

# Council Members Policy

Classification:	Council Policy
First Issued / Approved:	May 2003
Last Reviewed:	19 June 2007 February 2011 (CEO) 25 February 2014, C9600 27 May 2014, C9732 27 April 2017, C11163 14 November 2023, C141123/13568
Next Review:	November 2027
ECM tracking number:	986691
Responsible Officer:	Chief Executive Officer
Relevant Legislation:	<i>Local Government Act 1999</i> <i>Local Government (General) Regulations 2013</i> <i>Independent Commission Against Corruption Act 2012</i>
Related Policies:	Council Members Allowances and Benefits Council Members Training and Professional Development Records Management

## Introduction

- 1.1 The role of the Council Members of Council is governed by the *Local Government Act 1999*.
- 1.2 Council has also developed a number of policies to assist Council members in the performance of their roles and these are outlined in this policy.
- 1.3 This policy applies to all Council members.

## Strategic Plan Desired Outcomes

- Principles:* 4. Governing with Integrity
- Theme:* Spans all Strategic Plan Themes
- Goals:* Spans all Strategic Plan Goals
- Priorities:* Spans all Strategic Plan Priorities

## Our Approach

- 3.1 Ensure good governance by Council Members.
- 3.2 Ensure that Council Members are provided with appropriate support in accordance with the *Local Government Act 1999* and Council's adopted policies.

## Legislative Requirements and Corporate Policy Context

- 4.1 Chapter 5 of the *Local Government Act 1999* pertains to the Members of Council.
- 4.2 This Policy is in addition to the requirements set out in the legislation for the good governance of the Council.

## Interpretation

“Act” means the *Local Government Act 1999*

“*Behavioural Standards for Council members*” refers to the Behavioural Standards for Council Members as published by the Minister for Planning for the purposes of section 75E of the *Local Government Act 1999* (Government Gazette 17/11/2022)

“CEO” means the Chief Executive Officer.

*Councillor* refers to a member of the Council who is not the elected principal member

“*Clear Days*” is defined by section 3(2) of the *Local Government (Procedures at Meetings) Regulations 2013*

“*Council Meeting*” means a meeting convened and conducted under the provisions of the Act.

“*Conflict of Interest*” a person in public office has a conflict of interest when they have a personal or private interest that might compromise their ability to act in the public interest. A conflict of interest can exist even if no improper action results from it.

“*Council Member*” means the Principal Member or a Councillor elected by the electors of a particular ward, as a representative of the ward in Council.

“*Council Members*” means the duly elected representatives of the community, including the Mayor and all Councillors

“*in writing*” includes email

“*Leave of absence*” means a permission granted by the Council that enables an Council Member to be absent from Council Meetings for a period of time without triggering consideration of the provisions of section 54(1)(d) of the Act.

“LGA” is the Local Government Association.

“*Mayor*” is the person elected as the principal member of Council to represent the local government area as a whole.

“*Retiring*” refers to the conclusion of a Council Member's term with Council, whether through not successfully gaining a position on Council following the General Election or choosing not to contest an election.

“*Resigning*” refers to the conclusion of a council Member's term through resignation during an election term.

“Service” includes continuous and accumulative service as a Council Member of the City of Burnside.

“Staff” includes Council staff, contractors, volunteers and all others who perform work on behalf of Council.

“Suspension” the Act outlines in some circumstances that Council Members can be suspended from office, if this occurs the Act needs to be referred to as suspensions can include the stopping of allowance payments and the withdrawal of access to council benefits and entitlements.

## **Policy**

### **6.1 Conflict of Interest**

- 6.1.1 Managing conflicts of interest is integral to the accountability, transparency and effectiveness of local government.
- 6.1.2 The conflict of interest provisions under the Act apply in the same way to a Council Committee Member in respect of matters to be discussed by a Council Committee as they apply to Council Members with respect to matters to be discussed by a Council.
- 6.1.3 Council Members who have an interest in a matter before the Council, as defined in the Act, must disclose the interest to the Council.
- 6.1.4 The Member, when making the disclosure, must provide full and accurate details of the relevant interest, as prescribed under the Act.
- 6.1.5 The minute taker must record in the minutes of the relevant Council meeting the type and details of the relevant interest so declared by the Council Member.

### **6.2 Leave of Absence**

- 6.2.1 As the decision-making body of the Council, Council Members commit to regularly attending Council meetings. This position is reinforced by the Act.
- 6.2.2 Whilst absence from a meeting may, on occasion, be unavoidable, it is recommended practice to request a ‘leave of absence’ when an Council Member knows in advance that they will be unable to attend two or more consecutive Council meetings.
- 6.2.3 An apology for non-attendance at a Council meeting may be offered but this is a gesture of courtesy and does not provide any legal protection as it does not grant an Council member formal ‘leave of absence’.
- 6.2.4 A Leave of Absence is legally distinct from an apology as it is recognised under the Act and occurs when an Council Member requests and receives approval, in advance, to be absent from a meeting or meetings.
- 6.2.5 All Leave of Absence applications for Council consideration be made available by the CEO to Council Members for their consideration, whether in public or for confidential consideration. It is at the absolute discretion of the Council to approve or refuse the Leave of Absence request after being provided with all relevant information.

- 6.2.6 If the leave of absence request is refused by the Council, reasons must be provided in support of the refusal. The CEO will advise the Council Member in writing of Council's refusal and its reasons.
- 6.2.7 Unless requested (and subject to appropriate grounds being available), the leave of absence request will be dealt with in public at the Council meeting. If a request is made to consider the leave of absence request in confidence, the grounds for confidentiality must be identified in the request by the Council Member.
- 6.2.8 Decisions about whether a request should be subject to a recommendation that it be considered in confidence, will be made by the CEO. If, in the view of the CEO, there are no legally available grounds and/or the reasons for considering the leave of absence request in confidence are not sufficient, the leave of absence report will be included in the public agenda papers.
- 6.2.9 If an Council Member attends a Council meeting (whether or not an ordinary meeting) despite having been granted a leave of absence by the Council, the leave of absence is rescinded at that time. Attendance at a meeting does not prevent a further Leave of Absence being granted.
- 6.2.10 Where a period of Leave of Absence is longer than 3 months, the Council Member should resign their membership of any Council Committees or External Organisations occupied as a representative of Council.
- 6.2.11 If an Council Member is granted a leave of absence for a period in excess of 3 months, the Council Member should consider whether they wish to decline the receipt of their Council Member allowance for the entire period of the leave of absence or for the period in excess of the 3 months and must advise the CEO in writing of their decision in this regard.
- 6.2.12 If more than three months' leave of absence is requested within any one twelve month period, the Council Member should consider, and confirm to Council that they have considered - whether it is likely that their circumstances are such, that it would be more appropriate to resign their office.
- 6.2.13 The CEO will prepare a short report to the Council regarding the request for the leave of absence for the consideration of the Council. This report will include a recommendation as to whether or not the leave of absence request is consistent with the Policy and if it should be approved.
- 6.2.14 If a Council Member stands as a candidate for election as a member of the Parliament of South Australia, the member will be taken to have been granted leave of absence from the council in accordance with section 55A of the Act.
- 6.2.15 The procedure for leave of absence is shown in Attachment 1.

### 6.3 **Access to Information**

- 6.3.1 Section 61 of the Act allows for a member of Council, in the performance or discharge of the functions or duties of the member to have access to any relevant council document, this includes information that the Council or

committees have or will be considered under the provisions of 90(3) and 91(7) of the Act.

- 6.3.2 The CEO or delegate may determine how access to information that is considered to be sensitive or confidential. Documents which access is granted may be provided to Council Members as encrypted electronic documents
- 6.3.3 Distribution of Confidential Information including documents, reports, attachments and minutes to Council Members will be via encrypted electronic methods only.
- 6.3.4 Council Members will be provided access to all documents held by Council unless they are irrelevant to the Member's function or duties.
- 6.3.5 Council Members will not be granted access to documents regarding the personal affairs of Council staff, except for the Register of Interests that is required to be maintained under section 116 of the Act and be made available for Council Members' inspection upon request (section 118 of the Act).
- 6.3.6 This policy does not limit the rights of a Council Member to use the Questions on Notice (r 9) or the Notice of Motion (r 12) provisions of the *Local Government (Procedures at Meetings) Regulations 2013* to seek answers to questions or to request that a report be prepared on certain issues.
- 6.3.7 This policy does not restrict a Council Member from exercising their rights as a citizen to use the provisions of the *Freedom of Information Act 1991* to seek access to certain documents held by the Council.
- 6.3.8 The procedure for access to information is shown in Appendix 2.

#### 6.4 **Register of Interests**

- 6.4.1 The CEO maintains a Register of Interests and all information pursuant section 68 of the Act is included in the register.
- 6.4.2 The CEO will remind Council members of the requirement for them to submit a return. It is the Council member's responsibility to submit the return within the statutory timeframes.
- 6.4.3 The Act requires a Council Member to notify the CEO of a change or variation to the information appearing in the Register within one month of the change or variation. If a Council Member fails to notify the CEO of a change or variation within 30 days, the Council Member may be guilty of an offence.
- 6.4.4 Section 70 of the Act and the Regulations outline the information that the council must publish on its website regarding each member of the council. The Chief Executive Officer has determined that the register will be published on [burnside.sa.gov.au](http://burnside.sa.gov.au).
- 6.4.5 If a Council Member fails to submit a return to the CEO within the time allowed, the CEO is required, to follow the procedure outlined in section 68

of the Act. Ultimately, failure to submit a return will result in the Council Member being suspended and removed from office.

## 6.5 Mayor – Ex-Officio Appointments

- 6.5.1 The Mayor is an ex-officio member on all Committees<sup>1</sup> other than the Council Assessment Panel and the Audit and Risk Committee.
- 6.5.2 The Mayor, as an ex-officio member of any Committee, sub-Committee or Working Party, may exercise a deliberative vote but not a casting vote.
- 6.5.3 Where quorum provisions and membership make it clear that a certain number of persons are specified as constituting the membership, the number is in addition to the ex-officio- membership of the Mayor and quorum calculations take into account the Mayor's ex-officio membership as a member of each body whenever the Mayor is present at a meeting<sup>2</sup>.

## 6.6 Building Access

- 6.6.1 Council Members are provided with building access to the Council Members areas.
- 6.6.2 Council Members seeking access to Administration Offices' of Council are to be escorted by a staff member at all times.

## 6.7 Wearing of Robes

- 6.7.1 Robes may be worn by Council Members on ceremonial occasions only.

## 6.8 Council Delegate

- 6.8.1 The Mayor of the City of Burnside will be the Council's nominated delegate at meetings of the LGA, LGFA and other events where the Mayor is expected to attend or has been invited as Council's representative
- 6.8.2 Council will be represented at the ALGA National Assembly of Local Government by the Mayor and where appropriate the CEO<sup>3</sup>.
- 6.11.3 In the event that the Mayor is unable to attend LGA and LGFA meetings council will determine at least 6 weeks prior to the meeting an alternative delegate.

## 6.9 Recognition of Service

- 6.9.1 The City of Burnside recognises the service of Council Members at the achievement of service milestones and at the completion of their service
- 6.9.2 To ensure a consistent and equitable approach to recognising the service of a Council Member on resignation or retirement, a Certificate of Service will be provided outlining:
  - 6.9.2.1 Length of service
  - 6.9.2.2 Membership of Council Committees and
  - 6.9.2.3 Membership of external organisations

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<sup>1</sup> Decision of Council 25 February 2014

<sup>2</sup> (C9600, 25/2/2014)

<sup>3</sup> Council decision (C8058)

at the time of resignation or retirement.

- 6.9.3 Presentation of Certificates will occur at an ordinary meeting of the Council as soon as practicable following the conclusion of a Council Member's term.
- 6.9.4 If a former Council Member is unable to attend the scheduled meeting, the certificate should be provided in person by the Mayor at a mutually agreed time.
- 6.9.5 The Local Government Association (LGA) provides certificates for the recognition of service to Council Members through a 'Merit, Service and Recognition Awards Program'
  - 6.9.5.1 On the achievement of 10 or more years of service as a Council Member, a Council Member is eligible to receive a Local Government Service Award through the LGA 'Merit, Service and Recognition Awards Program'.
    - 6.9.5.1.1 The award is also available at 5 year intervals thereafter.
    - 6.9.5.1.2 The Office of the CEO will notify the LGA of the service milestones.
  - 6.9.5.2 It is the responsibility of the Council Member to notify the Office of the CEO when they have reached a service milestone. The Council will then contact the LGA on their behalf.

## 6.10 Gifts and Benefits

- 6.10.1 It is the Council Member's responsibility to disclose any gift or benefit that is valued greater than the amount determined by the Minister in accordance with the Act.
- 6.10.2 A register is maintained and published on the Council website outlining all gifts and benefits received by members.
- 6.10.3 The register published on the Council website ([burnside.sa.gov.au](http://burnside.sa.gov.au)) will disclose any benefits provided to Council members greater than the amount determined by the Minister, this includes but is not limited to the provision of meals, data plans etc.

## Review and Authority

- 7.1 This Policy will be reviewed every four years in line with Council's Policies and Protocols Framework.

## Availability

- 8.1 The Policy is available to be downloaded, free of charge, from Council's website [www.burnside.sa.gov.au](http://www.burnside.sa.gov.au)

## Further Information

9. For further information about this policy please contact:  
City of Burnside Civic Centre; 401 Greenhill Road, Tusmore SA 5065  
Telephone; 8366 4200; Email; [burnside@burnside.sa.gov.au](mailto:burnside@burnside.sa.gov.au)



## Appendix 1 – Leave of Absence Procedure

1. When a Council Member intends to request a leave of absence, they must indicate this to the Council as soon as practicable.
2. The Council Member must provide to the CEO, in writing their leave of Absence request, with a minimum of five clear days' notice prior to the Council meeting, which outlines:
  - a. the proposed commencement and end dates of the proposed leave of absence
    - i. the reasons for the leave of absence
    - ii. if the leave of absence request is for a period in excess of three months:
    - iii. if they will be resigning their membership from Council Committees or representing Council on External Organisations, and
    - iv. if they wish to receive or decline their Council Member allowance for the period of their leave of absence.
  - b. If a request for a leave of absence misses the deadline for receipt the items will be placed on the next Council Meeting Agenda.
  - c. If ana Council Member does not provide, in writing, reasons for the leave of absence request, the CEO in reporting the request to the Council will not provide any recommendation.
3. A Council Member is not obligated to reveal personal information if the reasons for the leave of absence request are of a personal nature.

## Appendix 2 – Access to Information Procedure

1. A request for access to a Council document under section 61 of the Act must:
  - a. be directed in the first instance to the CEO. The request may be made in person, by phone or in writing.
  - b. identify the document/s being sought with enough detail for the document/s to be identified and state the reason(s) for the request. Only documents which are in existence at the time of the request will be provided.
2. A Council Member will be provided access to the document/s if they are held by Council. Where access to a document is not provided, the reason is to be provided to the Council Member in writing.
3. The form of access to the document/s will be negotiated with the Council Member to accommodate the particular needs of the Member and administrative efficiency.

4. Where the document is publicly available (e.g. available on Council's website) the Council Member will be sent a link to the document.
5. Where access is granted to a document that is not publicly available and there is no sensitivity/confidentiality to the document, a copy of the document will be provided to the Council Member in an agreed form and may be provided to other Council Members if relevant.
6. Where there is a degree of sensitivity, existing confidentiality orders under sections 90(3) and 91(7) of the Act or there are other reasons to restrict distribution of the document(s) (e.g. if the documents contain legal advice, confidential information or internal corporate information) access may be limited to 'view only' access at a mutually convenient time at the Civic Centre...
7. The CEO or delegate will advise members of the arrangements to view these documents and email advice confirming the 'view only' access arrangements will be sent to the Council Member.
8. All documents covered by the *Independent Commissioner Against Corruption Act 2012* are excluded in accordance with the provisions of that Act or at the direction of the Commissioner.
9. Where the information being sought is not in the form of existing Council document/s, and the request requires more than a simple response, Council Members will be advised that they should propose a Motion on Notice to be presented to Council requesting a report.