



Final Investigation Report

Code of Conduct for Council Members

—

Adelaide City Council

Subject Member: Councillor Mary Couros

Complainant: Councillor Phil Martin

—

Final Investigation Report

Code of Conduct for Council Members

Executive summary	3
Report	4
1. COMPLAINT	4
1.1 Allegations	4
1.2 Identity of Complainant	5
2. PROCESS FOR REVIEW AND METHODOLOGY	5
2.1 Framework	5
2.2 Process	6
2.3 Evidence	6
3. NATURE OF CONDUCT	6
3.1 Background	6
3.2 Allegations	7
3.3 Submissions	9
4. CONSIDERATION OF COMPLAINT	10
4.1 Clause 2.1 – Show commitment and discharge duties conscientiously	11
4.2 Clause 2.2 – Act in a way that generates community trust and confidence in the Council	12
4.3 Clause 2.3 – Act in a reasonable, just, respectful and non-discriminatory way when dealing with people	12
4.4 Clause 2.6 – Comply with all Council policies, codes and resolutions	14
4.5 Clause 2.7 – Deal with information received in their capacity as Council members in a responsible manner	14
4.6 Clause 2.8 – Endeavour to provide accurate information to the Council and to the public at all times	15
4.7 Clause 2.9 – Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions	15
4.8 Clause 10 – Not bully or harass other Council members	16
5. FINDINGS	17
6. RECOMMENDATIONS	18

Executive summary

This Code of Conduct Investigation concerns a complaint made against Councillor Mary Couros, concerning her conduct in publishing a Facebook post, which refers to a Council Code of Conduct Investigation Report, as well as an organisation dedicated to preventing disrespect and violence toward women. Councillor Phil Martin lodged a Code of Conduct complaint in relation to this conduct, alleging that this Facebook post clearly identifies him as being the target of the post and inappropriately conflates his conduct with the aims of the abovementioned organisation.

Our findings are that Cr Couros has breached clauses 2.2, 2.3, 2.7, 2.8 and 2.9 of the Code of Conduct for Council Members.

We have found that the Facebook post draws an offensive imputation about Cr Martin's behaviour, and that Cr Couros' conduct was disrespectful.

Accordingly, Cr Couros has contravened the Code of Conduct for Council Members.

We have not found that Cr Couros breached clauses 2.1, 2.6 or 2.10 of the Code.

We suggest and urge Cr Couros to delete the Facebook post (including the public comment attaching to the post).

Councillor Couros has made an admission that

- the Facebook post was not appropriate;
- she did not understand the offending connotations; and
- she was not intending to (and does not) convey any link between Cr Martin and the 'Doing Nothing' organisation.

We recommend that the Adelaide City Council resolve to adopt the findings within this report..

We also note that, as at the date of this Final Investigation Report, the Facebook Post remains visible on Cr Couros' Facebook page.

If Cr Couros does not delete the Facebook Post, we note that this could constitute a breach of clause 3.17 of the Code (which relates to repeated, (or relevantly), sustained breaches of Part 2 of the Code). This could warrant referral to the Ombudsman. We urge Council to review and monitor Cr Couros' Facebook page and ensure that the offending Facebook Post is deleted expeditiously.



Susie Inat

Special Counsel

T +61 8 8233 5692 M +61 407 710 255

susie.inat@minterellison.com



Ryan Feuerherdt

Lawyer

T +61 8 8233 5573

ryan.feuerherdt@minterellison.com

Report

1. COMPLAINT

By emails dated 13 and 14 October 2021, the Adelaide City Council's (**Council**) Chief Executive Officer, Clare Mockler, received a complaint against Councillor Mary Couros (the **Complaint**) from Councillor Phil Martin (**Complainant**).

1.1 Allegations

The Complaint relates to the conduct of Councillor Couros in publishing a Facebook post, which concerns a Council Code of Conduct investigation and finding, as well as an anti-disrespect against women campaign. The Complaint also encompasses a 'comment' on that post made by a member of the public, containing references to 'intimidation, bullying, misogyny and racism' within the Council.

The Complaint alleged a breach of clauses 2.1, 2.2, 2.3, 2.6, 2.7, 2.8, 2.9, and 2.10 of the Code of Conduct for Council Members (**Code**).

The Complainant has provided evidence of the Facebook Post made by Cr Couros, which contains an image of a bus shelter advertisement reading 'Next time you see women being disrespected DO SOMETHING' and containing the DoingNothingDoesHarm.org.au campaign website (the **Facebook Post**). The commentary of Cr Couros within the Facebook Post reads:

How fitting I see this advertised at a bus shelter this morning with the Code of Conduct on the agenda tonight.

A fellow councillor being found disrespectful to two women the Lord Mayor and the CEO of the City of Adelaide

Let this be a message to alldo something because doing nothing does harm.

To make a change starts with women supporting each other to break the barriers and I would like to thank the men on council who continue to support women and in particular respecting the women on Council

Franz Knoll Arman Abrahamzadeh Simon Hou @Jessy Khera @Alexander Hyde

#womensupportingwomen #Respect #awareness

The comment made by the member of the public (**Public Comment**) reads:


Hoping that the Council can actually implement some form of punishment for any staff member or Councillor that does breach the Code of Conduct. As issues of staff intimidation, bullying, misogyny and racism have gone unpunished for too long now. If not the ACC will just be made out to be a hypocrite employer....

Councillor Martin subsequently supplemented his complaint with additional details and assertions by way of interview. These are outlined in more detail below.

The Complaint requires an investigation as to whether Cr Couros' conduct was in contravention of clauses 2.1, 2.2, 2.3, 2.6, 2.7, 2.8, 2.9, or 2.10 of the Code, being as follows:

2.1 *Show commitment and discharge duties conscientiously.*

2.2 *Act in a way that generates community trust and confidence in the Council.*

- 
- 2.3 *Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.*
 - 2.6 *Comply with all Council policies, codes and resolutions.*
 - 2.7 *Deal with information received in their capacity as Council members in a responsible manner.*
 - 2.8 *Endeavour to provide accurate information to the Council and to the public at all times.*
 - 2.9 *Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.*
 - 2.10 *Not bully or harass other Council members.*

A copy of the Complaint (including a screen capture of the Facebook Post and Public Comment) is attached as **Annexure A** to this report.

1.2 Identity of Complainant

Council's Standing Orders, Chapter 3 Part 3 contain the Complaint Handling Procedure under the Code of Conduct for Council Members (**Procedure**), which governs the investigation of the Complaint as well as the disclosure of the Complainant's identity. Specifically, clauses 28.6, 29, 34 and 36 each require strict confidentiality to be observed in undertaking the preliminary enquiry and investigation. Clause 34 explains that the CEO may make available to the subject councillor a copy of the complaint and details of the complainant, subject to the *Public Interest Disclosure Act 2018* (SA).

The *Public Interest Disclosure Act 2018* (SA) (**PID Act**) applies to information that raises a potential issue of misconduct (which includes contravention of a code of conduct by a public officer).

As the Complaint asserts a contravention of the Code, the PID Act confidentiality regime applies and renders the Complainant an 'informant' for the purposes of that Act. Section 8 of the PID Act requires that any person to whom a disclosure under the PID Act has been made, or who otherwise knows that such a disclosure has been made, must not knowingly divulge the identity of an informant, except so far as may be necessary to ensure the matters are investigated, or otherwise with the consent of the informant. The parties were advised of their confidentiality obligations pursuant to the Procedure and PID Act.

As the Complaint contains allegations which are personal in nature, it was considered necessary to provide the full complaint to Cr Couros, without redacting the identity of Cr Martin. This was so as to afford procedural fairness to Cr Couros and allow a proper opportunity to respond. This course of action is permitted through section 8(1)(a) of the PID Act.


Accordingly, Cr Couros was provided with a copy of the Complaint, and details of the identity of the Complainant. The Complainant also provided permission for their identity to be divulged within this Investigation Report.

2. PROCESS FOR REVIEW AND METHODOLOGY

2.1 Framework

This investigation of the Complaint is governed by Council's Procedure.

A preliminary enquiry of the Complaint was carried out by the CEO in accordance with the Procedure. The CEO determined that the complaint warranted referral to an independent legal counsel, or other appropriate authority, for formal investigation and report to Council (in accordance with Standing Order 327). The CEO advised the Complainant and Cr Couros of this determination on 29 November 2021.



The Complaint was referred to for investigation in accordance with Standing Order 35. MinterEllison was appointed as independent investigator in relation to the Complaint.

2.2 Process

Council's Procedure requires MinterEllison as independent investigator to provide to Council's CEO a written report which summarises:

- the allegations made in the Complaint;
- the evidence to which the investigation had regard;
- factual findings
- conclusions; and
- recommendations arising from the report.

Notably, the Procedure does not expressly provide for a procedure whereby a councillor will have an opportunity to review a draft or initial report, and make further comments and representations to the investigator in preparing a final report. Nonetheless, MinterEllison determined to afford Cr Couros an opportunity to do so, in the interests of procedural fairness.

Councillor Couros (as well as Cr Martin) were permitted to provide responses and submissions in relation to the content of an initial report. Councillor Martin provided a written response, and his comments were considered for the purposes of making a final finding and recommendations, and producing this final report. Councillor Couros made no further submissions.

Further, as a breach of the Code has been found, the Procedure allows for Cr Couros to make submissions to the Council meeting at which this report is considered.

2.3 Evidence

In conducting my investigation into the Complaint we have had regard to and relied upon the Complaint, evidence adduced at interview and other materials received by email.

In accordance with Council's Procedure, the Complainant and Cr Couros were invited to make submissions regarding the Complaint, or attend an interview with the independent investigator by teleconference.

An interview was held with the Complainant, and with Cr Couros. Each councillor made further submissions in respect to the Complaint. See a summary of these submissions below.

The standard of proof we have applied when assessing and accepting evidence in this investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, we have considered the nature of the assertions made and the consequences if they were to be upheld.

3. NATURE OF CONDUCT

3.1 Background

At Council's 14 September 2021 meeting, it considered a Code of Conduct Investigation Report, regarding the conduct of Councillor Phil Martin. The Investigation Report found that Cr Martin's comments at a Special Council Meeting and Committee Meeting were disrespectful. The comments in question were directed to the Lord Mayor and to the CEO.

The Investigation Report did not find that the comments were bullying or harassing in nature, nor did it find that Cr Martins' actions and behaviours were discriminatory in nature.

This was the only Code of Conduct matter considered at the 14 September 2021 meeting.

An Advertiser article was published on that same day, variously titled '*Code of conduct upheld against Adelaide City Council councillor Phillip Martin*', and '*Councillor "failed to respect" Lord Mayor*'. The article outlined the content of the Investigation Report to be considered by Council that evening. A similar article was published by InDaily on 13 September 2021, titled '*City councillor found to have "disrespected" Lord Mayor, staff*'.

In the morning of 14 September 2021, Councillor Mary Couros (then Deputy Lord Mayor) posted the Facebook Post (as extracted above) on her Facebook page. This post attracted some public attention, including the Public Comment (also extracted above). A viewing of the Facebook Post indicates that Cr Couros responded directly to the Public Comment.

The 'DoingNothingDoesHarm.org.au' advertisement relates to a campaign from 'Our Watch', an organisation devoted to prevention of violence against women and their children in Australia (www.ourwatch.org.au). The 'Doing Nothing Does Harm' campaign seeks to change the culture of disrespect against women, so as to ultimately prevent violence against women (www.doingnothingdoesharm.org.au/about/).

As at the date of this Report, it appears that the Facebook Post and the Public Comment remain visible on Cr Couros' Facebook page.

3.2 Allegations

The Complaint, as contained in the initial 13 October 2021 email, contained the following allegations and assertions:

[The] complaint is against Councillor Mary Couros for the sustained publication of commentary in social media associated with and dishonestly misrepresenting the nature of findings of a Code of Conduct complaint against me, together with her inclusion of commentary by a member of the public, within the same post, of false allegations of intimidation, bullying, misogyny and racism.

...

In both posts she did not name me, but my identity would have been apparent to any reasonable person through the publication of the Council Meeting Agenda on September 10th 2021 and the publication of a report in Adelaide Now and the Advertiser on the finding of the Code of Conduct complaint against me (to be emailed separately) on September 13th and September 14th.

The Facebook post conflated the findings of the Code of Conduct against me with Councillor Couros' assertion that I had been found to have been "disrespectful to two women" and that this required "doing something" when "women (are) being disrespected" because "doing nothing does harm", consistent with the goals of an organisation whose details are publicly displayed in North Adelaide and other places throughout Australia, a photograph of which was included in Councillor Couros' post and described by her as "fitting", presumably, the findings against me. The Our Watch; Doing Nothing Does Harm website defines "disrespect towards women" as;

"Disrespect towards women is anything that makes a woman feel uncomfortable, unsafe, put down, or treated unfairly because she's a woman. It's pervasive. It's targeted. And it often involves sexist and sexually harassing behaviours, like;

Making sexist jokes and comments

Interrupting, talking over, and speaking for women


Pestering a woman who said she "isn't interested"

Thinking or saying women "belong" in certain roles

Using patronising language with women you don't know ("sweetheart", "love")

The website Councillor Couros linked to the Code of Conduct finding against me also asserts "and while not all disrespect leads to violence, all violence starts with disrespect".

I contend Councillor Couros' conflating her Facebook post with "disrespecting of women" as detailed by the Our Watch; Doing Nothing Does Harm" organisation's website and their definitions of "disrespecting" was a deliberate and malicious attempt at character assassination by a publicly elected official acting without basis and without integrity.



The Code of Conduct investigations and findings which she sought to make the foundation of her published social media remarks and inferences concluded that there had been no harassment or bullying, but, most especially, there was no gender or any other discrimination;

*“For completeness, we **do not** find that the actions and behaviours of Cr Martin, subject of this investigation, could be said to be discriminatory in nature.”*

Additionally, Councillor Couros chose to again conflate through publishing and continuing to publish in the context of her false Facebook assertions about me, the inflammatory and entirely false remarks of a [member of the public] that there are “.....issues of staff intimidation, bullying, misogyny and racism (that) have gone unpunished for too long now”.

Councillor Couros has made no attempt on Facebook to dissociate me from [this person's] commentary, to reject or to even challenge [their] assertions and has not, at the date of the complaint, deleted them.

This entire post has been shared by other parties on the Facebook platform to innumerable others.

...

I contend the actions of Councillor Couros allowing, facilitating and maintaining the publication for well over a month of such completely false, offensive and inflammatory commentary directed at me breaches 2.1, 2.2, 2.3, 2.6, 2.7, 2.8, 2.9 and 2.10 of Part 2 of the Behavioural Code. Further, I contend her conflation of the findings against me of the Code of Conduct investigation with the goals of an organisation dedicated to stopping disrespecting women and preventing violence against women was at best dishonest and at the very least a failure to discharge her duties with reasonable care and diligence and, therefore, in breach of 3.1 or 3.2 of Part 3 of the Code of Conduct.

In the event the investigation finds against Councillor Couros on any or all of the code breaches I suggest the seriousness of the matter is such that under the Penalties outlined in paragraph 3 of the Code the minimum penalty should be a written apology to me, an apology to Council, training to ensure Councillor Couros understands her actions have fallen far below the minimum standards of behaviour expected of an elected member of the City of Adelaide and any other penalties recommended by any investigation.

...

During an interview with the investigator on 2 March 2021, the Complainant supplemented the Complaint with further assertions, as follows.

- The Kelliedy Jones Code of Conduct Investigation Report found 'disrespect' in the context of the Code and the *Local Government Act 1999*. The Facebook Post has sought to define 'disrespect' in another context – that of the 'Doing Nothing' organisation (which carries severe connotations). These are completely different definitions and contexts.
- The Investigation Report made it clear that there was no discrimination of women identified.
- Councillor Couros has attempted to distort and conflate the issue, linking the Investigation Report finding to the 'Doing Nothing' organisation.
- It was also referable to Cr Martin, because the Council Meeting Agenda of that evening contained the applicable Code of Conduct item. Additionally, the Advertiser article on that day featured this Report (and Cr Martin) prominently.
- The Facebook Post listed the names of male elected members who, in Cr Couros' words, 'continue to support women and in particular respecting the women on council.' Councillor Martin's name was not included in this list, whilst five other male members of Council were included.
- As a result of the above, the Facebook Post was grossly offensive to Cr Martin.
- Finally, the Public Comment made accusations of misogyny, racism and bullying, which find no basis in the Investigation Report.

3.3 Submissions

Councillor Couros provided her response to the Complaint at a meeting with the investigator on 17 March 2022.

The following submissions were made:

- Councillor Couros denied that she had breached any sections of the Code.
- Councillor Couros merely saw a sign with the word 'disrespect' prominently displayed. Drawing on the fact that Cr Martin had been found 'disrespectful' to two women, Cr Couros took a photo of the sign, then wrote and published the Facebook Post.
- Councillor Couros had no previous knowledge of the 'Doing Nothing' organisation or campaign, and had not been advised of the offending inference (i.e. linking Cr Martin's conduct to the aims of the organisation). She did not intend to draw this inference and connotation, nor to make any such offensive implications, and she can now understand the views and concerns of the Complainant.
- Councillor Couros noted that the Facebook Post did not identify Cr Martin by name, but conceded that his identity could be ascertained by reference to the published Council Meeting Agenda. In this respect, Cr Couros submitted that she chose not to name him, and chose not to attach the Kelledy Jones Code of Conduct Investigation Report, so as to remain respectful.
- It was Cr Couros' personal opinion that Cr Martin's actions and conduct (particularly toward the Lord Mayor and Council's CEO) have caused stress and intimidation. Councillor Couros pointed to the findings in Council's Cultural Investigation Report.
- Councillor Couros was trying to convey that Cr Martin had been found to be disrespectful. However, she did this in the context of a Council Meeting Agenda item. She submitted that her commentary was in relation to a Council matter (rather than exclusively Cr Martin in a personal respect).
- There are significant challenges experienced by elected members in curating their own social media profiles with no social media training being offered, and no access to advisors or lawyers for this purpose.
- In relation to the Public Comment, Cr Couros characterised the member of the public as a 'passionate ratepayer and a serial commenter', and she explained she does not endorse the comment.

Councillor Couros also explained that (following this complaint and other Council Code of Conduct reports), she is more mindful in presenting information to the public. She advised that she would review the website of the 'Doing Nothing' organisation.

Councillor Couros noted that, in hindsight, she would not have posted the Facebook Post and expressed regret for doing so (and was apologetic for the offensive inference). She explained that she has disabled commenting on various posts on her Facebook Page – those which she deems to be potentially controversial.

In terms of resolution and rectification, Cr Couros advised that she would be amenable to:

- deleting the Facebook Post and removing the Public Comment (if not already removed);
- admitting that the Facebook Post was not appropriate; and
- admitting that she did not understand the offending connotations and was not intending to (and does not) convey any link between Cr Martin and the 'Doing Nothing' organisation.

4. CONSIDERATION OF COMPLAINT

The Complaint alleges breaches of clauses 2.1, 2.2, 2.3, 2.6, 2.7, 2.8, 2.9, and 2.10 of the Code. We have investigated these alleged breaches, and consider each clause in turn below.

Whilst a significant portion of the alleged conduct concerns Cr Couros' own commentary within the Facebook Post, we are also required to consider allegations about the Public Comment, being a comment left by a third-party individual on Cr Couros' Facebook page. The Public Comment was posted by a member of the public, not by Cr Couros. However, the evidence establishes that Cr Couros was aware of the Public Comment and indeed she responded directly to the comment.

We must consider whether the Public Comment (which is publicly visible on Cr Couros' Facebook page) could have caused Cr Couros to breach the relevant clauses of the Code.

In this respect we take guidance from the High Court of Australia case of *Fairfax Media Publications Pty Ltd v Voller* [2021] HCA 27. In that case, news publishers/broadcasters maintained their own Facebook pages, upon which third-party Facebook users posted defamatory comments.

The High Court found that each news publisher/broadcaster was a publisher of each defamatory comment:

[98] Each appellant became a publisher of each comment posted on its public Facebook page by a Facebook user as and when that comment was accessed in a comprehensible form by another Facebook user. Each appellant became a publisher at that time by reason of its intentional participation in the process by which the posted comment had become available to be accessed by the other Facebook user. In each case, the intentional participation in that process was sufficiently constituted by the appellant, having contracted with Facebook for the creation and ongoing provision of its public Facebook page, posting content on the page the effect of which was automatically to give Facebook users the option (in addition to "Like" or "Share") to "Comment" on the content by posting a comment which (if not "filtered" so as to be automatically "hidden" if it contained "moderated words") was automatically accessible in a comprehensible form by other Facebook users.

...

[104] Where, as here, the operator of an "electronic bulletin board" posts material with the intention that third parties will comment on the material posted, the operator cannot escape being a publisher of the comments of those third parties. The most appropriate analogy is with live television or talkback radio. As Brennan CJ, Dawson and Toohey JJ recognised in *Thompson v Australian Capital Television Pty Ltd*, in the context of a live to air broadcast of a television program being simultaneously aired by another network, "the nature of a live to air current affairs program carries a high risk of defamatory statements being made" and such a program "by its nature would be likely to involve comments about persons".

[105] In sum, each appellant intentionally took a platform provided by another entity, Facebook, created and administered a public Facebook page, and posted content on that page. The creation of the public Facebook page, and the posting of content on that page, encouraged and facilitated publication of comments from third parties. The appellants were thereby publishers of the third-party comments.

...

We take significant guidance from the High Court's statements regarding the degree of responsibility and culpability that the publishers were found to have over third-party comments.

Councillor Couros is the moderator of her Facebook page and has control (and therefore responsibility) over posts and comments appearing on that page. She has capacity to remove public comments and in our view a responsibility to moderate and remove comments which are offensive or disrespectful.

Councillor Couros has sole discretion for monitoring and filtering any comments that may appear on her Facebook page, and voluntarily provides a public forum for discussion and debate with constituents that necessitates a degree of involvement and responsibility on behalf of that elected member.

Accordingly, we consider that Cr Couros' can be deemed the 'publisher' of the Public Comment and is responsible for its contents.

4.1 Clause 2.1 – Show commitment and discharge duties conscientiously

Discussion

Clause 2.1 requires Councillors to show commitment and to discharge their duties conscientiously.

To be committed requires one to be 'devoted; wholeheartedly engaged', and to act in conscience requires one to act 'in reason and fairness; in truth' (as those phrases are defined in the *Macquarie Dictionary*).

Sections 59 and 62 of the *Local Government Act 1999 (SA)* set out the primary duties of councillors. Relevantly, those sections provide (excluding provisions relevant to conflicts of interest):

59—Roles of members of councils

- (1) The role of a member of a council is—
 - (a) as a member of the governing body of the council—
 - (i) to participate in the deliberations and civic activities of the council;
 - (ii) to keep the council's objectives and policies under review to ensure that they are appropriate and effective;
 - (iii) to keep the council's resource allocation, expenditure and activities, and the efficiency and effectiveness of its service delivery, under review;
 - (iv) to ensure, as far as is practicable, that the principles set out in section 8 are observed;
 - (b) as a person elected to the council—to represent the interests of residents and ratepayers, to provide community leadership and guidance, and to facilitate communication between the community and the council

...

62—General duties

- (1) A member of a council must at all times act honestly in the performance and discharge of official functions and duties.
- (2) A member of a council must at all times act with reasonable care and diligence in the performance and discharge of official functions and duties.

...

Findings

On the basis of Cr Couros' conduct in publishing the Facebook Post and the Public Comment, we are unable to conclude that Cr Couros is undevoted or disengaged. We do not consider that Cr Couros was acting contrary to reason and fairness in carrying out her duties referenced above. She was not acting dishonestly, and we acknowledge the submissions supporting the fact that some degree of care and diligence was involved in the making of the Facebook Post. Importantly, this finding does not detract from the presence of disrespect and unreasonableness, which we discuss below.

We do not find that Cr Couros breached clause 2.1 of the Code.

4.2 Clause 2.2 – Act in a way that generates community trust and confidence in the Council

Discussion

Clause 2.2 requires elected members to act in a way that generates community trust and confidence in the Council. We must consider whether the publishing of the Facebook Post and the Public Comment failed to generate community trust and confidence in the Council.

To have 'trust' means 'to have or place trust, reliance or confidence in', 'to depend on; rely on'. To have 'confidence' means to have 'believe in the trustworthiness or reliability of a person or thing' (as those words are defined in the Macquarie Dictionary).

The Facebook Post refers to the disrespectful conduct of only one elected member, and highlights the support shown by five other elected members on Council. Negative imputations are not made in relation to Council as a whole.

The Public Comment does comment on the culture and actions of councillors and the Council more broadly, highlighting alleged 'issues of staff intimidation, bullying, misogyny and racism', which have assertedly 'gone unpunished', leading to the Council potentially becoming an 'hypocrite employer'.

Findings

We have not been provided with specific evidence tending to establish that the Facebook Post constitutes a failure to generate community trust and confidence in Council.

However, in relation to the Public Comment, readers of that comment would likely find their trust and confidence the Council diminished, by virtue of the untruthful assertions within. It was not accurate to say that the Council has issues involving 'bullying, misogyny and racism'. There is no factual basis for these statements and the commenter provided no source for their comments.

We reiterate that the content of the Public Comment can be largely attributed to Cr Couros in circumstances where she allowed that comment to appear on her own public Facebook page.

We find that Cr Couros, in allowing, facilitating and publishing the Public Comment, breached clause 2.2 of the Code.


4.3 Clause 2.3 – Act in a reasonable, just, respectful and non-discriminatory way when dealing with people

Discussion

Clause 2.3 requires elected members to act in a reasonable, just, respectful and non-discriminatory way when dealing with people.

'Dealing with People'

We have considered the significance and impact of the words 'when dealing with people' as used in clause 2.3 of the Code.



We adopt the *Macquarie Dictionary* definition of 'dealing' and 'deal', meaning '*conduct in relation to others; treatment*', and '*to conduct oneself towards persons*'. A preliminary question for determination is whether Cr Couros' conduct in allowing, facilitating and publishing the Public Comment satisfies this definition and constitutes 'dealing with people'.

In this regard, we respectfully adopt comments made by the Ombudsman in a previous investigation report:

542. Clause 2.3 appears directed towards a council member's dealings at large, in the sense that it is not limited to a council member's interactions with members of the public or with other council officers.

That report concerned the Ombudsman's investigation of the conduct of Cr Lance Bagster ([2018] SAOmbRp 24).

We find the reasoning and comments of the Ombudsman to be persuasive, and I adopt such comments as relevant to the present circumstances.

The Ombudsman outlined various emails sent by Cr Bagster to external parties, to whom he directed insults and threats. The Ombudsman concluded:

557. ... In the circumstances, I am satisfied that Cr Bagster's behaviour in sending the communications identified above was sufficiently connected to his position and responsibilities as an elected member so as to impart an obligation to comply with the Code.
558. In the circumstances, I am satisfied that Cr Bagster has contravened clause 2.3 of Part 2 of the Code by failing to act reasonably, justly and respectfully when dealing with each of the individuals identified above.

Similarly, in the Ombudsman's report concerning the investigation into the conduct of Mayor Walsh ([2020] SAOmbRp 7) the Ombudsman commented as follows.

74. I have turned my mind to the fact that Mayor Walsh appeared to have sometimes been acting in his personal capacity. I do not consider that clauses 2.2 and 2.3 are necessarily limited to official functions and duties, being aimed at conduct that does not meet community expectations. Overall, I consider that there is a sufficient nexus between Mayor Walsh's conduct and his role as a council member for clauses 2.2 and 2.3 to apply.


In light of these observations, we find that Cr Couros' conduct falls within the scope of clause 2.3. We find there to be a sufficient nexus between Cr Couros' conduct and her role as a Council member.

Content of Obligation in Clause 2.3

In relation to the content of the requirement in clause 2.3 to act in a 'reasonable, just, respectful and non-discriminatory way', we adopt the ordinary meaning of the relevant words as defined in the *Macquarie Dictionary*:

- 'reasonable' means 'endowed with reason'
- 'just' means 'actuated by trust, justice, and lack of bias'
- 'respectful' means 'full of, characterised by, or showing respect'
- with 'respect' meaning 'esteem or deferential regard felt or shown', and 'to show esteem, regard, or consideration for'; and
- 'discriminatory' means 'exhibiting prejudice; showing discrimination'.

We accept Cr Martin's submission that the commentary within the Facebook Post, combined with the attached image, draws a link between his conduct and the aims of the 'Doing Nothing' organisation. We



also accept that the aims of the 'Doing Nothing' organisation are directed toward prevention of disrespect violence against women and children – conduct that has not been attributed to Cr Martin.

We also accept Cr Couros' submission that the Facebook Post related to a matter before Council, which was not confidential. It is not inappropriate for councillors to comment on the existence or content of the Code of Conduct Report which is before Council. Nonetheless an offensive imputation and connotation was included within the Facebook Post. We acknowledge and accept Cr Couros' submission that this imputation was not deliberate, and that she did not intend to draw the inference or cause offence.

As conceded by Cr Couros, although the Facebook Post does not refer to Cr Martin by name, his identity is readily accessible through the Council Meeting Agenda and media articles circulating at that time.

The Public Comment does not refer to any particular councillors. However, when considered in context of the Facebook Post, we consider that the comment is reasonably referable to Cr Martin. We also accept Cr Martin's submission that assertions of 'bullying, misogyny and racism' have no factual basis.

Findings

As to whether Cr Couros' conduct was reasonable, just, respectful and non-discriminatory, our findings are as follows.

In relation to the Facebook Post, we find that the Facebook Post conveyed an imputation that Cr Martin's conduct was captured by, or within the scope of, the 'Doing Nothing' organisation. This imputation has no basis in fact and we find that the Facebook Post was not reasonable, nor did it show respect. The Complainant asserted that Cr Couros' conduct was 'a deliberate and malicious attempt at character assassination ...'. We note that the thresholds within clause 2.3 do not require any finding as to the existence of harmful intentions or malice. Accordingly we have not considered whether the behaviour was 'deliberate and malicious' and do not make a finding in that respect.

In relation to the Public Comment, we consider that the commentary is directed toward Cr Martin and contains untrue statements, therefore reaching the required threshold for disrespect and unreasonableness.

We find that Cr Couros, in publishing the Facebook Post and the Public Comment, breached clause 2.3 of the Code.

4.4 Clause 2.6 – Comply with all Council policies, codes and resolutions


We have not been provided with submissions or evidence tending to establish a breach of clause 2.6. To the extent that the Complaint is referencing the Code itself, we note that the Code is not a Council document and is not captured by clause 2.6. Councillor Couros will not be in breach of clause 2.6 by virtue of being in breach of other clauses of the Code.

4.5 Clause 2.7 – Deal with information received in their capacity as Council members in a responsible manner

Discussion

Clause 2.7 of the Code requires elected members to deal with information (received in their capacity as council members) in a responsible manner.

In the Ombudsman's decisions in *Cr Andrews* [2018] SAOmbRp 10 and *Cr Charles* [2018] SAOmbRp 11, the councillors in question were found to be in breach of clause 2.7 of the Code (amongst other clauses),



by writing and publishing an inaccurate account of a Council resolution. The publication contained information that was incorrect and misleading.

We have taken guidance from this useful illustration of conduct which will fall short of the threshold for 'responsible' dealings with information.

As explained above, Cr Couros' Facebook Post drew a disrespectful and inappropriate imputation that has no basis in fact. The imputation was inaccurate and misleading, and by extension, the Facebook Post itself will be inaccurate.

The basis of the Facebook Post was the Kelledy Jones Code of Conduct Investigation Report. Councillor Couros (by inference) relied on this Report in communicating the misleading inference

Findings

We consider that the Facebook Post contained information that was inaccurate and misleading. Further, the inference made by Cr Couros is that this information was to be found within a Council document, (i.e. the Investigation Report). As a result, we consider that Cr Couros did not deal with information received in her capacity as a Council member in a responsible manner.

We find that Cr Couros breached clause 2.7.

4.6 Clause 2.8 – Endeavour to provide accurate information to the Council and to the public at all times

Discussion

Clause 2.8 requires elected members to provide accurate information to the Council and to the public at all times.

In our view, Cr Couros' conduct in publishing the Facebook Post attracted the application of clause 2.8 of the Code, (i.e. Cr Couros was providing 'information ... to the public').

The Ombudsman's decisions in *Cr Andrews* [2018] SAOmbRp 10 and *Cr Charles* [2018] SAOmbRp 11 establish that creating, sending and sharing information to the general public can (when inaccurate and/or misleading) fall within this description and attract application of clause 2.8.

In those reports, as explained above, two elected members created and circulated media releases which conveyed wrong information. This conduct breached clause 2.8. The elected members genuinely believed the content of the media release but it was simply inaccurate. Their conduct in 'creating, sending and sharing incorrect information to the general public which was misleading' fell short of their responsibilities pursuant to clause 2.8.

As a result, in our view, if the information conveyed by the Facebook Post was inaccurate and/or misleading then Cr Couros' conduct will be in breach of clause 2.8 of the Code.


Findings

It is already established above that the Facebook Post conveyed inaccurate information and misleading imputations. Accordingly we consider that Cr Couros did not provide accurate information to the public. We find that Cr Couros breached clause 2.8 of the Code.

4.7 Clause 2.9 – Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions

Discussion

Clause 2.9 requires elected members to endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.



The Ombudsman's report in *Cr Bagster* [2018] SAOmbRp 24 provides a useful illustration of conduct which will breach clause 2.9 of the Code. In that instance, Cr Bagster's communications toward other councillors suggested that he 'has no real interest in maintaining a respectful relationship with any of the elected members'. As Cr Bagster appeared 'to have made no genuine efforts to understand or tolerate views different to his own', his conduct breached clause 2.9 of the Code.

In circumstances where a relationship between councillors is severely strained, it may be considered that clause 2.9 is inapplicable or irrelevant. This is not the case. Clause 2.9 continues to express a positive obligation on all councillors, no matter the current state of their relationships with other councillors. The Code is not expressed in a way that allows flexible application of the obligation depending on the present state of the relationship. To ensure ongoing compliance with clause 2.9, councillors must continue to maintain respectful relations (or at least endeavour to do so), with all other councillors.

As previously discussed, the Facebook Comment is disrespectful toward Cr Martin. We do not consider that the content of the Facebook Post evidences an interest in maintaining a respectful relationship with those elected members.

Findings

We find that Cr Couros, in publishing the Facebook Post, breached clause 2.9 of the Code.

4.8 Clause 10 – Not bully or harass other Council members

Discussion

Clause 2.10 requires elected members to not bully or harass other Council members.

In order to determine whether Cr Couros' conduct amounts to 'bullying' or 'harassment' and hence a breach of clause 2.10, it must first be established what sorts of conduct amount to bullying and harassment.

The Ombudsman has previously considered the term 'bullying' and harassment in the context of the Code (again in *Cr Bagster* [2018] SAOmbRp 24):

437. Based on the foregoing, I have adopted the following definition of bullying for the purposes of the present investigation:
 - the council member has engaged in repeated unreasonable behaviour directed towards a relevant person (especially by repeated threats, intimidation or demeaning behaviour); and
 - the behaviour creates a risk to health and safety (including a risk to mental health).
438. Similarly, and in the absence of any particular legislative definition to draw from, I have adopted the following definition of harassment for the purposes of the present investigation, drawn from the dictionary definition:
 - the council member has persistently and unreasonably disturbed a relevant person; and
 - the behaviour could reasonably be expected to trouble or stress that person.

We are unable to identify any evidence of *repeated* unreasonable behaviour or *persistent* disturbance. The material provided to us as part of this Complaint (being the Facebook Post and the Public Comment) present a singular incidence and we do not consider it falls within the definitions of bullying or harassing.

Findings

We do not find that Cr Couros breached clause 2.10 of the Code.

5. FINDINGS

Our findings are that Cr Couros has breached the Code. Specifically, her conduct in publishing the Facebook Post (which contained the Public Comment) fell short of the obligations found in clauses 2.2, 2.3, 2.7, 2.8 and 2.9 of the Code. More specifically:

- the content of the Public Comment contains untruthful assertions about the Council and the existence of issues of 'bullying, misogyny and racism', which fails to generate community trust and confidence in the Council (in breach of clause 2.2)
- the Facebook post draws an offensive and inaccurate imputation about Councillor Martin's behaviour, linking his conduct to the 'Doing Nothing' organisation (and thereby inferring that his behaviour involves severe levels of disrespect toward women) (in breach of clause 2.3)
- Cr Couros used a Council report to create (and convey to the public) the abovementioned inaccurate imputations (in breach of clauses 2.7 and 2.8)
- Cr Couros' behaviour was disrespectful, and she has failed to maintain a respectful relationship with all Council members (in breach of clause 2.9)

We do not find that Cr Couros breached clauses 2.1, 2.6, or 2.10 of the Code, as the evidence does not establish that she:

- failed to discharge her duties contentiously
- failed to comply with all Council policies, codes and resolutions; or
- bullied or harassed other Council members.

6. RECOMMENDATIONS

We consider that Councillor Couros should take remedial action (voluntarily and genuinely), as follows:

- delete the Facebook Post and remove the Public Comment;
- accept and acknowledge that:
 - the Facebook Post was not appropriate; and
 - she did not understand the offending connotations and was not intending to convey (or that there is) any link between Cr Martin and the 'Doing Nothing' organisation.

We encourage and urge Cr Couros to take these steps and note that a failure to delete the Facebook Post may constitute an ongoing breach of the Code. (We are of the view it is preferable that Cr Couros voluntarily remove the Facebook Post and Public Comment. As a result, we have not formally recommended to Council that it resolve to require Cr Couros to delete the Facebook Post and Public Comment, but it is open for Council to do so).

In respect to the two suggested public admissions, we consider that publication of these statements (as acknowledged within this Investigation Report) is sufficient, and no further statements are required.

The Complainant requested that a public apology be made. We do not consider this to be appropriate or necessary. We find that Cr Couros has demonstrated some remorse and regret for her actions. We also find that Cr Couros has taken tangible steps to lessen the prevalence of offensive Facebook comments being made by members of the public on her Facebook page. This has resulted in a lessened need to recommend punitive actions. Conversely, we consider that a public apology would not be directed toward meaningful change in behaviours or rectification of wrongful conduct. Our suggestions (outlined above) are intended to encourage practical and meaningful changes in behaviours.

Apart from the remedial suggestions identified above (and subject to our comments below), from the perspective of the Council, we recommend that no further action be taken.

We also recommend that Council, as part of its consideration of this matter, resolve to adopt the findings in this report.

Throughout the entirety of the preliminary enquiry stage, and this investigation, Cr Couros was aware that Cr Martin took offence to the Facebook Post. During the investigation stage Cr Couros conceded the Facebook Post misrepresented Cr Martin's conduct and was not appropriate. She took no steps to delete it from her Facebook page.

Further, at the interview, Cr Couros indicated that she would shortly remove the Facebook Post.

Upon circulation of the Initial Investigation Report, Cr Couros had the benefit of our draft recommendations, which included deletion of the Facebook Post. As at the date of this Final Investigation Report, Cr Couros has failed to remove the Facebook Post.

If Cr Couros does not remove the Facebook Post following adoption of this report by Council, this could constitute a breach of clause 3.17 of the Code (which relates to repeated or sustained breaches of Part 2 of the Code). This could warrant referral to the Ombudsman. We urge Council to review and monitor Cr Couros' Facebook page and ensure that the offending Facebook Post is deleted.



Annexure – A

Complaint

Annexure to Investigation Report

Code of Conduct



Phillip Martin <P.Martin@cityofadelaide.com.au>

To Clare Mockler

Cc Mick Petrovski

Reply Reply All Forward

Wed 13/Oct/2021 04:27 PM

Dear CEO

I wish to lodge Code of Conduct complaints.

The first and most serious complaint is against Councillor Mary Couros for the sustained publication of commentary in social media associated with and dishonestly misrepresenting the nature findings of a Code of Conduct complaint against me, together with her inclusion of commentary by a member of the public, within the same post, of false allegations of intimidation, bullying, misogyny and racism.

Councillor Couros first published on her Facebook page, accessed by entering a Facebook search for Mary Couros Adelaide City Councillor, a post on September 14th 2021 which continues to be published at the time of writing. Photographs of the post will be emailed separately as evidence.

In both posts she did not name me, but my identity would have been apparent to any reasonable person through the publication of the Council Meeting Agenda on September 10th 2021 and the publication of a report in Adelaide Now and the Advertiser on the finding of the Code of Conduct complaint against me (to be emailed separately) on September 13th and September 14th.

The Facebook post conflated the findings of the Code of Conduct against me with Councillor Couros' assertion that I had been found to have been "disrespectful to two women" and that this required "doing something" when "women (are) being disrespected" because "doing nothing does harm", consistent with the goals of an organisation whose details are publicly displayed in North Adelaide and other places throughout Australia, a photograph of which was included in Councillor Couros' post and described by her as "fitting", presumably, the findings against me. The Our Watch; Doing Nothing Does Harm website defines "disrespect towards women" as;

"Disrespect towards women is anything that makes a woman feel uncomfortable, unsafe, put down, or treated unfairly because she's a woman. It's pervasive. It's targeted. And it often involves sexist and sexually harassing behaviours, like;

Making sexist jokes and comments

Interrupting, talking over, and speaking for women

Pestering a woman who said she "isn't interested"

Thinking or saying women "belong" in certain roles

Using patronising language with women you don't know ("sweetheart", "love")

The website Councillor Couros linked to the Code of Conduct finding against me also asserts "and while not all disrespect leads to violence, all violence starts with disrespect".

I contend Councillor Couros' conflating her Facebook post with "disrespecting of women" as detailed by the Our Watch; Doing Nothing Does Harm" organisation's website and their definitions of "disrespecting" was a deliberate and malicious attempt at character assassination by a publicly elected official acting without basis and without integrity.

The Code of Conduct investigations and findings which she sought to make the foundation of her published social media remarks and inferences concluded that there had been no harassment or bullying, but, most especially, there was no gender or any other discrimination;

"For completeness, we do not find that the actions and behaviours of Cr Martin, subject of this investigation, could be said to be discriminatory in nature."

Additionally, Councillor Couros chose to again conflate through publishing and continuing to publish in the context of her false Facebook assertions about me, the inflammatory and entirely false remarks of a [REDACTED] that there are ".....issues of staff intimidation, bullying, misogyny and racism (that) have gone unpunished for too long now".

Councillor Couros has made no attempt on Facebook to dissociate me from [REDACTED] commentary, to reject or to even challenge [REDACTED] assertions and has not, at the date of the complaint, deleted them.

This entire post has been shared by other parties on the Facebook platform to innumerable others.

This is not the first time Councillor Couros has published unsubstantiated allegations about me on social media. For more than a year there have been repeated instances of her online bullying and harassing that reached such a point earlier this year I was forced to engage a legal firm to explain to her in writing that her allegations were actionable and to demand that they be taken down. Councillor Couros removed all of those posts within seven days and I took no further action. I am able to provide a copy of that correspondence subject to legal advice. In any case, her online campaign of character assassination has resumed.

I contend the actions of Councillor Couros allowing, facilitating and maintaining the publication for well over a month of such completely false, offensive and inflammatory commentary directed at me breaches 2.1, 2.2, 2.3, 2.6, 2.7, 2.8, 2.9 and 2.10 of Part 2 of the Behavioural Code. Further, I contend her conflation of the findings against me of the Code of Conduct investigation with the goals of an organisation dedicated to stopping disrespecting women and preventing violence against women was at best dishonest and at the very least a failure to discharge her duties with reasonable care and diligence and, therefore, in breach of 3.1 or 3.2 of Part 3 of the Code of Conduct.

In the event the investigation finds against Councillor Couros on any or all of the code breaches I suggest the seriousness of the matter is such that under the Penalties outlined in paragraph 3 of the Code the minimum penalty should be a written apology to me, an apology to Council, training to ensure Councillor Couros understands her actions have fallen far below the minimum standards of behaviour expected of an elected member of the City of Adelaide and any other penalties recommended by any investigation.



I acknowledge receipt of your email. Here are the screens shots of the post referred to from. September 14th. I will send separately the screens shots from yesterday, October 13th. Please advise me if you have not received both sets of photos or if you require further material from me.

1:46 pm Wed 13 Oct 55%

Comments Phillip

Mary Couros 14 Sep · 🌐

How fitting I see this advertised at a bus shelter this morning with the Code of Conduct on the agenda tonight.


A fellow councillor being found disrespectful to two women the Lord Mayor and CEO of the [City of Adelaide](#)

Let this be a message to alldo something because doing nothing does harm.

To make a change starts with women supporting each other to break the barriers and I would like to thank the men on council who continue to support women and in particular respecting the women on council.

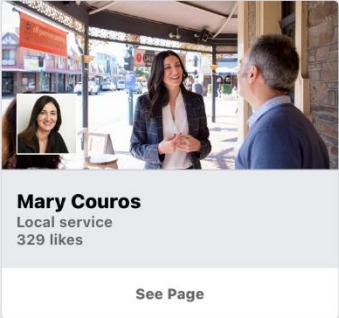
[Franz Knoll](#) [Arman Abrahamzadeh](#) [Simon Hou](#) @[Jessy Khera](#) @[Alexander Hyde](#)

[#womensupportingwomen](#) [#Respect](#) [#awareness](#)



Write a comment... GIF 😊

News Feed Friends (4) Watch (1) Marketplace (1) Notifications (9+) Menu





Like Comment Share

Write a comment... GIF



Mary Couros
Local service
329 likes

See Page

Like Comment Share

Arman Abrahamzadeh and 11 others

3 shares

Most relevant



Anne Moran
That's almost funny if it wasn't so sad. You disrespect me every Council meeting repeatedly Last little gem was when I said we should just say no to building on the parklands and I debated in a respectful and quiet manner. You responded by repeatedly screaming that I was like a toddler having a tantrum. I call you out Mary Couros

3 w Like Reply 2

Anne Moran replied · 8 replies

Hoping that the Council can actually implement some form of punishment for any staff member or Councillor that does breach the Code of Conduct. As issues of staff intimidation, bullying, misogyny and racism have gone unpunished for too long now. If not the ACC will just be made out to be a hypocrite employer....

4 w Like Reply

Write a comment... GIF



Mary Couros
Local service
329 likes

See Page

✕

📍 ...

Mary Couros
14 Sep · 🌐

How fitting I see this advertised at a bus shelter this morning with the Code of Conduct on the age... See more

👤 Arman Abrahamzadeh and 11 others

11 comments

👍 Like 💬 Comment ➦ Share