



**KOKATHA ABORIGINAL CORPORATION RNTBC (KAC)
CODE OF CONDUCT**



1. Core Themes

The Kokatha Aboriginal Corporation (**KAC**) objectives are set out in Rules 3.1 and 3.2 of the KAC Rule Book. The core themes are:

- Professional management of KAC - governance, structure, approachable, integrity and smart business.
- Ensure cultural and heritage interests are recognised and protected.
- Preserve our culture, heritage and spiritual values.
- Teach and share our principles.
- Foster learning and development, workplace development, training, education, and scholarships.
- Drive economic prosperity through investment, joint ventures and business incubation.
- Create employment opportunities to help Kokatha people return to country.
- Improve the health and wellbeing of Kokatha people - advocate for members, provide access to programs, looking after elders.

2. Application and Limitations

KAC is proud of the services we deliver and of our achievements in the Aboriginal community.

We acknowledge the Kokatha people have the right to expect KAC to carry out its activities efficiently, fairly, impartially, honestly and with integrity.

KAC values its members, clients, staff, volunteers, contractors and visitors. KAC believes people who are engaged by or interact with the organisation deserve to be treated professionally and with respect. Equally all staff and members have a right to a safe place of work.

The purpose of the Code of Conduct is to outline the standards of expected behaviour and the consequences of not meeting those standards. These standards are required to ensure all KAC members, directors, volunteers, employees and contractors can participate safely and harmoniously to achieve the KAC core themes.

The adoption of this Code of Conduct does not exclude persons from potential criminal or civil investigation and prosecution when so warranted by their actions. Persons who witness an illegal action are encouraged to report the incident to the police.

Persons who believe someone has acted towards them in a way for which a civil law remedy is appropriate should seek independent legal advice. Persons may take civil law action or make a complaint to Federal or State bodies such as the Fair Work Commission or the Australian Human Rights Commission. KAC does not provide support to individuals to pursue civil law matters.

Persons who are mandated notifiers under, for example, South Australian child protection laws, are required by law to notify the Department for Child Protection if they suspect on reasonable grounds



that a child or young person is, or may be, at risk of harm. This Code of Conduct does not relieve mandated notifiers of this requirement.

Rule 5.5 in the KAC Rule Book requires that a KAC member must:

- a. *follow these rules;*
- b. *let the Corporation know, within 28 days, if they change their address;*
- c. *treat other members with respect as outlined in the Corporation's Code of Conduct; and*
- d. *follow any Code of Conduct adopted from time to time by the Corporation's members.*

The general principle of treating people with respect always applies to all persons. This Code of Conduct takes this general principle a step further by specifying consequences that may apply to those persons who are bound by the Code of Conduct.

The Code of Conduct has no independent application in law. This means for example that a member cannot institute legal proceedings in relation to an allegation that another member has not adhered to the Code of Conduct.

The Code of Conduct is an executive document, and a range of actions or sanctions may be applied to persons who do not adhere to the Code of Conduct. For clarity, in respect to legal action, the general objectives in Rule 3.2 (c) of the KAC Rule Book limits the function of the KAC:

- *to initiate and defend legal proceedings so as to protect, preserve and prevent interference with places of historical, social, cultural and spiritual significance for Kokatha people as well as for the purposes of protecting and preserving the native title rights and interests of Kokatha people.*

Whilst any person has the right to take legal action if they believe is appropriate, it is not the responsibility of KAC to assist members, including directors, members of advisory boards or employees, to initiate, conduct or defend any legal proceeding which is not permitted under Rule 3.2 (c), or covered by the *Director's Deed of Access and Indemnity*.

The general objectives in the KAC Rule Book do not restrict KAC as a body corporate entity from taking legal action on commercial or other matters not relating to the Code of Conduct.

The KAC Code of Conduct applies to:

- members of the KAC as defined in Rule 5 of the KAC Rule Book. Rule 5.5 states members have the responsibility *to follow any Code of Conduct adopted from time to time by the Corporation's members*. Members must follow the Code of Conduct while they are participating in a KAC sponsored employment, meeting or community activity.
- directors of KAC (board members) have members responsibilities as outlined above and all directors (including independent or specialist non-member directors) are also required to comply with the KAC Code of Conduct as part of their general obligations as directors.
- members of elected advisory groups and committees - are members of the KAC and have members' responsibilities as outlined above.
- employees – the Code of Conduct forms part of the KAC employment contract. The term "employees" includes persons engaged through a KAC employment contract on a wage or



salary on a full time, part time, casual, permanent or temporary basis. Employees are required to:

- a. treat other members with respect as outlined in the Corporation's Code of Conduct; and
 - b. adhere to any Code of Conduct adopted from time to time by the Corporation's members.
- volunteers are expected to comply with the Code of Conduct and are required to commit to the Code of Conduct in their volunteering agreement.
 - contractors are expected to comply with the Code of Conduct and are required to commit to the Code of Conduct in their contract agreement.

The KAC Code of Conduct does not apply to persons who are not described in the above section.

Other than as provided in Rule 20.2 of the KAC Rule Book, the Board of Directors has no power to intervene or assist members who either allege that someone else has breached the Code of Conduct or against whom an allegation of a breach is made.

Rule 20.2 states:

- *In the event of a breach of the Code of Conduct by a member, notwithstanding any other rule of the Corporation, the Board of Directors may by resolution determine that the member is required to apologise for their behaviour or be required to leave the meeting for a period of time.*

From time to time, persons who are not bound by this Code of Conduct may attend KAC sponsored meetings or community activities. For example, not all Common Law Holders are members of KAC but they are entitled to attend the KAC sponsored Common Law Holder meeting. These persons are expected to comply with the spirit and intent of the KAC Code of Conduct and to adhere to the "Good Meeting Guide" at Annex A.

In the event a person refuses to leave a meeting when requested, either by resolution under Rule 20.2 or by request of the chairpersons or facilitator of a KAC sponsored meeting, the chairperson or facilitator may suspend the meeting and forward a written report to the KAC Board of Directors recommending further action. This may include offering:

- an independent investigation, or
- mediation,

or when warranted, referral:

- to a general meeting of the KAC members for consideration of cancellation of membership in accordance with Rule 5.8 and section 150-35 of the CATSI Act, whereby membership can be cancelled by special resolution of the members in general meeting if the general meeting is satisfied that member has behaved in a manner that significantly interfered with the operation of the corporation or of corporation meetings, or
- to the appropriate appointment authority for the advisory group or committee.

The KAC Rule Book does not give the KAC Board of Directors a mandate to themselves conduct an investigation or to mediate a complaint or to compel an individual to cooperate with an investigation or mediation; however, failure to cooperate or participate could be taken into consideration when determining if further action is required.



3. Expected Behaviours

Persons who are required to adhere to this Code of conduct must:

- Behave professionally, honestly and with integrity, maintaining a respectful relationship with others at work and in meetings.
- Treat everyone with respect and courtesy when attending KAC meetings, representing KAC in any capacity and when otherwise communicating with other persons. Behaviours include physical, verbal and written interaction whether in person, by letter, email, text, instant messaging, social media, telephone or video link or by any other means. The following example behaviours are not acceptable and would breach of the Code of Conduct:
 - (1) rudeness,
 - (2) harassment,
 - (3) insulting behaviour,
 - (4) aggression,
 - (5) derogatory and offensive language,
 - (6) physical abuse, or
 - (7) bullying and intimidation.
- Act with care and diligence in carrying out any activities on behalf of KAC.
- Work towards the achievement of the themes, aims and purposes of the Corporation.
- Disclose and take reasonable steps to avoid any conflict of interest (real or apparent) when acting on behalf of or representing KAC.
- Not make improper use of information gained through membership of KAC or in carrying out or participating in activities on behalf of KAC.
- At all times behave in a way that upholds the integrity and good reputation of KAC.
- Work collaboratively with members, clients and other persons when participating in KAC sponsored activities or when representing KAC in any manner.
- Ensure that KAC confidential information, in any form, remains protected and is not disclosed or used unless authorised to do so by legislation, the owner of that information or in accordance with KAC policy.
- Comply with KAC policies, Chief Executive Instructions, rules, by-laws, Codes of Practice, this Code of Conduct and other lawful directives as adopted from time to time.
- Use all KAC assets with care and respect, ensuring they are operated safely, correctly and within the parameters of its design and purpose and the operating and safety instructions.



- Use KAC resources in a proper manner and adhere to any “reasonable private use” policies when using allocated KAC resources.
- Comply with any reasonable and lawful direction given by managers and supervising staff, ensuring that duties and work are attended to in a professional and timely manner.
- Attend work and meetings at the allotted time in appropriate attire, observing any dress or safety requirements.
- Not present for work or attend a KAC sponsored meeting or community event whilst under the influence of alcohol or any illegal drug or other substance.
- Follow all directions relating to social distancing and the use of face masks or other protective measures during any period in which these precautions have been mandated.

4. Management of Member Behaviour

If it is alleged that a member’s behaviour is contrary to the Code of Conduct (misbehaviour) during a KAC Meeting (including corporation members, directors or advisory group members) the behaviour is to be referred to the chairperson of that meeting who may manage the issue in accordance with the procedure set out below in section 5 of this Code of Conduct.

If this does not resolve the issue or if the issue is of a serious nature, the chairperson may determine the matter should be referred to the KAC Board of Directors. In this event the referral is to be in writing and contain a recommendation to the KAC Board of Directors of the action required, for example, investigation, mediation or other action.

If an allegation of misbehaviour by a member is raised after the close of the meeting, it is to be referred to the chairperson of the meeting at which the misbehaviour was alleged and is to be initially dealt with by the chairperson at the next meeting, or if circumstances warrant, by written report to the KAC Board of Directors.

If an allegation of misbehaviour is made, and at the time of the incident the accused person is not a member, volunteer, employee or director and was not attending a KAC meeting or workplace, or representing the KAC in any other capacity, the KAC Code of Conduct does not apply. The complainant should be advised of the reason why their complaint cannot be addressed by KAC.

Alleged breaches of the Code of Conduct and complaints against directors are always managed by the KAC Chairperson regardless of where they occur.

An alleged breach of the Code of Conduct committed by the KAC Chairperson is to be managed by the Deputy Chairperson.

An alleged breach of the Code of Conduct committed by the KAC Chief Executive Officer is to be managed by the KAC Chairperson.

Alleged breaches of the Code of Conduct and complaints against employees, volunteers and contractors (who are acting in that capacity) are always managed by the KAC Chief Executive Officer regardless of where they occur. The procedures in relation to the handling of such complaints are not set out in this Code of Conduct.



Annex B to this Code of Conduct shows an incident management flowchart for members of the corporation. Note this flowchart does not cover KAC employee, volunteer or contractor behaviour.

Annex C to this Code of Conduct contains four fictitious Case Studies which give examples of typical breaches of the Code of Conduct and advice on how they should be managed.

5. Consequences

Behaviour which is contrary to the KAC Code of Conduct may result in action. This may include:

- For KAC Members:
 - (1) Rule 20.2 of the KAC Rule Book states: *In the event of a breach of the Code of Conduct by a member, notwithstanding any other rule of the Corporation, the Board of Directors may by resolution determine that the member is required to apologise for their behaviour or be required to leave the meeting for a period of time.*
 - (2) When the Board of Directors are not present at the meeting, for example a KAC sponsored community meeting or an Advisory Committee meeting, the chairperson / facilitator at that event may request that the participant apologise or leave the meeting. Should this not resolve the behaviour, the chairperson / facilitator may submit a report of the incident to the KAC Chairperson and, if necessary, suspend the meeting.
 - (3) Rule 5.8.1 (a) of the KAC Rule Book states that if a member misbehaves the member can be removed **by a special resolution at a general meeting**. In this context 'misbehaves' means behaviour that would be considered a serious or repeated breach of the Code of Conduct and 'removal' means the cancellation of membership of the KAC. Section 150-35 of the *Corporations (Aboriginal and Torres Strait Islander) Act (CATSI Act)* requires that for the corporation to cancel membership by special resolution in general meeting, it must be satisfied that the member has misbehaved in a manner that significantly interfered with the operation of the corporation or of corporation meetings.
- For KAC Directors:
 - (1) The penalty applying generally to members also apply to KAC Directors.
 - (2) Rule 7.10 (d) of the KAC Rule Book states that a person ceases to be a director if the director is removed as a director by the members or other directors. For Code of Conduct issues the removal must be by resolution of the members. This clause could be applied if a director committed a serious breach of the Code of Conduct which brought the name or reputation of the corporation into disrepute or breached any of the duties of a director under the CATSI Act. In particular:
 - i. duty of care and diligence (section 265-1);
 - ii. a duty of good faith (section 265-5);
 - iii. a duty not to improperly use position (section 265-10);
 - iv. a duty not to improperly use information (section 265-15);
 - v. a duty to disclose a conflict of interest (material personal interest) (section 268-1 and see rule 7.14);
 - vi. a duty to prevent insolvent trading (section 531-1); and



vii. a duty to act in the best interests of the Corporation and the Kokatha people.

Note: The CATSI Act) may also impose criminal or civil penalties for failure by directors to diligently perform any of the above duties. The Office of the Registrar of Indigenous Corporations (**ORIC**) may also intervene in the governance and management of the Corporation when in their opinion the corporation is non-compliant with the Rule Book or the CATSI Act.

- (3) The board of directors will determine the appropriate course of action following receipt of a report and recommendations from the chairperson of the meeting. It is the meeting chairperson's responsibility to manage the meeting and give the initial response to a Code of Conduct breach. The chairperson must fairly implement this rule (providing warnings and de-escalation options as appropriate). Behaviour which is violent, life threatening or has potential to cause injury, or is otherwise likely to constitute a breach of criminal laws, is to be referred to the police.
 - (4) If a KAC Director is removed from a meeting for breaching the Code of Conduct by a meeting chairperson or facilitator, that person is to provide the KAC Board with a written report on the matter for consideration at the next directors' meeting. This report must include a recommendation of further action.
 - (5) If a complaint is made against a director, and the complaint is made in writing, the Corporation may receive the complaint. The KAC Chairperson may elect to dismiss the complaint if it is clearly vexatious or frivolous; or may appoint an independent person to investigate the complaint or offer the complainant an opportunity to participate in mediation. The independent person or mediator is to provide a report the chairperson with recommendations on any further action required.
 - (6) The report must be considered by the Board of Directors prior to that director's attendance at any subsequent meetings. Actions that may be taken by the Board include:
 - i. independent mediation,
 - ii. dispute resolution in accordance with Rule 21 of the KAC Rule Book,
 - iii. suspension from the meeting/committee for a stated period (but not from directors' meetings), or
 - iv. issuing a notice for a resolution to remove the director for tabling at a general meeting or AGM in accordance with Rule 7.11.1.
- For members of advisory committees:
 - (1) The actions and sanctions applying generally to both members and directors also apply to members of advisory committees during those periods in which they are subject to the Code of Conduct; including while attending committee meetings, KAC sponsored community activities or when representing the Corporation at meetings or events.
 - (2) Code of Conduct issues relating to Culture and Heritage (**C&H**) Committee members which cannot be resolved under the remedies available in Rule 20.2 are to be managed under Schedule 5 to the Rule Book. Breaches may be referred to the KAC Board of Directors. When reporting the incident to the KAC Board of Directors, the KAC Board may determine whether the conduct of a member of the C&H Committee should be referred to the committee member's Appointing Authority.



- For KAC Employees:
 - (1) This Code of Conduct does not outline the consequences of an employee breaching the Code of Conduct during the course of their employment since appropriate consequences will be determined by the KAC Chief Executive Officer and will be consistent with applicable employment laws.

- For KAC Volunteers
 - (1) The action taken against a volunteer is to be commensurate with the seriousness of the breach of the Code of Conduct and can range from a warning to a termination of the volunteering agreement. The appropriate consequences will be determined by the KAC Chief Executive Officer and will be consistent with applicable laws.

- For KAC Contractors
 - (1) Any action taken against a contractor is to be commensurate with the seriousness of the breach of the Code of Conduct and in accordance with the contractor's agreement with the KAC. The appropriate consequences will be determined by the KAC Chief Executive Officer and will be consistent with applicable commercial laws.

6. Undertaking

I acknowledge that I have read this KAC Code of Conduct and I understand my obligations as a Director / Member of the Corporation / Member of an Advisory Board / Employee / Volunteer / Contractor. I undertake to abide by the KAC Code of Conduct.

Name:

Signature:

Date:

Witnessed by (KAC CEO, Manager or Recruitment Consultant)

Name:

Signature:

Date:



The Kokatha Good Meeting Guide

We agree to participate in this Kokatha Aboriginal Corporation sponsored meeting or activity on the understanding that we will always follow the instructions of the meeting chairperson or facilitator and we will:

Be friendly and welcoming:

- Listen with purpose, give other people the time and space to communicate in their own way.
- Ask yourself how you can make someone else's life easier.

Be patient:

- Wait to be recognised by the chairperson or facilitator before speaking to the meeting.
- Remember that people have varying communication styles and preferences.
- Recognise that not everyone has English as their mother language or may communicate in English in differing fashions - so do not make inferences about the speaker's meaning and tone.

Be thoughtful:

- Think about how others will interpret your words – productive, clear communication requires effort.
- Remember that sometimes it is best to refrain entirely from commenting.
- Focus on the issues not on the person – consider what is being said rather than who is saying it.

Be respectful and inclusive:

- Respect differences of opinion.
- Seek to build bridges and understand, not condemn or criticise.
- Make a conscious effort to include people who differ from your opinions.

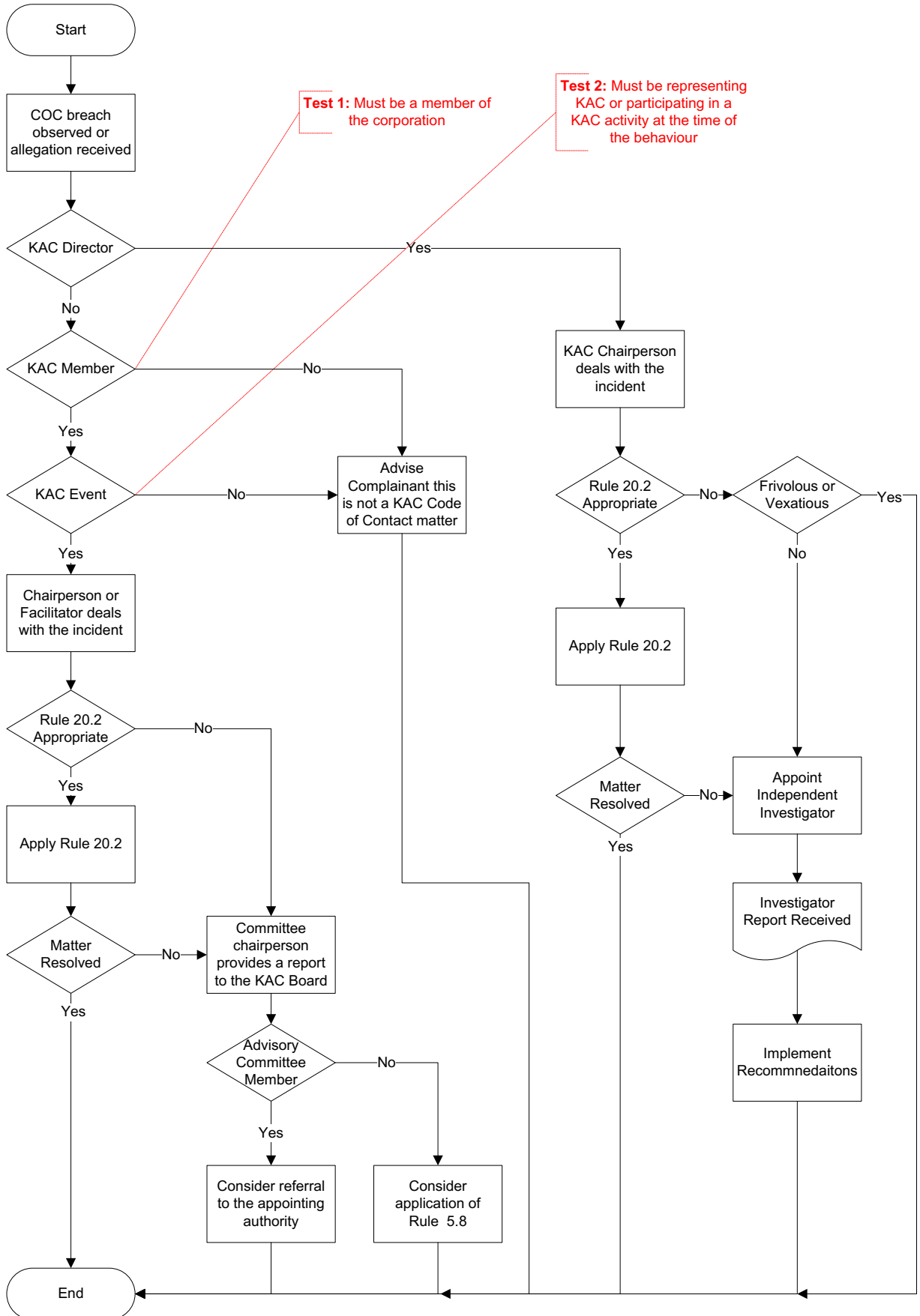
Be open and curious:

- Assume good intent and interpret others' statements or questions in good faith.
- Ask questions to understand, not denounce.
- Focus on continuous learning - get better at the things you already know, tackle completely new things, and ask others about their expertise to deepen yours.

Be attentive:

- Turn mobile phones and other electronic devices off or to silent mode.
- Refrain from side conversations while another person is speaking to the meeting.
- Discretely enter and exit the meeting while it is in progress.

KOKATHA ABORIGINAL CORPORATION
MEMBERS CODE OF CONDUCT INCIDENT MANAGEMENT



CASE STUDIES

1. Disruption of meeting

During a Common Law Holder's (CLH) meeting held at a community venue in Port Augusta, Fred who is a member of the Corporation and Barney, who is a CLH but not a member of the Corporation were having a noisy disagreement. The meeting facilitator stopped the meeting and asked Fred and Barney to observe the good meeting guide and wait to be recognised by the meeting before speaking.

Barney responded by shouting abusive language to the facilitator and he and Fred continued their argument preventing the meeting from continuing.

Test 1 – were Fred and Barney required to observe the Code of Conduct?

Rules 5.5 (c) and (d) apply to this case. Fred is member of KAC and under this rule he was required to treat other members with respect as outlined in the Corporation's Code of Conduct; and to follow any Code of Conduct adopted from time to time by the Corporation's members. Fred may have breached the Code of Conduct but only if he also meets Test 2.

Barney is not a member of KAC, so the Code of Conduct does not apply. However, by attending the meeting, Barney has voluntarily agreed to observe the Good Meeting Guide and to follow the instructions and directions of the facilitator.

Test 2 – were Fred and Barney attending a KAC sponsored meeting or community event at the time of the incident?

Both Fred and Barney meet this test as the CLH is a KAC sponsored meeting. Therefore, Fred has breached the Code of Conduct. As Barney did not meet Test 1, the Code of Conduct does not apply even though he is at a KAC sponsored meeting.

Remedy

If Fred and Barney's behaviour was considered a threat to any other person or became violent or prevented the meeting from continuing, the police or meeting security should be called to deal with the situation.

The facilitator may request the KAC Board of Directors, under Rule 20.2, pass a resolution that Fred either apologise to the meeting or leave the meeting for a specified time. If passed, Fred is required to comply with the direction or risk further action which could lead to cancellation of his membership under Rule 5.8.

The KAC Board of Directors cannot punish Barney for his behaviour as he is not subject to the Code of Conduct. If Barney refuses to observe the good meeting guide and is disruptive to the meeting, the facilitator has a duty of care to the other meeting participants so police or security should be called.

Reporting

If Fred and Barney respond to the facilitator and settle their argument, no reporting is necessary. If the incident needs to be escalated, the facilitator is to provide a written report to the KAC Board of Directors recommending further action. This action would apply only to Fred.

2. Rude and insulting behaviour

Wilma and Betty have been appointed by their family groups as members of the Kokatha Culture and Heritage (C&H) Committee. At the last C&H meeting, Betty supported an application for KAC membership from a member of her family. Wilma argued against the application stating that the applicant was not eligible. The discussion developed into a verbal argument. The C&H Chairperson suspended that agenda item pending further evidence of eligibility. After the meeting Betty sent several rude and threatening emails and text messages to Wilma and posted derogatory comments on her personal Facebook page. Wilma has telephoned Alice who is a KAC Director and made a complaint. Wilma wants KAC to take legal action against Betty.

Test 1 – were Betty and Wilma required to observe the Code of Conduct?

Both Betty and Wilma are members of the Corporation so Rules 5.5 (c) and (d) could apply and if so they would be required to follow any Code of Conduct adopted from time to time by the Corporation's members.

Test 2 – were Betty and Wilma attending a KAC sponsored meeting or community event at the time of the incident?

Although there was a disagreement during the C&H meeting which led to an argument, this was handled by the C&H Chairperson at the time and there was no breach of the Code of Conduct during the meeting. The alleged misbehaviour took place after the meeting. As the Code of Conduct only applies to non-director members while they are attending a KAC meeting or sponsored events, Betty was not subject to the Code of Conduct at the time of her misbehaviour.

Remedy

Alice, who received the complaint, should refer the complaint to the KAC Chairperson. The Chairperson (or the CEO as a delegate) would then advise Wilma that in this case Betty cannot be held accountable under the Code of Conduct since Betty's conduct in sending rude and threatening emails and text messages to Wilma and posting derogatory comments on her personal Facebook page occurred after the meeting and the Code of Conduct did not apply to Betty at that time.

It would now be a private matter for Wilma to decide whether she wanted to pursue a legal remedy for Betty's actions.

In any event, Rule 3.1 (c) the general objective relating to legal proceedings, is not intended to allow KAC to provide assistance to Wilma to take legal action against Betty.

Reporting

As this is not a KAC Code of Conduct matter no formal reporting is required. However, for good meeting governance, the C&H Committee Chairperson should be advised of the situation as Wilma could raise this at the next C&H meeting.

3. Intimidation of KAC Staff Member in Community

George is a Kokatha employee and a member of the Corporation. George works in the Port Augusta office part of the time but is employed on field and community work most of the time. Yesterday, George was delivering notices of the next Common Law Holder meeting to a member of the community when Jane, a Kokatha Common Law Holder and member of the Corporation (non-director) confronted him and accused him of being corrupt and attempting to 'stack' the attendees at the meeting to vote against her family. George claims Jane was loud and abusive, used threatening language and gestures. George did not engage in the incident and returned to the office. He has made a complaint to the Corporate Services Manager (**CSM**) about Jane's behaviour.

Test 1- were George and Jane required to observe the Code of Conduct?

George is a Kokatha employee and therefore, subject to Test 2, would be bound by the Code of Conduct both as a condition of his employment during the course of his employment and as a member of the Corporation when acting in his capacity as a member. Jane is a member of the Kokatha Aboriginal Corporation therefore Rules 5.5 (c) and (d) would apply and, subject to Test 2, she would be bound by the Code of Conduct.

Test 2 – were George and Jane attending a KAC sponsored meeting or community event at the time of the incident?

George was carrying out his duties as a Kokatha employee at the time of the incident, so he is bound by the Code of Conduct. However, in this case there is no suggestion that George has breached the Code of Conduct. Jane was not attending a KAC sponsored meeting or community event at the time of the incident so the Code of Conduct would not apply to her. This means that Test 2 is not met.

Remedy

While there is no remedy available under the Code of Conduct, the Corporation has a duty of care to provide a safe working place for all employees. Bullying, intimidation and other behaviour which threatens employees in the workplace cannot be tolerated and would need to be addressed outside of any Code of Conduct provisions. Both the Chief Executive Officer and the KAC Board of Directors share this responsibility. In cases of extreme behaviour where an employee believes they could be at risk of injury, the incident should be reported to the police. If deemed sufficiently serious, the Board of Directors could raise the matter in a special resolution at a General Meeting of the Corporation and seek the cancellation of Jane's membership under Rule 5.8.1 (b) misbehaviour of a member. In cases where there is clear evidence of repeated patterns of behaviour and a Kokatha employee is unable to perform duties without risk of injury (physical, emotional or psychological), KAC could apply through the police or magistrates court for an intervention order.

Reporting

The CSM is required to report the incident to the CEO. George should formalise his complaint in writing to the CEO. In this complaint he should outline the outcome that he expects from the complaint, for example an apology. The CEO is required to have the complaint investigated and determine the appropriate action. As this incident is a potential Workplace Health and Safety matter it should, if warranted after the investigation, be reported to the KAC Board of Directors. Other reporting may be required under the Work Health and Safety Act 2011 should George sustain an emotional or psychological injury as a result of the incident.

4. Intimidation of KAC Staff Member by a Director

Elroy is a newly appointed director of the KAC Board. He has completed the board induction training during which the Code of Conduct was explained, he was given a copy for reference. Elroy has agreed to abide by the Code and has signed the undertaking. At the board meeting earlier this week Judy, a Kokatha employee and manager of a Kokatha commercial enterprise, presented a draft employment policy for the board's approval. Elroy, whose brother was recently unsuccessful in applying for a position with another Kokatha enterprise, stood and approached Judy calling her corrupt and racist. Elroy stood over Judy and refused to resume his seat calling for the chairperson to sack Judy immediately. Judy was intimidated by this behaviour, left the meeting and went home. She has been on personal leave for the last three days.

Test 1- were Elroy and Judy required to observe the Code of Conduct?

As Elroy is a director of KAC he has responsibilities under Rules 5.5 (c) and (d) and is subject to the Code of Conduct. Judy is a KAC employee so adherence to the Code of Conduct is part of her employee agreement.

Test 2 – were Elroy and Judy attending a KAC sponsored meeting or community event at the time of the incident?

Both Elroy and Judy were attending a KAC Directors' meeting at the time of the incident, so they were both subject to the Code of Conduct at that time.

Remedy

This is serious breach of the Code of Conduct and is a workplace safety incident. The KAC Chairperson should immediately suspend proceedings and deescalate the incident. The CEO should excuse Judy from the meeting. Once de-escalated the chairperson should seek an apology from Elroy or could invoke Rule 20.2 and put a resolution to the board requiring Elroy to apologise to the meeting and to Judy, and to direct Elroy to leave the meeting for a period of time. Should Elroy refuse to accept this direction, the chairperson, in considering an appropriate response, may issue a notice for a resolution to remove Elroy as a director, to be tabled at a general meeting. The meeting should not resume until the incident has been managed.

Additionally, as Elroy had a personal conflict of interest (non-material) regarding Kokatha employment policy, the chairperson should remind Elroy of the required behaviour under Section 3 of the Code of Conduct regarding declaration of conflicts of interest. The board may have required Elroy to excuse himself from the meeting while employment policy was being discussed, thus avoiding the incident.

The CEO should offer assistance to Judy to enable her to return to the workplace as soon as possible.

Reporting

If Elroy responded positively to the requirements of Rule 20.2, the incident should be recorded in the minutes of the meeting. If further action were required, the report would be in the format of the notice for a resolution to remove Rule 7.11.1 (a).

Mandatory workplace health and safety reporting requirements would also need to be met depending on Judy's ability to resume her duties.