



TATIARA DISTRICT COUNCIL

CODE OF CONDUCT FOR ELECTED MEMBERS POLICY

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Introduction

- (1) This code of conduct sets out principles of good conduct and standards of behaviour that are desired and expected of the elected members of the Tatiara District Council as required by Section 63 of the Local Govt Act 1999.
- (2) Elected members, officers and employees of Local Government work together in the best interests of their local communities and the general public. A primary responsibility for those in the Local Government sector is to be accountable by acting in a proper manner according to the law and to be aware of the provisions of the various relevant Acts, Regulations and Codes of Practice that apply to and govern public responsibilities and duties.
- (3) Pursuant to the Criminal Law Consolidation Act, elected members, officers and employees are all considered to be public officers. As public officers of the council body corporate, they are legally obliged to act in good faith and conscientiously perform their duties in a professional manner with honesty and integrity. They must not solicit, demand or request any gift or benefit for themselves or anyone else. (Please also refer to Part 6, Benefits, Expenses and Facilities).
- (4) Under the Criminal Law Consolidation Act there are severe penalties for offences relating to public officers. Offences include bribery, corruption, threats and abuse of public office and carry a penalty of imprisonment for up to 7 years.
- (5) The Local Government Act also contains various provisions governing conduct and behaviour such as conflict of interest.
- (6) Disclosure of private interests is dealt with in Sections 73 to 75 of the Local Government Act 1999. This includes reference to Primary and Ordinary Returns that elected members, the Chief Executive Officer and senior management staff must complete. Use of confidential information is dealt with in Council's Meeting Code of Practice.
- (7) This code complements the legally enforceable requirements that are contained in the various State Acts.

Statement of the General Duties of Council Members

- (1) The general duties of Council Members are to act honestly and with reasonable care and diligence in the performance and discharge of official functions and duties. Council Members must not make improper use of information acquired or make improper use of their position as a Member of Council.
- (2) The general duties are set out in Section 62 of the Local Government Act 1999. (Refer Appendix 1).

Principles of this Code of Conduct

- (1) A Member of Council must:
 - (a) Act in a fair, honest and proper manner accordingly to the law.
 - (b) Be aware of the provisions of the Local Government Act 1999 and various other Acts, Regulations and Codes of Practice that apply to and govern public responsibilities and duties.
 - (c) At all times act in good faith and in a reasonable, just and non-discriminatory manner when dealing with people.

- (d) Conduct themselves in a way that generates community trust and confidence in them.
- (e) Behave in a manner that maintains and enhances the image of Council and does not reflect adversely on Council.
- (f) Act honestly, in good faith and to the best of their ability in the interests of the Council
- (g) Not allow conflicting interests or personal advantage to override the interests of the Council.
- (h) Be honest and fair when seeking reimbursement of expenses and usage of Council equipment for official purposes.

Roles of Elected Members

- (1) Elected members should generally conduct themselves in a way that reflects community trust and confidence in them as individuals and enhances the role and image of Local Government.
- (2) They should be well informed about the roles, functions and processes of their Council.
- (3) Elected members in fulfilling their various roles and activities of office should focus on -
 - (a) Providing community leadership;
 - (b) Consulting with and representing the community;
 - (c) Contributing to the collective decision making of the Council;
 - (d) Setting policies, goals and objectives, and determining strategies to achieve the goals and objectives in the Council's strategic and corporate plans;
 - (e) Collectively monitoring the overall performance of the Council against the stated goals and objectives in the strategic and corporate plans;
 - (f) Ensuring accountability and sound financial management;
 - (g) Representing the Council to the community;
 - (h) Being aware of the statutory obligations imposed on elected members and on Councils;
 - (i) Undertaking appropriate professional development.

Community Expectations

- (1) Local Government is the sphere of government closest to the people. The actions and behaviour of elected members are likely to be closely monitored by the local community.
- (2) In performing their roles and functions the community expects that elected members will:
 - (a) Be committed to ethical behaviour;
 - (b) Deal with all members of the community honestly, fairly, and not offend or embarrass individuals or groups;
 - (c) Not discriminate against people on the basis of sex, sexuality, marital status, pregnancy, race, physical impairment, intellectual impairment or age;
 - (d) Be aware of situations that may create a tension between their public and private roles and in such cases give priority to the public role; (please also refer to Council's Meeting Code of Practice).
 - (e) Ensure that Council mechanisms are in place to deal promptly and efficiently with the handling of community complaints and concerns.

Use of Information

- (1) Elected members are often provided with information that may need to be considered or handled in a confidential manner.

- (2) The use of Council information obtained through their role with the Council for financial or other personal advantage is illegal.
- (3) Elected members shall:
 - (a) Observe any specific policies that the Council has on the use of Council information;
 - (b) Be careful and prudent about how they collect and use confidential or controversial information;
 - (c) Balance the interests of the community and its right to information with the potential for significant damage to occur if confidentiality is not maintained in relation to information or documents that are likely to be determined by the Council to be confidential;
 - (d) Not use or disclose information in a way that may:
 - (i) Cause significant damage or distress to a person;
 - (ii) Cause significant damage to the interests of the Council or a person; or confer an unfair commercial or financial advantage on a person.
 - (e) Observe any order made by the Council or a Council Committee that a document is to remain confidential until such time as that order ceases to apply.

(Please also refer to Council's Meeting Code of Practice)

Communication and the Media

- (1) Council has established a protocol for public relations. The Mayor and Chief Executive Officer will normally act as Council spokesperson, however this may be varied at the discretion of the Mayor and Chief Executive Officer as required by the subject matter being discussed.
- (2) Elected members, officers and employees shall be responsive to the concerns of the community and communicate the views, decisions, policies and procedures of the Council.
- (3) Elected members should also ensure that:
 - (a) Information concerning adopted policies, procedures, and decisions of the Council is conveyed accurately;
 - (b) Reports to the media are responsible and do not contain information that may be determined by the Council to be confidential;
 - (c) Information which the Council has resolved should remain confidential is not communicated until it is determined by the Council to no longer be confidential;
 - (d) Formal notification of Council decisions on approvals, permits, and suchlike, is only communicated in an official capacity by a designated officer of the Council;
 - (e) When speaking to the community, or the media, they make clear whether or not they are representing the Council in accordance with an adopted Council position, policy or procedure, or if they are presenting a personal viewpoint as an individual, not on behalf of the Council;
 - (f) When expressing personal views care is taken not to show disrespect for the Council, its decisions, decision-making process or other elected members, officers or employees.

Working Relationship with Other Elected Members

- (1) Members will establish a working relationship with fellow Members that recognises and respects the diversity of opinion and achieves the best possible outcomes for the community.

- (2) Council Members should:
 - (a) Conduct their relationship with each other with courtesy and respect
 - (b) Seek to establish mature and constructive working relationships
 - (c) Respect each others points of view and diversity of opinions

Elected Member and Staff Relationships

- (1) Effective elected members, officers and employees work together as part of the Council team.
- (2) The teamwork of elected members and staff is based on mutual respect and co-operation to achieve the Council's strategic and corporate goals and implement its policies.
- (3) To achieve the teamwork approach, elected members, officers and employees need to:
 - (a) Develop mature and constructive working relationships based on mutual trust;
 - (b) Establish an effective means of communication and be clear about the distinction in the roles of elected members and staff and how they work together for the benefit of the community;
 - (c) Accept that the elected member role is a community representative and leadership one to determine goals and policies;
 - (d) Observe Council policy and practice re the various staff members to approach to obtain routine reports or other information;
 - (e) Not publicly criticise individuals in a way that casts doubts on their competence and integrity.
 - (f) Not use their position to improperly influence an individual to gain an advantage for themselves or others.
- (4) In addition to the above:
 - (a) Elected members must not direct officers or employees, this is the responsibility of the Chief Executive Officer;
 - (b) Any matters of concern that elected members have in relation to another elected member should be raised with the Mayor, unless the concern relates to the Mayor in which case it should be raised with the Deputy Mayor and/or with the Chief Executive Officer;
 - (c) Any matters of concern in relation to officers and employees should be raised with the Chief Executive Officer who is responsible for such matters;
 - (d) Any matters of concern in relation to the Chief Executive Officer should be raised with the Mayor.

Benefits, Expenses and Facilities

- (1) Elected members incur expenses in performing their duties. The Local Government Act provides for appropriate allowances and the reimbursement of prescribed expenses for elected members (sections 76 to 80).
- (2) Elected members, should
 - (a) Only claim for legitimate expenses incurred while acting on Council business as prescribed in Councils Elected Members' Allowances and Support Policy
 - (b) In claiming expenses, have regard to the level or amounts specified in any Council policy;
 - (c) Use Council facilities, equipment and resources (provided to assist individuals to undertake their Council duties) in a proper and responsible manner in accordance with Council policies;

- (d) Not solicit, demand or request gifts or any other personal benefit by virtue of their position and notify the Mayor or Chief Executive Officer of any gifts or benefits offered.
 - (e) Where a gift or benefit is received, full details shall be disclosed to the Chief Executive Officer who will maintain a register, which is to be publicly available.
- (3) A **gift** shall be defined as one whose value was such that there would be a possible expectation or a perceived obligation to return the favour. An example of this would be that inexpensive pens, items of minor stationary, baseball caps WOULD NOT be defined as gifts. If a Councillor is in any doubt about the definition then they should contact the CEO.

The term "gift" does not include:

- (a) Items given which are associated with the giving of gifts in accordance with social custom. These items may include token gifts of appreciation or gifts of a symbolic nature such as ties, scarves, cuff links, pens, calendars, diaries and other small items.
 - (b) The provision of hospitality, which is within the bounds of normal customary hospitality.
- (4) If any gift, reward or benefit is offered other than gifts of a token kind, or moderate acts of hospitality, disclosures must be made in a prompt and full manner to the Chief Executive Officer.
- (5) In all cases, if the acceptance of any offer of a gift or benefit no matter how nominal in value could in any way be seen to compromise a person's capacity to perform their duties impartially or to create an obligation, the offer should not be accepted.
- (6) Elected Members may accept gifts on behalf of Council provided that they are obviously mementos or gifts of a symbolic nature with such gifts becoming the automatic property of the Council.

Appointments to other Bodies

- (1) Elected members may be asked to represent their Council on external organisations as part of their community representative or corporate role.
- (2) Some appointments may be to other government committees or as a Council representative in a particular community interest group.
- (3) It is important that elected members:
 - (a) Clearly understand the basis of their Council nominated appointment and are aware of the ethical and legal responsibilities attached to such appointments;
 - (b) Are aware of all relevant Council policies;
 - (c) Balance and represent the interests of the Council and the local community;
 - (d) Remain objective and not seek to influence the Council so as to give preferential treatment to such bodies;
 - (e) Provide regular reports to the Council on the activities of the organisation.
 - (f) Inform the Mayor or Chief Executive Officer respectively, in writing, of any intention to undertake an activity which may interfere with their role as a public officer.

Behavior Contrary to the Code of Conduct

- 1. The Council is committed to supporting members in complying with the Code of Conduct and to investigate and address any complaints made relating to the Code.

Complaint Handling Process

1. Making a Complaint

- a) A complaint made by any person that relates to an alleged breach of this Code of Conduct must:
 - I. Be made in writing; and
 - II. Identify the provision(s) of this Code which it alleges have been breached and provide all available evidence that supports the allegation(s) of breach; and
 - III. Be delivered to the Mayor (which includes any person acting in the Office of Mayor), (in the case of a complaint against a Council Member); or
 - IV. Be delivered to the Deputy Mayor (in the case of a complaint against the Mayor).
- b) Receipt of the complaint will be acknowledged to the complainant within 3 days of receiving the complaint.
- c) The Council Member about whom the complaint has been made will be notified within 3 days of receipt of the complaint and of its substance.
- d) The complaint will be treated with strict confidentiality until such time as it has been fully investigated and finally determined, subject to satisfying the requirements of Section 90(3) of the *Local Government Act 1999*. The complainant will also be expected to observe confidentiality.
- e) On receipt of a complaint the Mayor (or the Deputy Mayor, as the case may be) must bring the fact of the complaint but not the detail of the allegations to the attention of the Council at the next formal meeting of the Council and it is to be received by the Council in confidence, subject to meeting one or more of the grounds under Section 90(3) of the *Local Government Act 1999*.
- f) An allegation of illegal behaviour will not be investigated by the Council under this Code of Conduct but will, instead, be referred to the appropriate authority. Allegations of corruption will be referred to the Anti Corruption Branch of SAPOL. Allegations of other illegal behaviour may be referred to the Minister for State Local Government Relations. To ensure any future investigation is not compromised, the Council Member about whom the complaint is made will not be advised of the receipt of the complaint by the Council, or its referral to the investigation authority. Council will not be advised until after the investigating authority has completed its investigation.

2. Assessment of Complaint

- a) The Council will cause a proper investigation of the complaint by obtaining the services of a suitably qualified, mutually agreed, Independent Assessor to conduct the investigation. Where the parties are unable to agree upon the Independent Assessor within a reasonable period of time (as determined by the Council) a person nominated by the Chief Executive Officer of the Local Government Association of South Australia will be appointed to conduct the investigation.
- b) The following processes will be followed with respect to assessment and investigation of complaints depending on the level of seriousness:
 - i. The Independent Assessor may determine that no further action should be taken with respect to an alleged breach where the Independent Assessor determines that the allegation is frivolous or vexatious. In this case the

Independent Assessor will prepare a report to that effect and provide it to the Mayor.

- ii. If the Independent Assessor/Committee identifies issues of substance that warrant further investigation:
- The investigation will be a thorough and balanced assessment of the available evidence regarding the alleged breach, the relevant circumstances prevailing at the time of the alleged breach and any other factors deemed relevant to making a fair and reasonable judgement about the matter.
 - The Council Member the subject of the allegation(s) will be provided with a reasonable opportunity to explain his/her actions and to make a written submission on the allegations. Any such submission will be provided to the Independent Assessor.
 - The Independent Assessor must provide the Council with a final written report on the investigation undertaken within fourteen days of receiving written submissions from the person who made the complaint and/or the Council Member who is the subject of the complaint, or such longer period as the Council may determine.
 - If the final report is not received from the Independent Assessor within fourteen days the Council will ascertain from the Independent Assessor the time frame within which the Council may expect the final reports. If the Independent Assessor forms the view that additional time will be needed to conclude the investigation and finalise the report the Independent Assessor should bring this to the attention of the Council at the earliest convenience, but at the very least, before the expiration of the fourteen day timeframe.
 - If the final report makes recommendations that are punitive in nature and recommends the application of penalties, the Council Member, the subject of the allegation(s), will be provided with a reasonable opportunity to comment in writing upon the contents and findings contained in the report and on the appropriateness of the proposed penalty. Such comment must be taken into account by the Council. The complainant is not able to comment, as procedural fairness attaches to the Council Member and not the complainant.
 - The report delivered to the Council is final. There is no right of appeal on the report of the Independent Assessor.
 - The final report will be presented at a Council meeting in confidence (ie public excluded), subject to Section 90(3) of the *Local Government Act 1999* being satisfied.
 - After receipt of the final report from the Independent Assessor, the Council must convey to the Council Member who is the subject of the complaint and to the person who made the complaint, a copy of the investigation report and a copy of Council's resolution in relation to the report.
 - The final report can be subject to a s91(7) order of confidentiality, with the exception that the report has been provided to both the Council Member and the complainant concerned.

3. Penalties

- a) On receipt of the final report of the Independent Assessor the Council will determine an appropriate penalty should there be a finding that there has been a breach of this Code of Conduct.
- b) The Council has the power to impose the following penalties in relation to a finding of a breach of the Code of Conduct.
 - I. Censure the member of Council;
 - II. Request a public apology from the Council Member in relation to the breach;
 - III. Recommend the Council Member undertake a particular training course or receive appropriate instruction relevant to the breach;

and in any such case the Council may:

- IV. Make a public announcement of the complaint made against the Council Member, the determination and the penalty imposed on the Council Member.

Confidentiality & Procedural Fairness

1. All deliberations by the Council, and the independent assessment process in regard to an alleged breach of the Code of Conduct will be conducted in confidence, subject to satisfying the requirements of Section 90(3) of the *Local Government Act 1999*, and maintained as confidential until finally determined, at which time the Council must decide the ongoing status of the confidentiality order.
2. The principles of procedural fairness must be observed from the time of receipt of the complaint and during the investigation of the complaint to final determination. The final report is to show due process and the reasons for reaching the decision.

Availability of the Code

- (1) The availability of this Code shall be promoted to the local community and displayed in a prominent position at the offices of the Council. It is also available on Council's web site - www.tatiara.sa.gov.au

Adoption of the Code

- (1) Council first formally adopted a code of conduct for Elected Members on 8th August 2000.

Review

- (1) The Council will review this code within 12 months of a general election of the Council. Section 63(2) of LG Act
- (2) The next review is due by October 2015

Information

The contact officer for information in relation to this code is the Manager Corporate and Community Services, telephone: (08) 8752 1044.

Commitment of the Council Members

We the Members of the Tatiara District Council are committed to discharging our duties conscientiously and to the best of our ability.

In the performance of our community role we will act with honesty and integrity and generally conduct ourselves in a way that both generates community trust and confidence in us as individuals and enhances the role and image of the Council and Local Government generally.

We also commit to be bound by the requirements of this Code of Conduct.

Cr Steve Dick _____

Cr David Edwards _____

Cr Graham Excell _____

Cr James Jackson _____

Cr Robert Mock _____

Cr Maureen Oliver _____

Cr Diana E Penniment _____

Cr John S Ross _____

Cr Richard J Vickery _____

Cr Ralph Winter _____

Record of Amendments

DATE	REVISION NO	REASON FOR AMENDMENT
14 th June 2000	Rev: 00	Draft Code of Conduct
8 th August 2000	Rev: 01	Adopted Council Res No: 77
12 th Sept 2000	Rev: 02	Clearer definition of a gift was added to this paragraph
14 th August 2001	Rev: 03	Annual Review
8 th July 2003	Rev: 04	Annual Review – minor changes
11 th March 2004	Rev 05	Changed from joint Code for Elected Members and Staff to separate codes
9 th August 2005	Rev 06	Policy amended so that review takes place within 12 months after every general election rather than annually.
12 th December 2006	Rev: 07	Reviewed after November Elections
8 th July 2008	Rev: 08	Added more specific process for handling complaints
14 th December 2010	Rev: 09	Review following Council elections. Change Chairman to Mayor

APPENDIX 1

General Duties of Elected Members – Section 62 Local Government Act 1999

62. (1) A member of a council must at all times act honestly in the performance and discharge of official functions and duties.
- (2) A member of a council must at all times act with reasonable care and diligence in the performance and discharge of official functions and duties.
- (3) A member or former 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.

Maximum penalty: \$10,000 or imprisonment for two years.

- (4) 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.

Maximum penalty: \$10,000 or imprisonment for two years.