Code of Practice for Children's Services Centres continued under Section 26 of the *Education and Children's Services Act*

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 children's services centre governance and decision-making lies in the relationships that are established and maintained within a children's services centre community. The children's services centre community in electing or nominating council members to the council relies on the council following its constitution and decision-making processes and, on 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 children's services centre, and have regard for the interests of all children and their families
- use the powers of the position for a proper purpose and act, at all times, in the best interests of the council and the children's services centre as a whole
- recognise the responsibility and accountability of the council to the children's services centre
- 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 children's services centre 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 at the children's services centre, and to act in the best interests of the children's services centre. 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 children's services centre regardless of other loyalties or allegiances.

Responsibility to the children's services centre
As members of the council, individuals are responsible to the children's services centre 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 children's services centre, 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 and without negligence. 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 when making decisions.

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

- the duty to act in good faith and in the best interests of the children's services centre, and
- the duty to act with care and diligence.

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 children's services centre policies and activities and the circumstances and context within which the children's services centre 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

- exercise reasonable diligence in attendance at and preparation for meetings

- take reasonable steps to understand financial reports for the children's services centre, and ensure that actual results are consistent with resource plans and budgets

Interpretation of the principles of the code of practice

Duty to children and the children's services centre, as a whole
Each council member should ensure the children's services centre and the financial and physical resources of the centre are constantly reviewed and effectively allocated so as to protect and enhance the interests of the children and parents.

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

The nature of the children's services centre 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 children's services centre community as a whole, the responsibilities imposed on the children's services centre 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 children's services centre 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 any auditors are open, unimpeded and constructive. Similarly, 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, whether or not this might cause detriment to the children's services centre.

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 children and parents of the children's services centre 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, the council should take into account the significance of the potential conflict and the possible consequences if it is not handled properly. Section 30 of the *Education and Children's Services Act 2019* directs the action of council members in the case of a conflict of interest in relation to a contract or a proposed contract to which the children's services centre is a party, 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 children's services centre

A staff member nominated to the council by the staff of the children's services centre 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 or the staff of the children's services centre. In any event, the council member should be prepared to implement the decisions of the council and the instructions of the director as a loyal member of the council.

For all council members

If there is any doubt as to whether a proposed course of action is consistent with a council member's honest duty then the course of action should not be supported. Council members can seek advice through the Preschool Policy and Advice team via email at education.preschoolpolicyandadvice@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 to be sought for the council
- 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.