

SCS-038 Councillor Workplace Health & Safety Policy

TRIM Reference:	D19/180761	Due for Review:	November 2024
Responsible Officer:	Manager Governance and Risk		

Purpose

Surf Coast Shire Council exists to represent the community, and its work includes providing a range of community, corporate, infrastructure, planning and environmental services to the Surf Coast Shire in a safe, efficient, cost effective and environmentally responsible manner.

Councillors care about the community and acknowledge their responsibility to provide leadership on workplace safety and relevant social justice issues.

Surf Coast Shire Council, as required by the *Occupational Health & Safety Act 2004 (OHS Act)*, must provide and maintain, so far as is reasonably practicable:

- a working environment;
- work systems, processes and training; and
- Council managed buildings and community facilities;

that are safe and without risks to the health of employees, contractors, volunteers, visitors and members of the public.

Councillors recognise their responsibilities, acting collectively as Council, making decisions in the Chamber, and individually, as Officers under section 144, taking reasonable care to ensure that Council complies with its obligations under the OHS Act, but constrained in relation to what the Councillor knows about a relevant matter, their ability to make or participate in the making of decisions that affect Council in relation to any relevant matter and any other relevant consideration.

Councillors also recognise that their ability to make or participate in the making of decisions is guided by the provisions of the *Local Government Act 2020 (LG Act)* and in particular section 28(3) which states that the role of a Councillor does not include the performance of any functions that are specified as functions of the CEO including the day to day management of the Council's operations.

Note the definition of Officer set out in the Appendix.

Scope

This policy applies to all Councillors of the Surf Coast Shire Council.

It provides guidance to Councillors concerning meeting their legal obligations, corporately and individually, concerning the general duties, requirements and other obligations under the OHS Act, and any other associated legislation. The policy has been enacted for the protection of employees, contractors, visitors and members of the public during the course of work at Surf Coast Shire Council and arising out of the conduct of the undertaking of Council.

This policy does not impose any obligations or functions on Councillors which are inconsistent with their obligations or functions under the LG Act.

Insofar as the CEO may, from time to time, provide Councillors with any operational information for the purposes of addressing any health and safety issue, Councillors recognise that matters related to the day to day management of Council's operations are matters solely the responsibility of the CEO pursuant to section 46(1)(b) of the LG Act.

This policy is in addition to the responsibilities of Councillors under the Councillor Code of Conduct.

See the Appendix for relevant definitions.

Policy

Recognising the obligations placed on Council and individual Councillors by relevant legislation and acknowledging the expectations of the community at Surf Coast Shire, the Council and Councillors are committed to:

- ensuring, so far as is reasonably practicable, the health and safety of all employees, Councillors, contractors, visitors, and members of the public;
- compliance with all relevant workplace health and safety legislation.

Council and individual Councillors will demonstrate a commitment to health and safety, in compliance with the OHS Act and in carrying out their governance responsibilities, by ensuring that Council's Management establishes and maintains objectives that are measurable and consistent with Council's values, goals and expectations which include:

- Eliminating, or if that is not possible, reducing, so far as reasonably practicable, risks to health and safety and wellbeing;
- Providing work environments that do not compromise the health, safety or wellbeing of Council employees, contractors and volunteers;
- Monitoring and reporting on relevant OHS issues;
- Providing relevant OHS information to Council or delegated committee to enable Council to make informed decisions;
- Consulting with employees, and other people likely to be affected by decisions, about safety;
- Ensuring that workplace health and safety is managed in a proactive manner; and
- Continually improving the effectiveness of all safety management systems.

1. What are Councillors Responsible For?

As well as being responsible for the functions and standard of conduct set out in the LG Act, Councillors have responsibilities under the OHS Act, while participating in the decision-making of the Council.

Councillors are subject to the obligations imposed on Officers in the OHS Act and acknowledge that they each have an individual responsibility to take reasonable care to ensure that Council carries out its health and safety obligations, within the restrictions set out in section 144 of the OHS Act including their ability to make or participate in making decisions about relevant matters concerning health and safety.

Councillors will best achieve their OHS Act objectives by:

- Ensuring that decisions made by the Council have taken into account issues concerning health and safety where relevant;
- Ensuring that Council has the resources to implement and manage an appropriate safety management systems;
- Requiring the CEO and Senior Management team to provide appropriate information regarding any relevant health and safety systems and processes;
- Asking questions of the CEO and Senior Management team to ensure that Council understands and accepts, as reasonably practicable, the systems and processes that Council has in place to manage issues of health and safety as required by the OHS Act and related legislation;
- When performing duties on behalf of Council or attending Council workplaces, ensuring that they are complying with this policy and any directions by Council concerning health and safety;
- Interacting with all Council employees, contractors, volunteers, members of the public and fellow Councillors in a manner that does not compromise any person's physical and/or psychological health and safety;
- Being aware of and reporting any incidents, near misses or perceived hazards, including any incidents, near misses or hazards arising from the behaviour of any person, to the Mayor, or the Deputy Mayor;
- The Mayor and Deputy Mayor taking all reasonable actions to ensure the health and safety of Councillors in relation to any safety issues arising internally within Council;
- The Mayor and Deputy Mayor reporting to the CEO all hazards identified by Councillors relating to Council property, staff, contractors or the community;

- Attending any safety related training or making themselves familiar with any briefing provided to Councillors in relation to workplace health and safety;
- Participating actively, if requested by the CEO, in any matter concerning the resolution of a safety issue regarding Councillor and staff health and safety;
- Undertaking all duties, at all times, in a manner that does not put themselves or any other person at risk to their health or safety.

2. Failure to Comply

Any acts or omissions by Council which are in breach of Council's obligations under the OHS Act and related legislation may result in:

- Accident and injury to persons and damage to Council property
- Investigation and criminal prosecution of Council or Staff under the OHS Act by WorkSafe Victoria
- Damage to the reputation of Council and Councillors in the community
- Intervention by the Minister

Any failure by an individual Councillor to take reasonable care to ensure that Council carries out its safety obligations, within the restrictions set out in this Policy, may result in:

- investigation and individual criminal prosecution by WorkSafe Victoria

In extremely serious cases, prosecution and imprisonment for workplace manslaughter.

This offence came into effect 1 July 2020 and applies to the negligent conduct by an employer or other duty holders or an officer of an organisation, which breaches certain duties under the Occupational Health and Safety Act 2004 and causes the death of another person who was owed the duty.

3. Procedure

This Policy will be achieved by Council and Councillors:

- Where relevant, having a section in any briefing paper provided by Management, for the purposes of Councillor Briefings, that identifies safety issues and provides details of any risk management;
- Considering workplace health and safety policy considerations and risk in all decisions before Council;
- Delegating authority to the Audit and Risk Committee to consider workplace health and safety issues at every committee meeting and to report any significant risks to Council;
- Receiving quarterly briefings from the CEO regarding strategic or significant OHS issues ;
- Reviewing annually a briefing on Council's OHS risk register and ensuring they are aware of the risks identified as the most serious for Council and what systems and processes Council has in place to eliminate or reduce those risks;
- Considering the safety of Councillors and members of the public at any Council meeting or Civic engagement where it might be reasonably anticipated that additional security is warranted;

Taking all reasonable care for their own safety while carrying out any Council or Civic duty, including ensuring that they are not impaired by drugs or alcohol at any Council meeting or event or while driving to and from any such meeting or event.

Local Government Act 2020 Principles

Principles	Applicable to this policy	If yes, provide details
Governance Principles (Consideration of the Governance Principles under s.9 of LGA 2020)	Yes	<i>This Policy has been updated in accordance with the relevant law.</i>
Community Engagement (Consideration of Community Engagement Principles under s.56 LGA 2020)	No	

Public Transparency (Consideration of Public Transparency Principles under s.58 of LGA 2020)	No	
Strategies and Plans (Consideration of Strategic Planning Principles under s.89 of LGA 2020)	No	
Financial Management (Consideration of Financial Management Principles under s.101 of LGA 2020)	No	
Service Performance (Consideration of Service Performance Principles under s.106 of LGA 2020)	No	

Definitions

The Principles of Health and Safety Protection (section 4)	<ol style="list-style-type: none"> 1) The importance of health and safety requires that employees, other persons at work and members of the public be given the highest level of protection against risks to their health and safety that is reasonably practicable in the circumstances. 2) Persons who control or manage matters that give rise or may give rise to risks to health or safety are responsible for eliminating or reducing those risks so far as is reasonably practicable. 3) Employers and self-employed persons should be proactive, and take all reasonably practicable measures, to ensure health and safety at workplaces and in the conduct of undertakings. 4) Employers and employees should exchange information and ideas about risks to health and safety and measures that can be taken to eliminate or reduce those risks.
Contractor owed a duty under section 21 of the OHS Act	an independent contractor engaged by the employer, and any employees of the independent contractor, in relation to matters over which the employer has control or would have control if not for any agreement purporting to limit or remove that control.
Health	includes psychological health
Employer	means a person who employs one or more other persons under contracts of employment or contracts of training;
Person	includes a body corporate, unincorporated body or association and a partnership;
Officer	<p>officer of a body corporate, unincorporated body or association or partnership has the meaning (other than in Part 8) given by section 9 of the Corporations Act;</p> <p>The Corporations Act definition of Officer is as follows:</p> <p>officer of a corporation means:</p> <ol style="list-style-type: none"> (a) a director or secretary of the corporation; or (b) a person: <ol style="list-style-type: none"> (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or (ii) who has the capacity to affect significantly the corporation's financial standing; or

	<p>(iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation); or</p> <p>(c) a receiver, or receiver and manager, of the property of the corporation; or</p> <p>(d) an administrator of the corporation; or</p> <p>(e) an administrator of a deed of company arrangement executed by the corporation; or</p> <p>(f) a liquidator of the corporation; or</p> <p>(g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.</p>
So far as is reasonably practicable	<p>regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring health and safety—</p> <p>(a) the likelihood of the hazard or risk concerned eventuating;</p> <p>(b) the degree of harm that would result if the hazard or risk eventuated;</p> <p>(c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;</p> <p>(d) the availability and suitability of ways to eliminate or reduce the hazard or risk;</p> <p>(e) the cost of eliminating or reducing the hazard or risk.</p>
Volunteer	means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses);
Workplace	means a place, whether or not in a building or structure, where employees or self-employed persons work.

Related Procedure

Nil.

References

Related Legislation:

Victorian Occupational Health and Safety Act 2004

Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Bill 2019

Victorian Occupational Health and Safety Regulations 2017

Victorian Workplace Injury Rehabilitation and Compensation Act 2013

OHSAS 18001:2007 Occupational Health and Safety Management System

Victorian Local Government Act 2020

Victorian Privacy and Data Protection Act 2014

Related Policies and Documents:

As well as directly related statutory obligations Council has responsibilities under other documents which have OHS implications such as:

- Councillor Equal Opportunity and Workplace Behaviours Policy
- Council policy, IS-010 Records Management Policy
- Other Council policies and procedures
- Contractual conditions that may change from time to time
- Current and relevant staff enterprise agreements
- Agreements with health authorities
- Voluntary principles, best practices, codes of conduct, charters and guidelines

Document History

Version	Document History	Approved by – Date
1	<i>Amended</i>	<i>Council Resolution – 10 December 2019</i>
2	<i>Amended</i>	<i>Council Resolution – 14 December 2021</i>