



**CITY OF ROCKINGHAM**

# **CODE OF CONDUCT**

**FOR**

## **COUNCILLORS, EMPLOYEES AND COMMITTEE MEMBERS**

Note: For Councillors, this Code of Conduct is to be read in conjunction with the Local Government (Rules of Conduct) Regulations 2007, which are enforceable regulations that specifically relate to the conduct of Council Members (Councillors) and are in addition to the requirements of this Code.

**Reviewed October 2009**

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**COUNCILLORS, EMPLOYEES AND COMMITTEE MEMBERS**

**1 STATEMENT OF INTENT**

This code has been prepared in accordance with the requirements of the Local Government Act 1995 (s5.103).

The Code of Conduct provides Councillors, employees and Committee Members of the City of Rockingham (the 'Local Government') with consistent guidelines for an acceptable standard of professional conduct. The Code addresses the broader issue of ethical responsibility and encourages greater transparency and accountability within the organisation.

The Code is complementary to the principles adopted in the Local Government Act and regulations which incorporate four fundamental aims to result in:

- (a) better decision-making by local governments;
- (b) greater community participation in the decisions and affairs of local governments;
- (c) greater accountability of local governments to their communities; and
- (d) more efficient and effective local government.

The Code provides a guide and a basis of expectations for Councillors, employees and Committee Members. It encourages a commitment to ethical and professional behaviour and outlines principles in which individual and collective local government responsibilities may be based.

In October 2007, enforceable Local Government (Rules of Conduct) Regulations 2007 specifically relating to the Conduct of Council Members (Councillors) came into existence and this Code of Conduct is to be read in conjunction with those regulations. (Refer to Annexure 1)

## **2 ROLE OF COUNCIL, COUNCILLORS, COMMITTEE MEMBERS AND EMPLOYEES**

### **2.1 Role of Council**

The role of Council is in accordance with section 2.7 of the Local Government Act 1995 as follows:

- (1) The council -
  - (a) directs and controls the local government's affairs; and
  - (b) is responsible for the performance of the local government's functions.
- (2) Without limiting subsection (1), the council is to -
  - (a) oversee the allocation of the local government's finances and resources; and
  - (b) determine the local government's policies.

When making decisions, Council is exercising either its legislative role or its executive role (also known as its administrative role). Its executive role may be an exercise of quasi judicial, review or advocacy functions.

The quasi judicial function is not specifically identified in the Local Government Act but is clearly dictated by various delegated responsibilities of Council to determine applications or matters directly affecting a person's rights or interests.

In exercising these responsibilities, Council is required to comply with the principles of procedural fairness (also known as the rules of natural justice). These principles require higher standards than may apply to other aspects of the Council's executive role.

### **2.2 Role of Elected Members (Councillors) and Committee Members**

The role of Councillors is set out in section 2.10 of the Local Government Act 1995 where it states:

A councillor -

- (a) represents the interests of electors, ratepayers and residents of the district;
- (b) provides leadership and guidance to the community in the district;
- (c) facilitates communication between the community and the council;
- (d) participates in the local government's decision-making processes at council and committee meetings; and
- (e) performs such other functions as are given to a councillor by this Act or any other written law.

The primary role of a Councillor or a Committee Member is to represent the community, and to effectively translate the community's needs and aspirations into a direction and future for their local government.

A Councillor or a Committee Member is part of a team in which the community has placed its trust to make decisions on its behalf and is therefore entitled to expect high standards of conduct.

In fulfilling the various roles, Councillors and Committee Members' activities will focus on:

- (a) achieving a balance in the diversity of community views to develop an overall strategy for the future of the community;
- (b) achieving sound financial management and accountability in relation to the local government's finances.
- (c) ensuring that appropriate mechanisms are in place to deal with the prompt handling of residents' concerns;
- (d) working with other governments and organisations to achieve benefits for the community at both a local and regional level;
- (e) having an awareness of the statutory obligations imposed on Councillors, Committee Members and on local governments.

### **2.3 Role of Employees**

The role of employees is determined by the functions of the Chief Executive Officer (CEO) as set out in section 5.41 & delegations from the CEO to Officers in section 5.44 (1) of the Local Government Act 1995 where it states:

#### **5.41. Functions of CEO**

The CEO's functions are to -

- (a) advise the council in relation to the functions of a local government under this Act and other written laws;
  - (b) ensure that advice and information is available to the council so that informed decisions can be made;
  - (c) cause council decisions to be implemented;
  - (d) manage the day to day operations of the local government;
  - (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;
  - (f) speak on behalf of the local government if the mayor or president agrees;
  - (g) be responsible for the employment, management, supervision, and dismissal of other employees (subject to section 5.37(2) in to senior employees);
  - (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and
  - (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.
- direction  
relation

#### **5.44. CEO may delegate powers and duties to other employees**

- (1) A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of delegation.

### **3 CONFLICT AND DISCLOSURE OF INTEREST**

#### **3.1 Conflict of Interest**

- (a) Councillors, employees and Committee Members should ensure that there is no actual (or perceived) conflict or incompatibility between their personal interests and the impartial fulfilment of their professional duties.
- (b) Employees will not engage in private work with or for any person or body with an interest in a proposed or current contract with the Local Government, without first making disclosure to the Chief Executive Officer. In this respect, it does not matter whether advantage is in fact obtained, as any appearance that private dealings could conflict with performance of duties must be scrupulously avoided.
- (c) Councillors, employees and Committee Members will lodge written notice with the Chief Executive Officer describing an intention to undertake a dealing in land within the Local Government area or which may otherwise be in conflict with the Local Government's functions (other than purchasing the principal place of residence).
- (d) Councillors, employees and Committee Members who exercise a recruitment or other discretionary function must make disclosure before dealing with relatives or close friends and should disqualify themselves from dealing with those persons.
- (e) Employees should refrain from partisan political activities which could cast doubt on the neutrality and impartiality of acting in their professional capacity.

An individual's rights to maintain their own political convictions are not impinged upon by this clause. It is recognised that such convictions cannot be a basis for discrimination and this is supported by anti discriminatory legislation.

#### **3.2 Financial Interest**

Councillors, employees and Committee Members will adopt the principles of disclosure of financial interest as contained within the Local Government Act. Part 5, Sections 5.59 – 5.90 and regulation 11 of the Local Government (Rules of Conduct) Regulations 2007. (Refer to Annexure 1)

#### **3.3 Disclosure of Interest**

- (a) In addition to disclosure of financial interests, Councillors, employees and Committee Members, including persons under a contract for services -
  - (i) attending a council or committee meeting; or
  - (ii) giving advice to a council or committee meeting;

are required to disclose any interest they have in a matter to be discussed at the meeting that would give rise to a reasonable belief

that the impartiality of the person having the interest would be adversely affected.

- (b) where an interest must be disclosed under (a) above, the disclosure is to be made at the meeting immediately before the matter is discussed or at the time the advice is given, and is to be recorded in the minutes of the meeting.

**Note (1):** For Councillors Interest Affecting Impartiality, refer to Regulation 11 of the Local Government (Rules of Conduct) Regulations 2007. (Refer to Annexure 1 and 6)

**Note (2):** For employees Interest Affecting Impartiality, refer to Regulation 34C of the Local Government (Administration) Regulations 2007. (Refer to Annexure 5 and 6)

- (1) In this regulation –  
“**interest**” means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.
- (2) A person who is an employee and who has an interest in any matter to be discussed at a council or committee meeting attended by the person is required to disclose the nature of the interest –
  - (a) in a written notice given to the CEO before the meeting;
  - or
  - (b) at the meeting immediately before the matter is discussed.
- (3) A person who is an employee and who has given, or will give, advice in respect of any matter to be discussed at a council or committee meeting not attended by the person is required to disclose the nature of any interest the person has in the matter –
  - (a) in a written notice given to the CEO before the meeting;
  - or
  - (b) at the time the advice is given.
- (4) A person is excluded from a requirement made under subregulation (2) or (3) of an interest referred to in section 5.60 of the Local Government Act (1995).
- (5) A person is excluded from a requirement made under subregulation (2) or (3) to disclose the nature of an interest if –
  - (a) the person’s failure to disclose occurs because the person did not know he or she had an interest in the matter; or
  - (b) the person’s failure to disclose occurs because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person discloses the nature of the interest as soon as possible after becoming aware of the discussion of a matter of that kind.



- (6) If to comply with a requirement made under subregulation (2) or (3), a person who is an employee makes a disclosure in a written notice given to the CEO before a meeting then –
- (a) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
  - (b) immediately before a matter to which the disclosure relates is discussed at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present.
- (7) If –
- (a) to comply with a requirement made under subregulation (2), the nature of a person's interest in a matter is disclosed at a meeting; or
  - (b) a disclosure is made as described in subregulation (5)(b) at a meeting; or
  - (c) to comply with a requirement made under subregulation (6)(b), a notice disclosing the nature of a person's interest in a matter is brought to the attention of the persons present at a meeting,
- the nature of the interest is to be recorded in the minutes of the meeting.

## 4 PERSONAL BENEFIT

### 4.1 Use of Confidential Information

- (a) Councillors, employees and Committee Members will not use confidential information to gain improper advantage for themselves or for any other person or body, in ways which are inconsistent with their obligation to act impartially, or to improperly cause harm or detriment to any person or organisation.
- (b) Information of a confidential nature will not be communicated until it is no longer regarded as confidential.

### 4.2 Intellectual Property

The title of Intellectual Property in all duties relating to contracts of employment will be assigned to the Local Government upon its creation unless otherwise agreed by separate contract.

### 4.3 Improper or Undue Influence

Councillors, employees and Committee Members will not take advantage of their position to improperly influence other Councillors or employees in the performance of their duties or functions, in order to gain undue or improper (direct or indirect) advantage or gain for themselves or for any other person or body.

### 4.4 Gifts and Acts of Hospitality

- (a) In general, elected members, committee members and employees must not seek or accept (either directly or indirectly) any immediate or future gift (including any financial benefit, reward, donation, or hospitality) for themselves, or for any other person or body, as a result of their role with the City.
- (b) Despite the general assumption against seeking or accepting gifts or acts of hospitality, elected members, committee members and employees may accept some types of gifts which are excluded from this code's coverage.

**Note (1):** For Councillor's gifts, refer to regulation 12 of the Local Government (Rules of Conduct) Regulations 2007. (Refer to Annexure 1)

**Note (2):** For Employee's gifts, refer to Regulation 34B of the Local Government (Administration) Regulations 2007. (Refer to Annexure 4)

- (1) In this regulation –
  - “**activity involving a local government discretion**” means an activity –
    - (a) that cannot be undertaken without an authorisation from the local government; or

- (b) by way of a commercial dealing with the local government;

**“gift”** has the meaning given to that term in section 5.82(4) except that it does not include –

- (a) a gift from a relative as defined in section 5.74(1); or
- (b) a gift that must be disclosed under regulation 30B of the *Local Government (Elections) Regulations 1997*;  
or
- (c) a gift from a statutory authority, government instrumentality or non-profit association for professional training;

**“notifiable gift”**, in relation to a person who is an employee, means –

- (a) a gift worth between \$50 and \$300; or
- (b) a gift that is one of 2 or more gifts given to the employee by the same person within a period of 6 months that are in total worth between \$50 and \$300;

**“prohibited gift”**, in relation to a person who is an employee, means –

- (a) a gift worth \$300 or more; or
- (b) a gift that is one of 2 or more gifts given to the employee by the same person within a period of 6 months that are in total worth \$300 or more.

(2) A person who is an employee is to refrain from accepting a prohibited gift from a person who –

- (a) is undertaking or seeking to undertake an activity involving a local government discretion; or
- (b) it is reasonable to believe is intending to undertake an activity involving a local government discretion.

(3) A person who is an employee and who accepts a notifiable gift from a person who –

- (a) is undertaking or seeking to undertake an activity involving a local government discretion; or
- (b) it is reasonable to believe is intending to undertake an activity involving a local government discretion,

is to notify the CEO, in accordance with subregulation (4) and within 10 days of accepting the gift, of the acceptance.

(4) Notification of the acceptance of a notifiable gift is to be in writing and include –

- (a) the name of the person who gave the gift; and
- (b) the date on which the gift was accepted; and
- (c) a description, and the estimated value, of the gift; and

- (d) the nature of the relationship between the person who is an employee and the person who gave the gift; and
  - (e) if the gift is a notifiable gift under paragraph (b) of the definition of “notifiable gift” in subregulation (1) (whether or not it is also a notifiable gift under paragraph (a) of that definition) –
    - (i) a description; and
    - (ii) the estimated value; and
    - (iii) the date of acceptance,of each other gift accepted within the 6 month period.
- (5) The CEO is to maintain a register of notifiable gifts and record in it details of notifications given to comply with a requirement made under subregulation (3).

## **5 CONDUCT OF COUNCILLORS, EMPLOYEES & COMMITTEE MEMBERS**

### **5.1 Personal Behaviour**

- (a) Councillors, Employees and Committee Members will:
  - (i) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code and that will not bring the City into disrepute;
  - (ii) perform their duties impartially and in the best interests of the Local Government uninfluenced by fear or favour;
  - (iii) act in good faith (ie, honestly, for the proper purpose, and without exceeding their powers) in the interests of the Local Government and the community;
  - (iv) make no allegations which are improper or derogatory (unless true and in public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment; and
  - (v) always act in accordance with their obligation of fidelity to the Local Government.
- (b) Councillors will represent and promote the interests of the Local Government, while recognising their special duty to their own constituents. Regulation 10(3) of the Local Government (Rules of Conduct) Regulations 2007 prohibit an elected member from:
  - (i) making a statement that a local government employee is incompetent or dishonest; or
  - (ii) using offensive or objectionable expressions in reference to a local government employee.

### **5.2 Equal Opportunity and Harassment**

- (a) Council considers it the right of every individual to carry out their job in an environment which promotes job satisfaction, maximises performance and provides economic security. Such an environment is dependent of it being free from all forms of harassment, discrimination and victimisation.
- (b) In accordance with the WA Equal Opportunity Act 1984, the City has developed an Equal Opportunity Plan and Policies to assist with the implementation of this act, refer to Council's Policies - 'Equal Opportunity and Harassment' and 'Sexual Harassment'.
- (c) Allegations of discrimination or harassment may be discussed, or assistance sought from the Human Resources section, the Chief Executive Officer, or Contact Officers the names of whom are available from the Human Resources department.

### **5.3 Honesty and Integrity**

- (a) Councillors, employees and Committee Members will:
  - (i) observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards;
  - (ii) bring to the notice of the Mayor any dishonesty on the part of any other Councillor, in the case of an employee to the Chief Executive Officer and in the case of a Committee Member to the Chairperson of the Committee;
  - (iii) be frank and honest in their official dealing with each other.
- (b) Councillors and Committee Members should refrain from making statements that may damage the reputation of the Council or Committee, or individual Councillors or Committee Members, without providing substantiating evidence.
- (c) The Local Government (Rules of Conduct) Regulations 2007 prohibit an elected member from:
  - (i) making a statement that a local government employee is incompetent or dishonest; or
  - (ii) using offensive or objectionable expressions in reference to a local government employee.

### **5.4 Performance of Duties**

- (a) While on duty, employees shall give their whole time and attention to the Local Government's business and ensure that their work is carried out efficiently, economically and effectively, and that their standard of work reflects favourably both on them and on the Local Government.
- (b) Councillors and Committee Members will at all times exercise reasonable care and diligence in the performance of their duties, being consistent in their decision making but treating all matters on individual merits. Councillors and Committee Members will be as informed as possible about the functions of the Local Government, and treat all members of the community honestly and fairly.

### **5.5 Compliance with Lawful Orders**

- (a) Councillors, employees and Committee Members will comply with any lawful order given by any person having authority to make or give such an order, with any doubts as to the propriety of any such order being taken up with the superior of the person who gave the order and, if resolution cannot be achieved, with the Chief Executive Officer.
- (b) Councillors, employees and Committee Members will give effect to the lawful policies of the Council, whether or not they agreed with or approve of them.

## **5.6 Administrative and Management Practices**

- (a) Councillors, employees and Committee Members will ensure compliance with:
  - (i) proper and reasonable administrative practices and conduct including endorsed Council and Administrative Policies and Procedures.
  - (ii) professional and responsible management practices.

## **5.7 Corporate Obligations**

- (a) Standard of Dress.
  - (i) Councillors, employees and Committee Members are expected to comply with prescribed dress standards whilst undertaking Council or Committee duties and the Mayor and Chief Executive Officer reserve the right to raise the issue of dress with individual Councillors, employees and Committee Members, respectively.
- (b) Communication and Public Relations.
  - (i) all aspects of communication by employees (including verbal, written or personal), involving the Local Government's activities should reflect the status and objectives of the Local Government. Communications should be accurate, polite and professional;
  - (ii) all press statements on behalf of the Local Government shall be issued by the Mayor or the Chief Executive Officer, or, in specific cases, an announcement agreed to by resolution of Council, on the further understanding that the Chief Executive Officer has authority to delegate his authority to a Senior Officer.
  - (iii) As representatives of the community, Councillors need to be not only responsive to community views, but to adequately communicate the attitudes and decisions of the Council. In doing so Councillors should acknowledge that:
    - as a member of the Council there is respect for the decision making processes of the Council which are based on a decision of the majority of the Council;
    - information of a confidential nature ought not be communicated until it is no longer treated as confidential;
    - information relating to decisions of the Council on approvals, permits and so on ought only be communicated in an official capacity by a designated officer of the Local Government;
    - information concerning adopted policies, procedures and decisions of the Council should be conveyed accurately.
  - (iv) When approached by members of the public to address an issue on their behalf, Councillors should:

- (a) Ascertain if an approach has been made to a relevant employee and if not, encourage such approach.
- (b) Obtain comment and any related information from a relevant employee should it be considered necessary to meet with the person(s) or to discuss the matter further.
- (c) Provide a brief file note of the meeting for Council's records.

## **5.8 Relationships between Councillors and Employees**

An effective Councillor will work as part of the Council team with the Chief Executive Officer and other employees. That teamwork will only occur if Councillors and employees have a mutual respect and co-operate with each other to achieve the Council's corporate goals and implement the Council's strategies. To achieve that position Councillors need to:

- (a) accept that their role is a leadership, not a management or administrative one;
- (b) acknowledge that they have no capacity to individually direct employees to carry out particular functions;
- (c) refrain from publicly criticising employees in a way that casts aspersions on their professional competence and credibility.
- (d) Councillors are only to approach and seek advice from employees, other than in Council meetings or other meetings constituted by the Council, in the same way as any other member of the public; namely by correspondence, telephone, fax, e-mail or appointment.
- (e) Councillors shall refrain from contacting or dealing with any employee on a matter in which they have an obligation to declare an interest, pursuant to the provisions of Local Government Act 1995.
- (f) Councillors shall refrain from directing, demanding or otherwise attempting to influence an employee to either provide information to which the Councillor is not entitled or to prepare a report or recommendation to Council in a particular way, to further the interests of the Councillor or any other third party.
- (g) Councillors shall not enter employee work areas without an appointment or without requesting and receiving approval from the CEO, Director or relevant senior officer. Councillors shall have security access to the Councillors area within the Administration building when required for official duties, meetings and functions.
- (h) Facilities provided for use by Councillors within the Administration Building are not to be used for the pursuit or conduct of private business or interests.



## **5.9 Appointments to Committees**

As part of their representative role, Councillors are often asked to represent the Council on external organisations. It is important that Councillors:

- (a) clearly understand the basis of their appointment; and
- (b) provide regular reports on the activities of the organisation.
- (c) Communicate the resolved position of Council to the body as determined from:
  - (i) resolutions of Council dealing specifically with the matter involving the external organisation;
  - (ii) resolutions of Council dealing generally with matters involving the external organisation; and
  - (iii) relevant statements of the Council's position contained in adopted Council policies or the City's Strategic Plan.

## **6 DEALING WITH COUNCIL PROPERTY**

### **6.1 Use of Local Government Resources**

Councillors, employees and Committee Members will:

- (a) be scrupulously honest in their use of the Local Government's resources and shall not misuse them or permit their misuse (or the appearance of misuse) by any other person or body;
- (b) use the Local Government's resources entrusted to them effectively and economically in the course of their duties; and
- (c) not use the Local Government's resources (including the services of the Local Government's staff) for private purposes (other than when supplied as part of a contract of employment), unless properly authorised to do so, and appropriate payments are made (as determined by the Chief Executive Officer).

### **6.2 Travelling and Sustenance Expenses**

Councillors and employees will only claim or accept travelling and sustenance expenses arising out of travel related matters which have a direct bearing on the services, policies or business of the Local Government in accordance with the Local Government's Policy. Councils 'Expenses Associated with Interstate and Overseas Travel' Policy refers.

### **6.3 Access to Information**

- (a) Employees will ensure that Councillors and Committee Members are given access to all information necessary for them to properly perform their functions and comply with their responsibilities as Councillors or Committee Members.
- (b)
  - (i) any Officer's Report or any other matter under consideration by any Committee or Council, other than in an open meeting, shall be treated as strictly confidential, and shall not be disclosed to the public;
  - (ii) an individual Councillor or Committee Member does not have the right to copies of correspondence unless by special Council resolution, and that the contents of letters are strictly confidential to the Councillor or Committee Member so supplied.
  - (iii) Copies of all reports and correspondence are to be released concurrently to all Councillors or Committee Members and should not be made available to individual Councillors or Committee Members prior to general release.
- (c) Councillors and Committee Members will ensure that information provided will be used properly and to assist in the process of making reasonable and informed decisions on matters before the Council or Committee.

## **7 BREACHES AND MISCONDUCT**

### **7.1 Protection of employees reporting unacceptable or illegal behaviour.**

While there are many legal avenues to ensure the protection of employees and elected members who report unacceptable or illegal behaviour, (that is, whistleblowers) the CEO is to ensure that they are not in anyway disadvantaged or victimised because of their actions.

### **7.2 Reporting of Unacceptable or Illegal Behaviour**

- (a) Employees are encouraged to take a pro-active role in ensuring the honesty and integrity of all dealings within the workplace and in the first instance, to report unacceptable or illegal behaviour to the relevant supervisor or manager. Misbehaviour of a serious nature may be reported directly to the CEO.
- (b) Consideration should however be given to the requirements of any laws that may be relevant in the reporting of any breaches or allegations of misconduct, such as:
  - (i) Local Government Act 1995
  - (ii) Local Government (Rules of Conduct) Regulations 2007,
  - (iii) Local Government (Administration) Regulations 1996,
  - (iv) Corruption and Crimes Commission Act 2003, and
  - (v) Public Interest Disclosure Act 2003

### **7.3 Breaches**

A person may report a breach, or suspected breach of this code;

- (a) by a member or an employee (other than the CEO), to the CEO; or
- (b) by the CEO, to the Mayor

Each report of a breach is to be dealt with quickly and fairly in accordance with principles of procedural fairness. A breach by an elected member of a Rule of Conduct may be reported to the City's complaints Officer (the CEO). If so, it will be dealt with under Part 5, Division 9 of the Local Government Act 1995.

### **7.4 Misconduct**

The CEO has a statutory obligation to report to the Corruption and Crime Commission;

- (a) Any allegation of misconduct; or
- (b) any situation that otherwise comes to his or her attention involving misconduct, where the CEO considers on reasonable grounds that misconduct may have occurred. For these purposes, 'misconduct' is defined in section 4 of the Corruption and Crime Commission Act 2003. (refer to annexure 2).

## **7.5 Corruption and Crime Commission Act 2003**

- (a) Matters of misconduct and/or corruption may be reported to the Corruption and Crime Commission (CCC) and that protections are afforded to persons who make reports. It is an offence to:
  - (i) victimise any person who has given evidence to or helps the CCC.
  - (ii) Dismiss or prejudice any person for having appeared before or having given evidence to the CCC; or
  - (iii) Cause injury or detriment to any person for having appeared before or having given evidence to the CCC.

## **7.6 Public Interest Disclosure Act 2003**

- (a) The Public Interest Disclosure Act 2003 provides people who make disclosures of public interest information with certain immunities, protections and remedies, and impose certain requirements. The City has developed a policy to reflect the requirements of this act and can be found at the Council Policy – ‘Public Interest Disclosure Act 2003 – Internal Procedures’. (Refer to Annexure 3)
- (b) If you make a disclosure under the Public Interest Disclosure Act 2003 you will not incur any civil or criminal liability for doing so and will not be liable for any disciplinary action under a written law, or be dismissed, or have your services dispensed with or otherwise terminated or be liable for any breach of a duty or secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by a written law) applicable to you.
- (c) Further information can be found by contacting the City’s Public Interest Disclosure Officer(s) who would normally be located in the Executive Services Department.

## 8 ANNEXURES

### Annexure 1 Local Government (Rules of Conduct) Regulations 2007

Local Government Act 1995

#### Local Government (Rules of Conduct) Regulations 2007

##### 1. Part 1 — General

##### 1. Citation

These regulations are the *Local Government (Rules of Conduct) Regulations 2007*<sup>1</sup>.

##### 2. Commencement

These regulations come into operation as follows:

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Local Government (Official Conduct) Amendment Act 2007* section 11 comes into operation.

##### 3. General principles to guide the behaviour of council members

- (1) General principles to guide the behaviour of council members include that a person in his or her capacity as a council member should —
  - (a) act with reasonable care and diligence; and
  - (b) act with honesty and integrity; and
  - (c) act lawfully; and
  - (d) avoid damage to the reputation of the local government; and
  - (e) be open and accountable to the public; and
  - (f) base decisions on relevant and factually correct information; and
  - (g) treat others with respect and fairness; and
  - (h) not be impaired by mind affecting substances.
- (2) The general principles referred to in subregulation (1) are for guidance of council members but it is not a rule of conduct that the principles be observed.

##### 4. Contravention of certain local laws

- (1) In this regulation —  
**local law as to conduct** means a local law relating to conduct of people at council or committee meetings.
- (2) The contravention of a local law as to conduct is a minor breach for the purposes of section 5.105(1)(b) of the Act.

## 2. Part 2 — Rules of conduct

### 5. Rules of conduct

- (1) This Part contains the rules of conduct referred to in section 5.104(1) of the Act.
- (2) The rules of conduct apply to a council member whether or not acting as a committee member.

### 6. Use of information

- (1) In this regulation —  
**closed meeting** means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;  
**confidential document** means a document marked by the CEO to clearly show that the information in the document is not to be disclosed;  
**non-confidential document** means a document that is not a confidential document.
- (2) A person who is a council member must not disclose —
  - (a) information that the council member derived from a confidential document;  
or
  - (b) information that the council member acquired at a closed meeting other than information derived from a non-confidential document.
- (3) Subregulation (2) does not prevent a person who is a council member from disclosing information —
  - (a) at a closed meeting; or
  - (b) to the extent specified by the council and subject to such other conditions as the council determines; or
  - (c) that is already in the public domain; or
  - (d) to an officer of the Department; or
  - (e) to the Minister; or
  - (f) to a legal practitioner for the purpose of obtaining legal advice; or
  - (g) if the disclosure is required or permitted by law.

### 7. Securing personal advantage or disadvantaging others

- (1) A person who is a council member must not make improper use of the person's office as a council member —
  - (a) to gain directly or indirectly an advantage for the person or any other person;  
or
  - (b) to cause detriment to the local government or any other person.
- (2) Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or *The Criminal Code* section 83.

**8. Misuse of local government resources**

A person who is a council member must not either directly or indirectly use the resources of a local government —

- (a) for the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the *Electoral Act 1907* or the *Commonwealth Electoral Act 1918*; or
- (b) for any other purpose,

unless authorised under the Act, or authorised by the council or the CEO, to use the resources for that purpose.

**9. Prohibition against involvement in administration**

- (1) A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task.
- (2) Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.

**10. Relations with local government employees**

- (1) A person who is a council member must not —
  - (a) direct or attempt to direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee; or
  - (b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a person who is a local government employee in the person's capacity as a local government employee.
- (2) Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.
- (3) If a person, in his or her capacity as a council member, is attending a council meeting, committee meeting or other organised event and members of the public are present, the person must not, either orally, in writing or by any other means —
  - (a) make a statement that a local government employee is incompetent or dishonest; or
  - (b) use offensive or objectionable expressions in reference to a local government employee.
- (4) Subregulation (3)(a) does not apply to conduct that is unlawful under *The Criminal Code* Chapter XXXV.

**11. Disclosure of interest**

- (1) In this regulation —

**interest** means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.

- (2) A person who is a council member and who has an interest in any matter to be discussed at a council or committee meeting attended by the member must disclose the nature of the interest —
  - (a) in a written notice given to the CEO before the meeting; or
  - (b) at the meeting immediately before the matter is discussed.
- (3) Subregulation (2) does not apply to an interest referred to in section 5.60 of the Act.
- (4) Subregulation (2) does not apply if —
  - (a) a person who is a council member fails to disclose an interest because the person did not know he or she had an interest in the matter; or
  - (b) a person who is a council member fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.
- (5) If, under subregulation (2)(a), a person who is a council member discloses an interest in a written notice given to the CEO before a meeting then —
  - (a) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
  - (b) at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before a matter to which the disclosure relates is discussed.
- (6) If —
  - (a) ) under subregulation (2)(b) or (4)(b) a person's interest in a matter is disclosed at a meeting; or
  - (b) under subregulation (5)(b) notice of a person's interest in a matter is brought to the attention of the persons present at a meeting,

the nature of the interest is to be recorded in the minutes of the meeting.

## 12. **Gifts**

- (1) In this regulation —
 

**activity involving a local government discretion** means an activity —

  - (a) that cannot be undertaken without an authorisation from the local government; or
  - (b) by way of a commercial dealing with the local government;

**gift** has the meaning given to that term in section 5.82(4) of the Act except that it does not include —

  - (a) a gift from a relative as defined in section 5.74(1) of the Act; or
  - (b) a gift that must be disclosed under regulation 30B of the *Local Government (Elections) Regulations 1997*; or
  - (c) a gift from a statutory authority, government instrumentality or non-profit association for professional training;

**notifiable gift**, in relation to a person who is a council member, means —

  - (a) a gift worth between \$50 and \$300; or



- (b) a gift that is one of 2 or more gifts given to the council member by the same person within a period of 6 months that are in total worth between \$50 and \$300;

**prohibited gift**, in relation to a person who is a council member, means —

- (a) a gift worth \$300 or more; or
- (b) a gift that is one of 2 or more gifts given to the council member by the same person within a period of 6 months that are in total worth \$300 or more.

- (2) A person who is a council member must not accept a prohibited gift from a person —

- (a) who is undertaking or seeking to undertake; or
- (b) who it is reasonable to believe is intending to undertake,

an activity involving a local government discretion.

- (3) A person who is a council member and who accepts a notifiable gift from a person —

- (a) who is undertaking or seeking to undertake; or
- (b) who it is reasonable to believe is intending to undertake,

an activity involving a local government discretion must, within 10 days of accepting the gift, notify the CEO of the acceptance in accordance with subregulation (4).

- (4) Notification of the acceptance of a notifiable gift is to be in writing and is to include —

- (a) the name of the person who gave the gift; and
- (b) the date on which the gift was accepted; and
- (c) a description, and the estimated value, of the gift; and
- (d) the nature of the relationship between the person who is a council member and the person who gave the gift; and
- (e) if the gift is a notifiable gift under paragraph (b) of the definition of “notifiable gift” (whether or not it is also a notifiable gift under paragraph (a) of that definition) —
  - (i) a description; and
  - (ii) the estimated value; and
  - (iii) the date of acceptance,

of each other gift accepted within the 6 month period.

- (5) The CEO must maintain a register of gifts in which details of notices received under subregulation (4) are recorded.

## Definitions of 'Misconduct' (Section 4)

**4. Term "misconduct"**

Misconduct occurs if —

- (a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment;
- (b) a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person;
- (c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment; or
- (d) a public officer engages in conduct that —
  - (i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;
  - (ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;
  - (iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or
  - (iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,

and constitutes or could constitute —

- (v) an offence against the *Statutory Corporations (Liability of Directors) Act 1996* or any other written law; or
- (vi) a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the *Public Sector Management Act 1994* (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).

## **Annexure 3                      Public Interest Disclosure Act 2003**

### **Summary of rights and responsibilities of Disclosures**

The *Public Interest Disclosure Act 2003* (the Act) provides people who make disclosures of public interest information with certain immunities, protections and remedies, and imposes certain requirements.

If you make a disclosure under the Act, you will not incur any civil or criminal liability for doing so and will not be liable for any disciplinary action under a written law, or be dismissed, or have your services dispensed with or otherwise terminated or be liable for any breach of a duty or secrecy or confidentiality or any other restriction (whether or not imposed by a written law) applicable to you.

Making a disclosure does not under the Act affect your liability for any wrongdoing you have been involved in.

A person must not reveal information that might identify or tend to identify anyone as a person who has made a disclosure under the Act. There are certain exceptions where:

- The person consents to the release of such information.
- It is necessary to do so to enable the matter to be investigated effectively
- It is necessary having regard to the principles of natural justice.

If you make a disclosure under the Act and it is necessary to reveal your identity, the Public Interest Disclosure (PID) Officer will take all reasonable steps to notify you in advance. Apart from the exceptions outlined above, it is an offence for anyone to reveal the identity of the discloser and the person about whom the disclosure has been made. Both carry a penalty of \$24,000 or imprisonment for 2 years.

Under the Act, it is the Chief Executive Officer of a public authority who must provide you with the protection against detrimental action. Detrimental action includes action causing, compromising or involving injury, damage, or loss; intimidation or harassment; adverse discrimination, disadvantage, or adverse treatment in relation to a person's career, profession, employment, trade or business; or a reprisal.

A person who takes or threatens to take detrimental action against another person because or substantially because anyone has made, or intends to make, a disclosure of public interest information under the Act commits:

- An offence or reprisal which carries a penalty of \$24,000; or
- Imprisonment for 2 years.

An act of victimisation may be lodged with the Opportunity Commission or dealt with as a tort. If you believe you have suffered detrimental action or that someone is threatening detrimental action against you, advise the PID Officer with whom you lodged your disclosure.

The Act requires you be informed within 3 months of making your disclosure of the action taken or proposed to be taken in relation to the disclosure. You will also be notified of the outcome of an investigation (where one is undertaken) and any action that has been taken or is proposed to be taken as a result of the investigation and the reason for taking the action.

You must believe on reasonable grounds that the information you have is or may be true. The information you have must be more than a mere suspicion and tend to show that a wrongdoing is, has or is about to occur. It is an offence to make a false or misleading disclosure and the penalty for doing so is \$12,000 or imprisonment for one year.

You can minimise the risk of anyone taking detrimental action against you by keeping your intentions to make a disclosure to yourself – be discreet. Once you have made a public interest disclosure you must maintain confidentiality of the information. This means you cannot go to the media or any other person with information contained in your disclosure or your risk losing your protection and you may incur a penalty.

You may speak with the PID Officer or anyone conducting an investigation into the matter. If you believe it is necessary to speak to another person about some aspects of your disclosure, contact the PID Officer first and discuss the matter with them.

In addition to protecting your identity, the Act protects the identity of the person about whom your disclosure is made. You must not reveal any information about the person named in your disclosure to anyone other than the PID Officer with whom you lodged your disclosure or anyone investigating the matter. If you do you may commit an offence which carries a penalty of \$24,000 or two years imprisonment.

Where you are able to, you must assist a person investigating the matter to which your disclosure relates by supplying them with any information requested, whether orally or in writing and within such period as specified by them. It is not your role to investigate the matter and you must not obtain evidence illegally or in such a manner as to expose yourself to any risk.

**This information is a summary only. For further information, potential disclosers are urged to speak to a PID Officer, read the Policy contained within the City's Council Policy Manual, or visit the Office of the Public Standards Commissioner website at [http://www.opssc.wa.gov.au/Public\\_Interest\\_Disclosures/](http://www.opssc.wa.gov.au/Public_Interest_Disclosures/)**

## Regulation 34B - Codes of conduct (Gifts)

- (1) In this regulation —
- activity involving a local government discretion** means an activity —
- (a) that cannot be undertaken without an authorisation from the local government; or
  - (b) by way of a commercial dealing with the local government;
- gift** has the meaning given to that term in section 5.82(4) except that it does not include —
- (a) a gift from a relative as defined in section 5.74(1); or
  - (b) a gift that must be disclosed under regulation 30B of the *Local Government (Elections) Regulations 1997*; or
  - (c) a gift from a statutory authority, government instrumentality or non-profit association for professional training;
- notifiable gift**, in relation to a person who is an employee, means —
- (a) a gift worth between \$50 and \$300; or
  - (b) a gift that is one of 2 or more gifts given to the employee by the same person within a period of 6 months that are in total worth between \$50 and \$300;
- prohibited gift**, in relation to a person who is an employee, means —
- (a) a gift worth \$300 or more; or
  - (b) a gift that is one of 2 or more gifts given to the employee by the same person within a period of 6 months that are in total worth \$300 or more.
- (2) A code of conduct is to contain a requirement that a person who is an employee refrain from accepting a prohibited gift from a person who —
- (a) is undertaking or seeking to undertake an activity involving a local government discretion; or
  - (b) it is reasonable to believe is intending to undertake an activity involving a local government discretion.
- (3) A code of conduct is to contain a requirement that a person who is an employee and who accepts a notifiable gift from a person who —
- (a) is undertaking or seeking to undertake an activity involving a local government discretion; or
  - (b) it is reasonable to believe is intending to undertake an activity involving a local government discretion,
- notify the CEO, in accordance with subregulation (4) and within 10 days of accepting the gift, of the acceptance.
- (4) A code of conduct is to require that the notification of the acceptance of a notifiable gift be in writing and include —
- (a) the name of the person who gave the gift; and
  - (b) the date on which the gift was accepted; and
  - (c) a description, and the estimated value, of the gift; and

- (d) the nature of the relationship between the person who is an employee and the person who gave the gift; and
  - (e) if the gift is a notifiable gift under paragraph (b) of the definition of “notifiable gift” in subregulation (1) (whether or not it is also a notifiable gift under paragraph (a) of that definition) —
    - (i) a description; and
    - (ii) the estimated value; and
    - (iii) the date of acceptance,of each other gift accepted within the 6 month period.
- (5) A code of conduct is to require that the CEO maintain a register of notifiable gifts and record in it details of notifications given to comply with a requirement made under subregulation (3).

**Regulation 34C - Codes of conduct (disclosure of interests affecting impartiality)**

- (1) In this regulation —
- interest** means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.
- (2) A code of conduct is to contain a requirement that a person who is an employee and who has an interest in any matter to be discussed at a council or committee meeting attended by the person disclose the nature of the interest —
- (a) in a written notice given to the CEO before the meeting; or
  - (b) at the meeting immediately before the matter is discussed.
- (3) A code of conduct is to contain a requirement that a person who is an employee and who has given, or will give, advice in respect of any matter to be discussed at a council or committee meeting not attended by the person disclose the nature of any interest the person has in the matter —
- (a) in a written notice given to the CEO before the meeting; or
  - (b) at the time the advice is given.
- (4) A code of conduct is to exclude from a requirement made under subregulation (2) or (3) an interest referred to in section 5.60.
- (5) A code of conduct is to excuse a person from a requirement made under subregulation (2) or (3) to disclose the nature of an interest if —
- (a) the person's failure to disclose occurs because the person did not know he or she had an interest in the matter; or
  - (b) the person's failure to disclose occurs because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person discloses the nature of the interest as soon as possible after becoming aware of the discussion of a matter of that kind.
- (6) A code of conduct is to require that if, to comply with a requirement made under subregulation (2) or (3), a person who is an employee makes a disclosure in a written notice given to the CEO before a meeting then —
- (a) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
  - (b) immediately before a matter to which the disclosure relates is discussed at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present.
- (7) If —
- (a) to comply with a requirement made under subregulation (2), the nature of a person's interest in a matter is disclosed at a meeting; or
  - (b) a disclosure is made as described in subregulation (5)(b) at a meeting; or
  - (c) to comply with a requirement made under subregulation (6)(b), a notice disclosing the nature of a person's interest in a matter is brought to the attention of the persons present at a meeting,
- the nature of the interest is to be recorded in the minutes of the meeting.

## **Annexure 6            Disclosure of Interest affecting impartiality**

### **Operational Guidelines for Disclosures of Interest**

#### **1.    Introduction**

This Appendix to the Code of Conduct for Councillors, employees and Committee Members provides operational guidelines on the responsibilities of Councillors, employees and Committee Members disclosing non-financial interest when advising or making decisions. (Refer Code of Conduct clause 3.3 Disclosure of Interest).

#### **2.    The Decision to Disclose**

For the purposes of requiring disclosure, an interest affecting impartiality is defined in the Regulations as follows:

**“interest”** means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.

The important element of the above definition is the likely public perception as to whether there may be an interest.

When considering this matter, the following questions should be asked:

- *If you were to participate in assessment or decision making without disclosing, would you be comfortable if the public or your colleagues became aware of your association or connection with an individual or organisation?*
- *Do you think there would be a later criticism of perceived undisclosed partiality if you were not to disclose?*

#### **3.    The Impact of an Impartiality Disclosure**

There are very different outcomes resulting from disclosing an interest affecting impartiality compared to that of a financial interest.

With the declaration of a financial interest a Councillor or Committee Member leaves the room and does not vote (unless permitted to do so by the meeting or the Minister).

With the declaration of interest affecting impartiality, the Councillor or Committee may stay in the room, participate in the debate and votes. In effect then, following disclosure of an interest affecting impartiality, the Councillor’s or Committee Member’s involvement in the meeting continues as if no interest existed.

#### **4.    Disclosing an Interest**

##### **4.1    Who is Required to Disclose?**

Councillors, employees and Committee Members (including persons under contract) of local governments are required to disclose interests affecting impartiality.



#### **4.2 When should Disclosure be made?**

If the matter in which a Councillor, employee or Committee Member has an interest affecting impartiality is to be discussed at a council or committee meeting, the Councillor, employee or Committee Member is to disclose the interest immediately before the matter is discussed.

In relation to a matter where a Councillor, employee or Committee Member has an interest affecting impartiality and is required to give advice on this matter, a disclosure is to be made at the time the advice is given.

**Clause 5.2 discusses the type of associations that give rise to interests affecting impartiality.**

#### **4.3 What to Disclose**

To assist with making the disclosure, the Department of Local Government has prepared the following declaration which Councillors, employees and Committee Members may use when they consider it necessary to disclose an interest affecting impartiality.

***“With regard to ..... the matter in item x ..... I disclose that I have an association with the applicant\* (or person seeking a decision). As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly.”***

\* The Councillor, employee or Committee Member is encouraged to disclose the nature of the association.

#### **4.4 How to Disclose**

##### **(a) At Meetings**

A Councillor, employee or Committee Member attending a meeting who wishes to disclose an interest affecting impartiality must make a verbal declaration or do so in written form. In either case it is recommended that a written declaration, of the form proposed in Clause 4.3, be made by the Councillor, employee or Committee Member and that this declaration is kept by the local government.

If a Councillor, employee or Committee Member chooses only to make a written disclosure, it is suggested that the process by which written disclosures are dealt with in the financial interest provisions of the Act are followed. That is, the Councillor, employee or Committee Member gives written notice of the interest to the Chief Executive Officer who then ensures the notice is given to the person presiding at the meeting. The presiding member is then required to bring the notice to the attention of the meeting immediately before discussion on the relevant item commences.

All disclosures made are to be recorded in the minutes of the relevant meeting. It is important that the minutes distinguish between disclosures of interests affecting impartiality and disclosures of financial interests.

(b) At Other Times

Situations will arise where employees not attending meetings will have the need to disclose an interest. For example, an officer preparing a report for a matter to be discussed at a council or committee meeting should disclose the interest to their supervisor. In addition, the nature of the interest should be recorded at the beginning of the relevant report that has been included in the agenda for the meeting at which the matter will be discussed.

Employees involved in the preparation of reports for matters to be discussed at council or committee meetings who also attend the meeting at which the matter is discussed will be required to disclose an interest when the report is prepared and also at the meeting where the matter is being discussed.

## 5. When does an interest affecting impartiality arise?

The existence of an interest affecting impartiality is dependent on:

- the Councillor, employee or Committee Member having an association with a person or organisation that has a matter being discussed at a council or committee meeting; and
- the type of matter being discussed at a council or committee meeting.

It is not expected that a disclosure be made in matters which are solely related to:

- an individual's beliefs, philosophies or attitudes;
- a councillor's election pledges; or
- any other public pledges made by a councillor.

***No disclosure should be necessary – unless the matter also involves an association with a person or organisation connected to the councillor.***

### 5.1 What types of matters could result in a perception of impartiality?

The view of the Department of Local Government is that the intent of the impartiality provisions is to capture those matters where persons or organisations associated with Councillors, employees or Committee Members are, by their own action, seeking a decision from Council or a Committee (see Clause 5.2 below for discussion on persons associated).

***The types of matters where disclosure is warranted include any matters which require applications for approval, consent or a licence where the financial interest provisions of the Act do not apply. This would include development applications, extensions or construction of facilities, requests for financial assistance, tenders, staff recruitment and so on.***

It is recognised that decisions on impartiality disclosures are most difficult where a Councillor, employee or Committee Member has an association with an individual or organisations, which has a passive involvement in a matter before Council or a Committee for a decision.

**Example:** A matter is before a council meeting which requires a decision to be made about the provision of footpaths on a particular group of streets. The brother of one of the Councillors lives on one of the streets.

**Scenario A:** The brother had been a leader in the community push to request the construction of the footpaths.

**Decision:** There is no doubt, the councillor should make an impartiality disclosure.

**Scenario B:** The brother had not been involved in any of the community efforts which have caused council to consider the provision of footpaths.

**Decision:** This scenario is more doubtful. Criticism of the councillor for not making a disclosure could be considered unfair. However, the councillor may still wish to declare, as it does not affect their ability to debate and vote on the issue.

## **5.2 What types of associations may give rise to a perception of impartiality?**

There are two major categories of associations that Councillors, employees or Committee Members may have which in certain circumstances may give rise to interests that affect impartiality. These are associations with people and associations with organisations.

### **(a) Associations with persons**

The financial interest provisions of the Act identify particular relationships that a Councillor, employee or Committee Member may have which can result in a financial interest arising. In a similar way, matters involving persons that a Councillor, employee or Committee Member has a relationship with may result in an interest which affects impartiality.

In the opinion of the Department of Local Government, if a relevant matter (see Clause 5.1) is discussed at a council or committee meeting, to avoid a later criticism of undisclosed partiality, disclosure may well be warranted if the matter involves a Councillor's, employees or Committee Members:

- spouse or defacto spouse;
- brother and sister;
- parents and spouse's parents;
- children;
- employer; or
- business partner.

### **(b) Associations with friends and adversaries**

In addition to the persons mentioned in the previous section, the general public is often concerned about impartiality in matters which involve people who are friends or adversaries of Councillors, employees or Committee Members. However, while the definition of persons linked by family ties is generally indisputable, there is some argument about the existence of an acceptable definition of a friend or adversary.

In relation to a friend, the definition which probably comes closest to the Department's view is given in the Macquarie dictionary which defines a friend as "one attached to another by feelings of affection or personal regard", or "one who is on good terms with another".

In another interpretation, the Royal Commission into the City of Wanneroo suggested that two people could be considered friends because they socialised, had business lunches and went on fishing trips to the north of the State together.

A friend may also be considered as someone who regularly participates at another person's family functions or other significant events, or there may be a length of time component which would form part of the definition.

Nonetheless, it would be fair to say that the definition would vary from person to person depending on age, background, gender, geographic location and so on. It is a judgement for each Councillor or Committee Member to make as to whether a person in their local government district would have a reasonable belief that another person is a friend of the councillor or Committee Member. Following this judgement, it is then up to each councillor or Committee Member to decide whether to disclose or not, bearing in mind the potential for later criticism of undisclosed partiality.

It is important to note that, in addition to a friend, the same level of impartiality could be perceived to exist for an adversary or person that a Councillor, employee or Committee Member strongly disliked. When relevant matters come before Council involving such persons, disclosure may well be warranted.

**(c) *Associations with organisations***

Subject to the person considering the extent of their involvement in an association or organisation, disclosure would be warranted when matters are discussed at council or committee meetings which directly relate to groups with which Councillors, employees and Committee Members are affiliated. These include sporting clubs, resident groups and associations, business groups and associations, professional associations and so on.

**Example: A sporting group has a request before Council seeking a donation or other financial contribution.**

**Scenario A: A councillor is an office bearer in the sporting club.**

**Decision: The councillor should make an impartiality disclosure at the meeting.**

**Scenario B: A councillor is a member of the sporting club but the extent of involvement is occasional attendance at meetings and events.**

**Decision: Disclosure would probably not be required.**

**(d) *Associations with donors of gifts and contributors to travel***

Sections 5.82 and 5.83 of the Act require Councillors and employees to disclose in an annual return details about:

- the donor and nature of gifts received; and
- who contributed to, and the value of, any contribution made towards any travel including accommodation.

A record of these is to be included in the annual financial interests return.

The *Local Government (Administration) Regulations 1996* indicate that for annual returns lodged prior to 1 January 2000, disclosure of gifts and contributions to travel valued at \$500 or below are not required. For returns lodged after this date, gifts over the value of \$200 must be disclosed.

If a relevant matter was discussed at a council or committee meeting involving a person who had previously been a donor of such gifts or contributions to travel, to avoid a later criticism of undisclosed partiality if disclosure was not made, disclosure is likely to be warranted.

**(e) *Other associations***

The Department considers that the associations outlined in Sub-Clauses (a) to (d) of Clause 5.2 are a minimum requirement. Councillors, employees and Committee Members may wish to include other types of associations as they see fit. This may also include other categories of persons or it may include secondary relationships, for example, matters which involve friends of spouses, or friends of children etc.

**5.3 *Matters which involve a Councillor's beliefs, philosophies, attitudes and election or public pledges***

As stated earlier, a councillor's, employee's or Committee Member's beliefs, philosophies, attitudes and election or public pledges are not matters for which an impartiality disclosure is warranted. The key issue is the association with people or organisations who have business with the local government.

As one of the objectives of the interest affecting impartiality provisions is to help make local government decision making transparent, it should be unnecessary for a councillor to disclose issues openly campaigned upon before their election. The following examples outline the Department's views on this matter.

**Example 1: A person who actively campaigns on a platform of keeping the rates down is elected in May and in July faces the decision of voting for the budget.**

**Decision: As the councillor's views on the matter is well known and it does not relate to a specific application etc, the councillor would not be required to disclose an interest.**

**Example 2:** A councillor is known to be anti-development and is a strong campaigner on environmental issues. An issue comes before Council with regards to the clearing of 20ha of pristine bushland known as “Tinglewood Dell”.

**Decision:** As the councillor’s views on the matters are well known and there is no association with other individuals or organisations that have an interest in the matter, the councillor would not be required to disclose an interest.

**Example 3:** As in example 2, except the councillor is deputy president of the organisation “Friends of Tinglewood Dell”, a non-profit organisation dedicated to saving the land from development and trying to raise sufficient funds to buy the land.

**Decision:** As the councillor is an office holder in an organisation which is heavily involved in the matter before Council, the councillor should disclose that association with the organisation.

**Example 4:** A councillor campaigned at the last election for the zoning of a certain area of land to be retained as residential in contrast to the local government’s publicly announced preference to rezone it commercial. By the time the rezoning of the land is debated in Council it has become known the councillor’s son (who does not live with the councillor) has an option to buy a block of land, which will become zoned for a commercial building. The financial interest provisions do not apply.

**Decision:** The councillor should disclose an impartiality interest because in dealing with this matter there is an association with a relative even though the councillor’s eventual vote is against the interests of this person.”