



# CORPORATE POLICY NO 1.1

## CODE OF CONDUCT FOR COUNCILLORS AND COMMITTEE MEMBERS AND GROUP MEMBERS

### DIVISION 1 – PRELIMINARY PROVISIONS

#### 1. Citation

This is the Southern Metropolitan Regional Council (SMRC) Code of Conduct for Council Members, Committee Members and Group Members.

##### 1.1. Legislation

The Local Government Act 1995 (LG Act) requires all local governments to prepare or adopt a code of conduct to be observed by elected members and committee members. The Code of conduct is consistent with the requirements of The Local Government (Administration) Regulations 1996 and other applicable laws, and is based on the *Local Government (Model Code of Conduct) Regulations 2021*.

On 2 February 2021 the following new legislation (collectively known as the New Regulations):

- Local Government (Model Code of Conduct) Regulations 2021;
- Local Government (Administration) Amendment Regulations 2021; and
- Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021,

were gazetted and came into effect on 3 February 2021, with an implementation phase of up to three months, during which time the Council will be required to undertake a series of actions to operationalise the new requirements.

##### 1.2. Scope

The code is to communicate expected standards of conduct and integrity. Effective codes that are well communicated throughout the workplace contribute to building and sustaining a culture of integrity, and create a robust and transparent framework in which to operate, both of which are fundamental to good organisational performance and public confidence.

This Code applies only to persons/individuals appointed as a Council Member, Committee Member and Group Member being a person who is not an employee, as there is a separate Code for employees. For ease of reference, the CEO and Senior Management are covered under the Code of Conduct for Employees.

#### 2. Terms used

<b>Act</b>	Means the <i>Local Government Act 1995</i> ;
<b>Complaint</b>	Means a complaint made under clause 11(1)
<b>Publish</b>	Includes to publish on a social media platform
Other terms used in this code that are also used in the Act have the same meaning as they have in the Act, unless the contrary intention appears.	
<b>Council Member</b>	Is a person appointed to the Southern Metropolitan Regional Council in accordance with the <i>Local Government Act 1995</i> and the SMRC Establishment Agreement
<b>Committee Member</b>	Is a person of any SMRC committee as appointed by the Council in accordance with the <i>Local Government Act 1995</i>
<b>Advisory Member Group</b>	Is a person of any SMRC advisory group appointed by the SMRC Chairperson, CEO or the Council

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<b>Regional Group Member</b>	<b>Executive</b>	A participant member local government employee appointed by their participant to be a member or deputy member of the SMRC's Regional Executive Group.
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## DIVISIONS 2 - GENERAL PRINCIPLES

### 3. Overview of Division

This Division sets out general principles to guide the behaviour of council members, committee members and group members.

### 4. Personal Integrity

This Division sets out general principles to guide the behaviour of council members, committee members and group members.

- 1) A council member, committee member or group member should —
  - a) act with reasonable care and diligence; and
  - b) act with honesty and integrity; and
  - c) act lawfully; and
  - d) identify and appropriately manage any conflict of interest; and
  - e) avoid damage to the reputation of the local government
  
- 2) A council member, committee member or group member should —
  - a) act in accordance with the trust placed in council members and committee members; and
  - b) participate in decision-making in an honest, fair, impartial and timely manner; and
  - c) actively seek out and engage in training and development opportunities to improve the performance of their role; and
  - d) attend and participate in briefings, workshops and training sessions provided or arranged by the local government in relation to the performance of their role.

### 5. Relationship with others

- 1) A council member, committee member or group member should —
  - a) treat others with respect, courtesy and fairness; and
  - b) respect and value diversity in the community.
  
- 2) A council member, committee member or group member should maintain and contribute to a harmonious, safe and productive work environment

### 6. Accountability

- A council member, committee member or group member should —
- a) base decisions on relevant and factually correct information; and
  - b) make decisions on merit, in the public interest and in accordance with statutory obligations and principles of good governance and procedural fairness; and
  - c) read all agenda papers given to them in relation to council or committee meetings; and
  - d) be open and accountable to, and represent, the community in the district.

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## DIVISION 3 - BEHAVIOUR

### 7. Overview of Division

This Division sets out —

- a) requirements relating to the behaviour of council members, committee members and group members; and
- b) the mechanism for dealing with alleged breaches of those requirements.

### 8. Personal Integrity

1) A council member, committee member or group member —

- a) must ensure that their use of social media and other forms of communication complies with this code; and
- b) must only publish material that is factually correct.

2) A council member, committee member or group member —

- a) must not be impaired by alcohol or drugs in the performance of their official duties; and
- b) must comply with all policies, procedures and resolutions of the local government.

### 9. Relationship with others

A council member, committee member or group member —

- a) must not bully or harass another person in any way; and
- b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and
- c) must not use offensive or derogatory language when referring to another person; and
- d) must not disparage the character of another council member, committee member or group member or a local government employee in connection with the performance of their official duties; and
- e) must not impute dishonest or unethical motives to another council member, committee member or group member or a local government employee in connection with the performance of their official duties.

### 10. Council, committee or group meetings

When attending a council, committee or group meeting, a council member, committee member or group member —

- a) must not act in an abusive or threatening manner towards another person; and
- b) must not make a statement that the member knows, or could reasonably be expected to know, is false or misleading; and
- c) must not repeatedly disrupt the meeting; and
- d) must comply with any requirements of a local law of the local government relating to the procedures and conduct of council, committee or group meetings; and
- e) must comply with any direction given by the person presiding at the meeting; and
- f) must immediately cease to engage in any conduct that has been ruled

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## 11. Complaint about alleged breach

- 1) A person may make a complaint, in accordance with subclause (2), alleging a breach of a requirement set out in this Division.
- 2) A complaint must be made —
  - a) in writing in the form approved by the local government; and
  - b) to a person authorised under subclause (3); and
  - c) within 1 month after the occurrence of the alleged breach.
- 3) The local government must, in writing, authorise 1 or more persons to receive complaints and withdrawals of complaints.

## 12. Dealing with Complaint

- 1) After considering a complaint, the local government must, unless it dismisses the complaint under clause 13 or the complaint is withdrawn under clause 14(1), make a finding as to whether the alleged breach the subject of the complaint has occurred.
- 2) Before making a finding in relation to the complaint, the local government must give the person to whom the complaint relates a reasonable opportunity to be heard.
- 3) A finding that the alleged breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.
- 4) If the local government makes a finding that the alleged breach has occurred, the local government may —
  - a) take no further action; or
  - b) prepare and implement a plan to address the behaviour of the person to whom the complaint relates.
- 5) When preparing a plan under subclause (4)(b), the local government must consult with the person to whom the complaint relates.
- 6) A plan under subclause (4)(b) may include a requirement for the person to whom the complaint relates to do 1 or more of the following —
  - a) engage in mediation;
  - b) undertake counselling;
  - c) undertake training;
  - d) take other action the local government considers appropriate.
- 7) If the local government makes a finding in relation to the complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of —
  - a) its finding and the reasons for its finding; and
  - b) if its finding is that the alleged breach has occurred — its decision under subclause (4).

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### 13. Dismissal of Complaint

- 1) The local government must dismiss a complaint if it is satisfied that —
  - a) the behaviour to which the complaint relates occurred at a council, committee or group meeting; and
  - b) either —
    - i) the behaviour was dealt with by the person presiding at the meeting; or
    - ii) the person responsible for the behaviour has taken remedial action in accordance with a local law of the local government that deals with meeting procedures.
  
- 2) If the local government dismisses a complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of its decision and the reasons for its decision.

### 14. Withdrawal of Complaint

- 1) A complainant may withdraw their complaint at any time before the local government makes a finding in relation to the complaint.
  
- 2) The withdrawal of a complaint must be —
  - a) in writing; and
  - b) given to a person authorised under clause 11(3).

### 15. Other provisions about complaints

- 1) The procedure for dealing with complaints may be determined by the local government to the extent that it is not provided for in this Division.

## DIVISION 4 - RULES OF CONDUCT

Notes for this Division:

1. Under section 5.105(1) of the Act a council member commits a minor breach if the council member contravenes a rule of conduct. This extends to the contravention of a rule of conduct that occurred when the council member was a candidate.
2. A minor breach is dealt with by a standards panel under section 5.110 of the Act.

### 16. Overview of Division

- 1) This Division sets out rules of conduct for council members.
  
- 2) A reference in this Division to a council member includes a council member when acting as a committee member.

### 17. Misuse of local government resources

- 1) In this clause —
 

*electoral purpose* means the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the *Electoral Act 1907* or the *Commonwealth Electoral Act 1918*;

resources of a local government includes —

  - a) local government property; and
  - b) services provided, or paid for, by a local government.

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- 2) A council member must not, directly or indirectly, use the resources of a local government for an electoral purpose or other purpose unless authorised under the Act, or by the local government or the CEO, to use the resources for that purpose.

### 18. Securing person advantage or disadvantaging others

- 1) A council member must not make improper use of their office —
  - a) to gain, directly or indirectly, an advantage for the council member or any other person; or
  - b) to cause detriment to the local government or any other person.
- 2) Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or *The Criminal Code* section 83.

### 19. Prohibition against involvement in administration

- 1) A council member must not undertake a task that contributes to the administration of the local government unless authorised by the local government or the CEO to undertake that task.
- 2) Subclause (1) does not apply to anything that a council member does as part of the deliberations at a council, committee or group meeting.

### 20. Relationship with local government employees

- 1) In this clause —
  - local government employee means a person —
    - a) employed by a local government under section 5.36(1) of the Act; or
    - b) engaged by a local government under a contract for services.
- 2) A council member must not —
  - a) direct or attempt to direct a local government employee to do or not to do anything in their capacity as a local government employee; or
  - b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a local government employee in their capacity as a local government employee; or
  - c) act in an abusive or threatening manner towards a local government employee.
- 3) Subclause (2)(a) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.
- 4) If a council member, in their capacity as a council member, is attending a council, committee or group meeting or other organised event (for example, a briefing or workshop), the council member must not orally, in writing or by any other means —
  - a) make a statement that a local government employee is incompetent or dishonest; or
  - b) use an offensive or objectionable expression when referring to a local government employee.
- 5) Subclause (4)(a) does not apply to conduct that is unlawful under *The Criminal Code* Chapter XXXV.

### 21. Disclosure of information

- 1) In this clause —
  - closed meeting means a council, committee or group meeting, or a part of a council, committee or group meeting, that is closed to members of the public under section 5.23(2) of the Act;

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*confidential document* means a document marked by the CEO, or by a person authorised by the CEO, to clearly show that the information in the document is not to be disclosed;  
*document* includes a part of a document;  
*non-confidential document* means a document that is not a confidential document.

- 2) A council member must not disclose information that the council member —
  - a) derived from a confidential document; or
  - b) acquired at a closed meeting other than information derived from a non-confidential document.
  
- 3) Subclause (2) does not prevent a council member from disclosing information —
  - a) at a closed meeting; or
  - b) to the extent specified by the council and subject to such other conditions as the council determines; or
  - c) that is already in the public domain; or
  - d) to an officer of the Department; or
  - e) to the Minister; or
  - f) to a legal practitioner for the purpose of obtaining legal advice; or
  - g) if the disclosure is required or permitted by law.

## 22. Disclosure of interests

- 1) In this clause —
  - interest* —
    - a) means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest; and
    - b) includes an interest arising from kinship, friendship or membership of an association.
  
- 2) A council member who has an interest in any matter to be discussed at a council, committee or group meeting attended by the council member must disclose the nature of the interest —
  - a) in a written notice given to the CEO before the meeting; or
  - b) at the meeting immediately before the matter is discussed.
  
- 3) Subclause (2) does not apply to an interest referred to in section 5.60 of the Act.
  
- 4) Subclause (2) does not apply if a council member fails to disclose an interest because the council member did not know —
  - a) that they had an interest in the matter; or
  - b) that the matter in which they had an interest would be discussed at the meeting and the council member disclosed the interest as soon as possible after the discussion began.
  
- 5) If, under subclause (2)(a), a council member discloses an interest in a written notice given to the CEO before a meeting, then —
  - a) before the meeting the CEO must cause the notice to be given to the person who is to preside at the meeting; and
  - b) at the meeting the person presiding must bring the notice and its contents to the attention of the persons present immediately before any matter to which the disclosure relates is discussed.

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- 6) Subclause (7) applies in relation to an interest if —
  - a) under subclause (2)(b) or (4)(b) the interest is disclosed at a meeting; or
  - b) under subclause (5)(b) notice of the interest is brought to the attention of the persons present at a meeting.
  
- 7) The nature of the interest must be recorded in the minutes of the meeting.

### 23. Compliance with plan requirement

If a plan under clause 12(4)(b) in relation to a council member includes a requirement referred to in clause 12(6), the council member must comply with the requirement.

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## REFERENCES & REVIEW

<b>Statutory Compliance</b>	<ul style="list-style-type: none"> <li>▪ Local Government Act 1995</li> <li>▪ <a href="#">Local Government (Model Code of Conduct) Regulations 2021</a></li> <li>▪ Local Government (Administration) Regulations 2021</li> <li>▪ Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021</li> </ul>						
<b>Organisational Compliance</b>	<ul style="list-style-type: none"> <li>▪ Misconduct, Fraud &amp; Corruption Prevention Policy</li> </ul>						
<b>Related Documents</b>	<ul style="list-style-type: none"> <li>• <a href="#">Model Code of Conduct Explanatory Notes</a></li> <li>• <a href="#">Model Code of Conduct Guidelines</a></li> <li>• Complaint About Alleged Breach Form – Code of Conduct for Council members, committee members and group members</li> </ul>						
<b>Approved by</b>	Regional Council – <i>by Absolute Majority section 5.104</i>						
<b>Next Revision Date</b>	November 2022						
<b>Policy Administration</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"><b>Responsible Officer</b></td> <td style="width: 40%;"><b>Review Cycle</b></td> </tr> <tr> <td>Corporate Services</td> <td>Biennial</td> </tr> <tr> <td>Chief Executive officer</td> <td></td> </tr> </table>	<b>Responsible Officer</b>	<b>Review Cycle</b>	Corporate Services	Biennial	Chief Executive officer	
<b>Responsible Officer</b>	<b>Review Cycle</b>						
Corporate Services	Biennial						
Chief Executive officer							
<b>Risk Rating</b>	High						
<b>Location of document</b>	SMRC Website – Key Documents - Policies SMRC Website – Members Area Staff Intranet						

## DOCUMENT CONTROL REGISTER

Date	Review		Author	Resp Officer	Council
2007/03	Original	1	MAF	MAF	29/3/2007
2008/11	Review	2	HRO	MAF	
2011/10	Update	3	CSM	DCS	27/10/2011
2013/10	Review	4	EMCS	EXCS	24/10/2013
2015	Review	5	EMCS	CEO	26/11/2015
2017	Review	6	A/EMCS	CEO	23/11/2017
2021	Review	7	EMCS	CEO	27/05/2021

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