The policy will also be reviewed as deemed necessary in consideration of any changes to legislation, relevant standards, codes and guidelines or audit findings.

## **10. TRAINING**

Council will ensure that Council employees are aware of their obligations under this policy and provide training to assist in meeting their responsibilities.

Persons responsible for managing complaints under this policy will be appropriately trained in keeping with the nature of complaints they are expected to resolve.

Training needs will be identified through the performance review, audit and training needs analysis processes. Training will also occur and as necessary in response to changes to legislation and relevant standards, codes and guidelines.

**11. RELATED COUNCIL POLICIES AND DOCUMENTS**

- PO001 Work Health Safety and Return to Work;
- PO020 Social Media Policy;
- PO026 Fair Treatment Policy;
- PO037 Internal Review of Council Decisions Policy;
- PO063 Records Management Policy;
- PO137 Volunteer Policy;
- PO146 Support, Disciplinary and Performance Management Policy;
- PO147 Complaints Policy;
- PO148 Fraud and Corruption Policy;
- PO150 Gifts and Benefits Policy;
- PO153 Information Systems Access Control Policy;
- PO159 Secondary Employment Policy;
- PO171 Public Interest Disclosures Policy;
- PR152 Public Interest Disclosure Procedure;
- Council’s Training Needs Analysis (elementSTAFF); and
- Yorke Peninsula Council Enterprise Agreements (SA Municipal Officers and Local Government Employees).

**12. REFERENCES AND LEGISLATION**

- Independent Commissioner Against Corruption Act (SA) 2012;
- Local Government (General) Regulations 2013;
- Local Government Act 1999;
- Local Government Association Model Employee Conduct Policy
- Ombudsman Act 1972;
- Public Interest Disclosure Act 2018; and
- Work Health and Safety Act 2012.

**13. COUNCIL DELEGATION**

<b>Details of Delegation:</b>	Chief Executive Officer
<b>Delegate:</b>	Nil

**14. VERSION HISTORY**

<b>Version No</b>	<b>Issue Date</b>	<b>Description of Change</b>
1.0	07/04/2003	New Policy
2.0	14/09/2010	Added reference to Section 91a of the Local Government (Elections) Act 1999 and included related documents.
3.0	11/07/2012	Complete rewrite in line with new Policy template.
4.0	14/02/2014	Adopted Code of Conduct for Council Employees as gazetted on 13/02/2014.
5.0	08/07/2020	Complete rewrite incorporating Local Government Associations model documentation.

**Attachment 1**

<p>Conflict of Interest</p>	<p>Any person who carries out Council Work has an interest in a matter if the person, or another person with whom the person carrying out Council Work is closely associated, would, if the person carrying out Council Work acted in a particular manner in relation to the matter, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment or a non-pecuniary detriment.</p> <p>A person is closely associated with a person carrying out Council Work —</p> <p>(a) if that person is a body corporate of which the person carrying out Council Work is a director or a member of the governing body; or</p> <p>(b) if that person is a proprietary company in which the person carrying out Council Work is a shareholder; or</p> <p>(c) if that person is a beneficiary under a trust or an object of a discretionary trust of which the person carrying out Council Work is a trustee; or</p> <p>(d) if that person is a partner of the person carrying out Council Work; or</p> <p>(e) if that person is the employer or an employee of the person carrying out Council Work; or</p> <p>(f) if that person is a person from whom the person carrying out Council Work has received or might reasonably be expected to receive a fee, commission or other reward for providing professional or other services; or</p> <p>(g) if that person is a relative of the person carrying out Council Work.</p> <p>However, a person carrying out Council Work, or a person closely associated with a person carrying out Council Work, will not be regarded as having an interest in a matter—</p> <p>(a) by virtue only of the fact that the a person carrying out Council Work or person closely associated with the person carrying out Council Work —</p> <p style="padding-left: 40px;">(i) is a ratepayer, elector or resident in the area of the council; or</p> <p style="padding-left: 40px;">(ii) is a member of a non-profit association, other than where the person carrying out Council Work or person closely associated with the person carrying out Council Work is a member of the governing body of the association or organisation; or</p> <p>(b) in a prescribed circumstance (as per Section 120 of the Act).</p>
<p>Public Officer</p>	<p>The officers listed in Schedule 1 of the ICAC Act, which includes “<i>an officer or employee of a local government body</i>”.</p>
<p>Council Employee</p>	<p>All Council employees in addition to other persons working on behalf of Council, including:</p> <ul style="list-style-type: none"> <li>• employees of a labour hire company;</li> <li>• Apprentices or trainees;</li> <li>• Student or work experience placements; and</li> <li>• Volunteers.</li> </ul>

**Extract from the Local Government Act 1999  
Section 110**

1.1.2019—Local Government Act 1999  
Council staff—Chapter 7  
Conduct of employees—Part 4  
General duty and code of conduct—Division 1

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**Part 4—Conduct of employees**

**Division 1—General duty and code of conduct**

**108—Interpretation**

In this Division—

*employee* of a council includes a person working for the council on a temporary basis;  
*registered industrial association* means an industrial association or organisation registered under a law of the State or of the Commonwealth.

**109—General duty**

- (1) An employee of a council must at all times act honestly in the performance of official duties.
- (2) An employee of a council must at all times act with reasonable care and diligence in the performance of official duties.

**110—Code of conduct for employees**

- (1) The Governor may, by regulation, prescribe a code of conduct to be observed by the employees of all councils.
- (2) The Minister must consult with any registered industrial association that represents the interests of employees of councils before the regulation is made.
- (3) A code of conduct must not diminish a right or employment condition under an Act, award, industrial agreement or contract of employment.
- (4) Council employees must observe the code of conduct.
- (5) Contravention of or failure to comply with the code of conduct constitutes a ground for suspending, dismissing or taking other disciplinary action against the employee.

**110A—Duty to protect confidential information**

- (1) An employee or former employee of a council must not disclose information or a document in relation to which there is an order of a council or council committee in effect under section 90 requiring the information or document to be treated confidentially.  
Maximum penalty: \$10 000 or 2 years imprisonment.
- (2) Nothing in subsection (1) prohibits the disclosure of information or a document where the disclosure is required or authorised by law.

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**Extract from Local Government (General) Regulations 2013**

**Schedule 2A—Code of conduct for employees**

**1—Gifts and benefits**

- (1) An employee of a council must not seek out or receive a gift or benefit that is, or could reasonably be taken to be, intended or likely to create a sense of obligation on the part of the employee to a person or influence the employee in the performance or discharge of the employee's functions or duties.
- (2) If an employee of a council receives a gift or benefit of an amount greater than the amount determined by the Minister (from time to time), by notice published in the Gazette, the employee must provide details of the gift or benefit to the chief executive officer of the council in accordance with any requirements of the chief executive officer.
- (3) The chief executive officer of a council must maintain a register of gifts and benefits received by employees of the council and must ensure that the details of each gift and benefit provided under this clause are included in the register.
- (4) A register maintained under this clause must be—
  - (a) made available for inspection at the principal office of the council during ordinary office hours without charge; and
  - (b) published on a website determined by the chief executive officer.
- (5) A register maintained under this clause—
  - (a) need not include information available in another register published by, or available for inspection at, the council or otherwise available under the Act; and
  - (b) may include information by reference to another register or document, provided the register or document is published by, or available for inspection at, the council and the register maintained under this clause identifies that other register or document.
- (6) For the purposes of this clause, a gift or benefit received by a person related to an employee of a council will be treated as a gift or benefit (as the case requires) received by the employee.
- (7) Unless the contrary intention appears, terms and expressions used in this clause and in Schedule 3 of the Act have the same respective meanings in this clause as they have in that Schedule, provided that a reference in Schedule 3 to a *member* will be taken, for the purposes of this clause, to be a reference to an *employee*.

**Note—**

The Act requires that certain gifts and benefits must be disclosed by employees and recorded on the Register of Interests relating to employees.

## **2—Complaints**

- (1) A complaint alleging that an employee of a council has contravened or failed to comply with the code set out in this Schedule must be dealt with in accordance with a policy prepared and maintained by the council relating to complaints against employees.
- (2) The policy referred to in subclause (1) must nominate a person or persons to whom complaints are to be given and, in the case of a complaint against the chief executive officer of the council, must provide for the complaint to be given to the principal member of the council, except in circumstances where it would be inappropriate to do so (for example, if the matter to which the complaint relates must be kept confidential under an Act or law).

### **Note—**

- 1 Chapter 13 Part 2 of the Act requires a council to develop and maintain policies, practices and procedures for dealing with (among other things) complaints about the actions of employees of the council.
- 2 The code set out in this Schedule is in addition to and does not—
  - (a) limit the operation of the *Fair Work Act 1994*; or
  - (b) operate to lessen any rights or obligations on employees or employers under the *Fair Work Act 1994* or any award, industrial agreement or contract of employment; or
  - (c) affect the jurisdiction of the South Australian Employment Tribunal conferred under the *Fair Work Act 1994*.