

Governing Council Code of Practice

This Code of Practice is approved by the Minister for the purposes of section 10(2)(b) of the Education and Children's Services Act 2019.

The strength of community participation in local school governance and decision making lies in the relationships that are established and maintained within a school community. The school community in electing or nominating council members to the council places its trust in the council's consultation and decision-making processes and the integrity and diligence of each council member.

Each individual, therefore, in fulfilling the roles and responsibilities of a council member must:

- act honestly and in good faith
- use due care and diligence
- recognise that the primary responsibility of the council is to the school, and have regard for the interests of all students and children
- use the powers of the position for a proper purpose and act, at all times, in the best interests of the council and the school as a whole
- recognise the responsibility and accountability of the council to the school
- not take improper advantage of their position on council or as a council member
- ensure that there is no conflict or apparent conflict between their own interests and duties and those of the council, and may need to have regard to any benefit or interest that potentially may arise for members of their immediate families, to the extent that they know their interests
- be independent in judgement and actions and take all reasonable steps to be satisfied as to the soundness of all decisions taken by the council
- not make improper use of information acquired
- keep confidential the information received in the course of their duties, and not disclose it, or allow it to be disclosed, unless that disclosure has been authorised or the disclosure is required by law
- not engage in conduct likely to bring discredit upon the school or the Minister
- act lawfully and comply with the principles of this code of practice
- take all steps, if necessary including mediation, to resolve any disputes which may arise.

Code of conduct commentary

Context

Section 10(2)(b) of the *Education and Children's Services Act 2019* provides that the constitution of a council must require that the members of the council comply with a code of practice approved by the Minister. The code is a public document, and together with the constitution of a council, is available for public inspection. Thus, the community is aware of the obligation to comply with the code, and the actions of a council are transparent and accountable.

When members are elected, nominated or appointed to a council they undertake a duty of trust and loyalty to act honestly and in good faith, to consider the needs of every child and student at the school, and to act in the best interests of the school. Although a council member may have been nominated by a group as specified in the legislation or in the constitution, that person is elected or nominated *to the council*, to provide a perspective in the course of making decisions in the best interests of the school regardless of other loyalties or allegiances.

Responsibility to the school

As members of the council, individuals are responsible to the school and the community for the manner in which they exercise their functions. The duties of a council member must be performed in an efficient and effective manner consistent with the legal requirements under the *Education and Children's Services Act 2019*, the constitution of the council, administrative instructions issued by the Chief Executive of the Department for Education and any other Act or law.

The code of practice forms part of the framework under which the council operates. Council members are protected under the *Education and Children's Services Act 2019* from personal liability for any act or omission in exercising the powers and functions of a council done in good faith. Compliance with the code of practice is an integral part of that protection from liability.

Duties of a council member

The code of practice embraces the values of honesty, integrity, enterprise, excellence, accountability, justice, independence and equal opportunity, and these values form the basis of actions and decisions when making decisions.

There are two broad categories of duties for a council member:

- a duty to act in good faith and in the best interests of the school, and
- the duty to act with care and diligence.

In undertaking the council's duties, a council member must:

- take reasonable steps to be informed of the functions of the council and to ensure that the council competently discharges those functions
- take reasonable steps to be informed about the school policies and activities and the circumstances and context within which the school operates

- take reasonable steps through the processes of the council to obtain sufficient information and advice on all matters to be decided by the council
- exercise an active discretion with respect to all matters to be decided by the council
- undertake reasonable diligence in attendance at and preparation for meetings.

Interpretation of the principles of the code of practice

Duty to students/children and the school, as a whole

Each council member should endeavour to ensure that the school achieves high standards and the resources of the school are effectively allocated so as to protect and enhance the interests of the students, children and parents.

Duties to others

All council members must comply with the legal framework governing the school council's operations. In making decisions about a range of matters, particular attention must be paid to Government and departmental policies, standards and guidelines, and Ministerial directions particularly with respect to the curriculum of the school and the use of, and accountability for, resources.

The nature of the school as part of the public education system and therefore, of services provided by government funding, requires that council decisions be transparent and publicly justifiable in a political, social and, economic sense.

Although a council member owes a primary duty to the school community as a whole, the responsibilities imposed on schools under various Acts clearly demand that the council member evaluate actions in a broader social context.

Due diligence

A councillor should attend all council meetings. Where attendance at a meeting is not possible, an apology must be provided before the meeting.

In order to be fully effective, a council member must have access to all relevant information to be considered by the council. This information should be made available in sufficient time to allow proper consideration of all relevant issues.

Part of the duty of all council members is to participate in the establishment of systems within the school that provide them with the necessary information, on a regular and timely basis, to enable reasoned judgements to be made.

In relation to audit procedures, a council member should endeavour to ensure that relations between the council and the auditors are open, unimpeded and constructive. Similarly, the auditors should have direct and unimpeded access to the council.

Conflict of interest

A council member must not take improper advantage of the position of council member to gain, directly or indirectly, a personal advantage or an advantage for any associated person, which might cause detriment to the school.

The personal interests of a council member, and those of the council member's family, must not be allowed to prevail over those of the students, children and parents of the school generally. A council member must seek to avoid conflicts of interest wherever possible. Full disclosure of any conflict, or potential conflict, must be made to the council. In considering these issues, account should be taken of the significance of the potential conflict and the possible consequences if it is not handled properly. Section 37 of the *Education and Children's Services Act 2019* directs the action of council members in the case of a conflict of interest, and a failure to comply with the requirements of this section is an offence.

Use of information

A council member must not make improper use of information acquired by virtue of being a council member. A council member nominated to the council by other groups should recognise the particular sensitivity of the position and should be especially careful not to disclose matters that are confidential unless prior agreement of the council has been obtained.

Professional integrity

For council members nominated by the staff of the school

A staff member nominated to the council by the staff of the school should recognise that the position occupied is particularly sensitive. In exceptional circumstances it may be necessary for the council member to express disagreement with colleagues on the staff of the school. In any event, the council member should be prepared to implement the decisions of the council and the instructions of the principal as a loyal member of the council.

For all council members

If there is any doubt whether a proposed course of action is inconsistent with a council member's honest duty then the course of action should not be supported. Independent advice should be sought as soon as possible to clarify the issue. Contact the Department for Education's site governance team via email at education.sitegovernance@sa.gov.au.

When a council member feels so strongly as to be unable to abide by a decision of the council, some or all of the following steps should be considered:

- making the extent of the dissent and its possible consequences clear to the council as a means of seeking to influence the decision
- asking for additional legal, accounting or other professional advice
- asking that the decision be postponed to the next meeting to allow time for further consideration and informal discussion
- tabling a statement of dissent and asking that it be minuted
- writing to the chairperson, or all members of the council, and asking that the letter be filed with the minutes
- if necessary resign and consider advising the Minister.