

Attachment 11.1

Action following Code of Conduct breach

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elected member
personnel
WALLMANS
LAWYERS

Our Ref: MJK:jls:091563
 Your Ref:

4 May 2010

Mayor Lorraine Rosenberg
 The City of Onkaparinga
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Dear Mayor Rosenberg

CODE OF CONDUCT TRAINING

I refer to my attendance at the Council offices on Wednesday morning, 28 April 2010, to meet with Councillor Apap.

I confirm that my attendance was consequent upon a resolution of the Council which, in part, provides as follows:

"...

5. *That Council make available training to help the elected member who has breached the Code of Conduct understand the responsibilities of an elected member."*

In attending upon Councillor Apap I confirm discussions with him concerning:

- the roles and responsibilities of an elected member, consistent with the LGA training program;
- consideration of Section 59 (roles of members of councils) of the *Local Government Act 1999*;
- consideration of Section 63 (elected member code of conduct) of the *Local Government Act 1999*; and
- the *Local Government Act* framework generally.

Councillor Apap advised me that he and Councillor Wenham (the complainant in the Code of Conduct process) had already participated in a constructive mediation process. As a consequence of this he had communicated with Mr Peter Laffan, the recipient of Councillor Apap's email on 22 October 2009, being the email which gave rise to the code of conduct complaint.

The meeting with Councillor Apap was a constructive meeting. In particular, I confirm that Councillor Apap demonstrated an understanding and recognition of the roles and responsibilities of an elected member and the duties upon them. In this regard, Councillor Apap recognised the necessity and role of a code of conduct and indicated that whilst he was in general agreement with the document at a macro level he is not necessarily in agreement

with all of the detail of the Code. As I am sure you will agree, this is not an uncommon position amongst elected members.

Councillor Apap also clearly understood the different roles for an elected member (as statutorily articulated by Section 59 of the Act) in terms of being both a member of the governing body and an elected representative representing the interests of the community. In this context, Councillor Apap explained his position that in the event of a real or perceived conflict between the roles, he saw the community representative role as being the primary one. Indeed, this view is consistent with his email of 22 February 2010 when, in agreeing to meet with me he indicated that the meeting would be unlikely to change much of what he is doing. I now understand that the context in which that statement was made was in reflection of Councillor Apap's view of the primacy of the community representative role.

It is also of note that Councillor Apap in recognising the inappropriateness of the email sent to Mr Laffan as the originating communication of the code of conduct complaint, emphasised that whilst being inappropriate it was not and was not intended to be a communication of a malicious nature.

Having spent the time with Councillor Apap and undertaking discussions consistent with the objective of the Council resolution, I am satisfied of Councillor Apap's knowledge and understanding of his roles and responsibilities as an elected member. I am also cognisant of his articulated position that his primary role is a community representative.

In my view, the objective of the Council resolution (set out above) has been satisfied.

Thank you for the instructions to undertake this process, the success of which I hope and anticipate will be manifested by a willingness on the part of Councillor Apap to reflect upon the appropriateness of future email communications with a view to ensuring that they cannot be regarded as breaching the Elected Member Code of Conduct.

Yours sincerely
WALLMANS LAWYERS



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cc: Councillor Apap

Draft Mediation Agreement

Date: 14th April 2010

Mediator: Michael Craig

Participants: Councillor George Apap
Councillor Yvonne Wenham

A meeting was held on the 31st March 2010 to discuss the following topics:

- 1. Mutual expectations**
- 2. Resolving differences of opinion**
- 3. Appropriate behaviours**

There was discussion of all topics and the strategies were further discussed and reviewed on the 14th April. It was agreed that the mediation has been completed and no further discussion on the matter will occur.

This document has also been forwarded the Kate Harmon of the City of Onkaparinga Council.

This is a confidential document and should not be discussed or released to any other party.

Agreed Strategies

- 1) It is expected that differences of opinion will occur from time to time between Members of Council.
- 2) It is expected Members of Council will express and debate these opinions within the Council and in public settings.
- 3) It is important that Councillor Apap and Councillor Wenham demonstrate professional behaviour at these times.
- 4) It is important that Members of Council express these differences whilst maintaining mutual respect for each other.

- 5) Councillor Wenham and Councillor Apap indicated they both understand how to demonstrate professional behaviour and mutual respect.
- 6) Differences of opinion are important and it was agreed that any debate would focus on the problem at hand, rather than personal criticism or confrontation.
- 7) Councillor Apap and Councillor Wenham recommended that a grievance policy and procedure is established as soon as possible.
- 8) Councillor Apap and Councillor Wenham agreed they would discuss any future differences of opinion in private and confidentially, before taking any further action.
- 9) Councillor Apap has emailed Peter Laffin regarding the previous email he sent on the 22nd November 2009. In that email, he wrote that the contents of that email did not relate to Councillor Wenham.
- 10) Councillor Wenham indicated she received an email from Peter Laffan regarding this correspondence and wanted to respond to his query.
- 11) After some discussion, Councillor Wenham agreed to respond to Peter Laffan. She agreed to confirm the purpose of the most recent email from Councillor Apap was to make clear to Peter Laffan that the previous email sent on the 22nd November did not relate to Councillor Wenham.

Please call if there are any questions regarding the final document.

Regards

Michael Craig
Mediator