

# SHIRE OF SHARK BAY CODE OF CONDUCT



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# Introduction

In accordance with section 5.103 of the *Local Government Act 1995* every Western Australian local government is to prepare and adopt a code of conduct to be observed by Elected Members, Committee Members and employees.

The *Shire of Shark Bay Code of Conduct* (the Code) has been adopted for this purpose and ensures the roles and responsibilities of Elected Members, Committee Members and employees are understood and respected. This enables professional relationships to be established and maintained in the interests of providing good governance, overall integrity and good government for the community.

The Code sets out principles and standards of behaviour Elected Members, Committee Members and employees must observe when performing their duties and is intended to promote accountable and ethical decision-making. However the Code does not establish a rule for every situation an Elected Member, Committee Member or employee may face while performing their role and undertaking their duties on a daily basis.

The Code must be read in conjunction with the *Local Government Act 1995*, the *Local Government (Rules of Conduct) Regulations 2007* and other legislation that affect Elected Members, Committee Members and employees while performing their role and duties and the Code does not override or affect those provisions or requirements. To aid understanding, relevant legislation has been referenced in the Code and is indicated by the highlighted boxes. These provisions do not form part of the Code and will be updated from time to time as legislation changes.

The Code must contain certain matters for employees as listed in Part 9 of the *Local Government (Administration) Regulations 1996*. It contains the standards around personal behaviour, which if breached, may lead to reporting and action being taken under the Code. In view of this, the Code details explanatory matters around key areas of:

- professional conduct
- communication and official information
- use of Shire resources and information
- conflicts of interests and gifts and benefits
- reporting suspected breaches of the Code.

Employees of the Shire of Shark Bay (the Shire) are subject to the provisions of the Code upon their acceptance of employment and while they remain employed by the Shire.

# Behavioural Principles

## Behavioural principles

For the purposes of the Code, the following principles, as set out in the *Local Government (Rules of Conduct) Regulations 2007*, are to guide the behaviours of Elected Members, Committee Members and employees while performing their role at the Shire:

- Act with reasonable care and diligence.
- Act with honesty and integrity.
- Act lawfully.
- Avoid damage to the reputation of the Shire.
- Be open and accountable to the public.
- Base decisions on relevant and factually correct information.
- Treat others with respect and fairness.
- Not be impaired by mind affecting substances.

## Personal behaviour

Elected Members, Committee Members and employees must:

- (a) act, and be seen to act, properly and in accordance with the requirements of the law and the Code
- (b) perform their duties impartially and in the best interests of the Shire uninfluenced by fear or favour
- (c) act in good faith in the interests of the Shire and the community
- (d) make no allegations which are improper or derogatory and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any person unwarranted offence or embarrassment
- (e) always act in accordance with their obligations to the Shire and in line with any relevant policies, protocols and procedures

A breach or a suspected breach of the personal behaviours stated above may lead in action being taken under the provisions of this Code (see "Reporting breaches and suspected breaches of the Code").

Members will represent and promote the interests of the Shire of Shark Bay, while recognizing their special duty to their constituents.

## Honesty and Integrity

Members and staff will -

- (a) observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards,
- (b) bring to the notice of the President any dishonesty or possible dishonesty on the part of any other member, and in the case of an employee to the Chief Executive Officer.
- (c) be frank and honest in their official dealing with each other.

# Professional Conduct

As Elected Members, Committee Members and employees, high standards of professional conduct ensure that a positive image of the Shire is conveyed when the Shire interacts with its stakeholders and the community. The conduct displayed should encourage fair, equitable and lawful operation of the Shire.

## **Fraudulent and corrupt conduct**

Fraud is a dishonest activity that causes actual or potential financial loss to any person or the Shire and corrupt conduct is behaviour that lacks virtue or integrity, including when an Elected Member, Committee Member or employee uses or attempts to use their position for personal advantage. The *Criminal Code* makes it illegal for a public officer (including an employee, Elected Member or Committee Member) to engage in fraud and/or corruption.

## **Performance of duties**

Elected Members, Committee Members and employees have a legal duty of fidelity to act in the best interests of the Shire.

While on duty, employees must give their time and attention to the Shire's business and ensure that their work is carried out efficiently and effectively, so that their standard of work reflects favourably both on them and on the Shire.

Elected Members, Committee Members and employees must exercise reasonable care and diligence in the performance of their duties, being consistent in their decision-making and treating all matters on individual merits. Elected Members and Committee Members will be as informed as possible to enable them to perform their role and will treat all members of the community honestly and fairly.

## **Relationships between Elected Members, Committee Members and employees**

Elected Members, Committee Members and employees must have mutual respect for the role that each party plays to achieve the Shire's corporate goals and implement the Shire's strategies. All parties need to understand each other's role as specified in the *Local Government Act 1995* and other legislation.

To achieve this, Elected Members and Committee Members must:

- (a) accept that their role is one of leadership, and not a management or administrative role
- (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 or credibility
- (d) ensure that no restriction or undue influence is placed on the ability of employees to give professional advice to Council.

Employees ought to recognise that an Elected Member's and a Committee Member's views and opinions often reflect valid community viewpoints that should be considered in conjunction with professional opinion. Employees are to make every effort to assist Elected Members and Committee Members in the performance of their role, and to achieve the satisfactory resolution of issues that may arise in the performance of that role.

Regulations 9 and 10 of the *Local Government (Rules of Conduct) Regulations 2007* apply to Elected Members in respect of involvement in the Shire's administration and relationships with employees:

#### 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.

## Role of Elected Members

A Councillor's primary role is to represent the community, and the effective translation of the community's needs and aspirations into a direction and future for the Shire of Shark Bay will be the focus of the Councillor's public life.

A Councillor is part of the team in which the community has placed its trust to make decisions on its behalf and the community is therefore entitled to expect high standards of conduct from its elected representatives.

In fulfilling the various roles, elected members' activities will focus on -

- achieving a balance in the diversity of community views to develop an overall strategy for the future of the community,
- achieving sound financial management and accountability in relation to the Shire of Shark Bay's finances,
- ensuring that appropriate mechanisms are in place to deal with the prompt handling of residents' concerns,
- working with other Governments and organisations to achieve benefits for the community at both local and regional level,
- having an awareness of the statutory obligations imposed on Councillors and on Local Governments.

## **Compliance with lawful orders**

Elected Members, Committee Members and employees shall obey 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.

## **Compliance with local laws and policies**

Employees must give effect to the adopted local laws and policies of the Shire. Elected Members and Committee Members are to consider the policies of the Shire to guide them in their decision-making responsibilities.

Elected Members and Committee Members must comply with the *Shire of Shark Bay Standing Orders Local Law 2013* as a contravention may lead to disciplinary action being taken under the *Local Government Act 1995*.

## **Compliance with management protocols and procedures**

Employees must comply with the Shire's management protocols, procedures and administrative practices.

## **Appointments to external boards, committees and working groups**

Elected Members and employees representing the Shire on external organisations, boards, committees and working groups are to ensure that they:

- (a) clearly understand the basis of their appointment
- (b) provide regular reports on the activities of the organisation in accordance with the confidentiality requirements of that organisation
- (c) represent the Shire's interests on all matters relating to that organisation, while maintaining the confidentiality requirements of the Shire.

# Communication and Official Information

## Communication and public relations

All aspects of communication by employees (including verbal, written, electronic or personal), involving the Shire's activities must be accurate, polite and professional.

As a representative of the community, Elected Members need to be not only responsive to community views, but communicate decisions of Council or a committee adequately, with good faith and not adversely reflect on those decisions externally.

Elected Members, Committee Members and employees must:

- (a) respect the decision-making processes within a local government which are based on a decision of the majority of the Council or a committee
  - (b) not communicate information of a confidential nature until it is no longer treated as confidential (see "Use of information" in this Code)
  - (c) comply with the *Local Government Act 1995* whereby information relating to decisions of Council are to be communicated in an official capacity only by:
    - (i) the President (or his/her representative)
- or
- (ii) with the agreement of the President, by the CEO (or the CEO's representative)
  - (d) convey information concerning adopted policies, procedures and decisions of the Shire accurately.

Section 2.8(1)(d) of the *Local Government Act 1995* states the Mayor is to speak on behalf of the local government.

Section 5.41(f) of the *Local Government Act 1995* states the CEO can speak on behalf of the local government if the Mayor agrees.

# Use of Shire Resources

## Use of resources

Elected Members, Committee Members and employees must:

- (a) be honest in their use of the Shire's resources and must not misuse them or permit their misuse by any other person or body
- (b) use the Shire's resources entrusted to them effectively and efficiently in the course of their duties
- (c) ensure the Shire's resources are to be utilised only for authorised activities.

Regulation 8 of the *Local Government (Rules of Conduct) Regulations 2007* states the following in respect of

Elected Members using Shire resources:

### 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.

## Reimbursement of expenses

Members and staff 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 Shire of Shark Bay in accordance with Shire of Shark Bay policy and the provision of the *Local Government Act 1995*.

Section 5.98(2) of the *Local Government Act 1995* states an Elected Member who incurs an expense of a kind prescribed as being an expense —

- (a) to be reimbursed by all local governments or
- (b) which may be approved by any local government for reimbursement and which has been approved by the local government for reimbursement,

is entitled to be reimbursed for the expense in accordance with section 5.98(3) of the *Local Government Act 1995*.

# Use of Information

## Improper use of information

Elected Members, Committee Members and employees must not make improper use of any information acquired by the person in the performance of his or her functions under the *Local Government Act 1995* or any other written law.

Due discretion must be exercised by all those who have access to confidential or sensitive information. This applies not only to the proper disclosure of that information, but also to the appropriate measures to be taken to ensure that the security of the information is not compromised.

Section 5.93 of the *Local Government Act 1995* prohibits an Elected Member, Committee Member or employee from making improper use of any information acquired in the performance by the person of his or her functions under the *Local Government Act 1995* or any other written law:

- (a) to gain directly or indirectly an advantage for themselves or for any other person or
- (b) to cause detriment to the Shire or any other person.

The penalty, on conviction, is a fine of \$10,000 or imprisonment for 2 years.

## Confidential information

Elected Members, Committee Members and employees must not disclose to another person, written or oral information that is provided to them, or obtained by them, in confidence, or derived from a confidential document, or acquired at a closed Council meeting or committee meeting which is not open to the public.

A confidential document means a document marked by the CEO to clearly show that the information in the document is confidential and is not to be disclosed.

A closed meeting means a council meeting or committee meeting that is closed to members of the public under section 5.23(2) of the *Local Government Act 1995*.

A Committee Member or employee is not prevented from disclosing information:

- (a) to an officer of the Department of Local Government and Communities
- (b) to the Minister for Local Government
- (c) to a legal practitioner for the purpose of obtaining legal advice or
- (d) if the disclosure is required or permitted by law.

## Access to Information

- (a) Staff will ensure that members are given access to all information necessary for them to properly perform their functions and comply with their responsibilities as members.
- (b) 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.

Regulation 6 of the *Local Government (Rules of Conduct) Regulations 2007* prohibits an Elected Member from disclosing confidential information, or information acquired at a closed meeting:

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.

The *Shire of Shark Bay Standing Orders Local Law 2013* provides how confidential documents and information at meetings are to be marked.

## Intellectual Property

The title of intellectual property in all duties relating to contracts of employment will be assigned to the Shire of Shark Bay upon its creation unless otherwise agreed by separate contract.

# Conflicts of Interests

## Guiding principles

The nature of the Shire's business is conducive to conflicts of interests arising between an Elected Member, Committee Member and employee's personal interests and the performance of their public or professional duties. Genuine or perceived conflicts of interests may arise from a number of sources, including friends, relatives, close associates, financial investments, past employment and the like.

Although there is no right way to identify conflicts of interest, a good starting point is to consider the following principles:

- Public duty versus private interests  
*Do I have personal or private interests that may conflict, or be perceived to conflict with my public duty?*
- Potentialities  
*Should there be benefits for me now, or in the future, that could cast doubt on my objectivity?*
- Perception  
*How will my involvement in the decision/action be viewed by others? Are there risks associated for me/my organisation?*
- Proportionality  
*Does my involvement in the decision appear fair and reasonable in all the circumstances?*
- Presence of mind  
*What are the consequences if I ignore a conflict of interest? What if my involvement was questioned publicly?*
- Promises  
*Have I made any promises or commitments in relation to the matter? Do I stand to gain or lose from the proposed action/decision?*

## Conflict of interests

Elected Members, Committee Members and employees must ensure there is no actual or perceived conflict of interest between their personal interests and the impartial fulfilment of their public duties and functions.

In applying this requirement:

- (a) employees must lodge written notice with the CEO describing an intention to undertake a dealing in land within the district or which may otherwise be in conflict with the Shire's functions (other than purchasing or leasing their principal place of residence)
- (b) employees who exercise a recruitment or other discretionary function must make written disclosure to the CEO before dealing with relatives or close friends, and will disqualify themselves from dealing with those persons during the recruitment or other matter requiring a discretionary function

- (c) employees are encouraged to refrain from partisan political activities which could cast doubt on their neutrality and impartiality in carrying out their public duties and functions.

## **Private work of employees**

Additional employment outside of the Shire may place employees at risk of being conflicted or impeded in the ability to carry out their public duties. Employees must avoid any conflict of interest whether real or perceived between their primary employment with the Shire and any other potential employment.

The definition of outside employment includes paid employment with another organisation, running a business, maintaining a professional practice or consultancy and being a director of an organisation. It may include voluntary activities if those activities have the potential to affect employment with the Shire.

Employees who are considering engaging in employment outside the Shire (including employment during leave breaks) must seek written approval of the CEO before doing so.

## **Financial interests**

Elected Members, Committee Members and employees must comply with the laws governing financial interests, including the disclosure of financial interests, set out in the *Local Government Act 1995*.

Sections 5.59-5.90 of the *Local Government Act 1995* establish the requirements for disclosure by Elected Members, Committee Members or employees of financial interests (including proximity interests).

The onus is on Elected Members, Committee Members and employees to identify possible financial interests (including proximity interests and non-financial interests), to determine whether an interest exists, and whether any statutory exemption applies.

## **Impartiality interests**

For the purposes of the Code, an *impartiality 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”* (see regulation 34(C)(1) of the *Local Government (Administration) Regulations 1996* and regulation 11(1) of the *Local Government (Rules of Conduct) Regulations 2007*).

An ‘impartiality interest’ does not include a ‘financial interest’ that is subject to the requirements of the *Local Government Act 1995*.

An employee who has an impartiality interest in any matter to be discussed at a Council or committee meeting attended by that person must disclose the nature of the impartiality interest:

- (a) in a written notice given to the CEO before the meeting or
- (b) at the meeting immediately before the matter is discussed.

In addition, an employee 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 employee must disclose the nature of any impartiality interest he or she 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.

An employee is excused from the requirement to disclose an impartiality interest if the failure to disclose occurs because the person:

- (a) did not know he or she had an impartiality interest in the matter or
- (b) did not know the matter in which he or she had an impartiality interest would be discussed at the meeting and the person discloses the nature of the impartiality interest as soon as possible after becoming aware of the discussion of that matter.

The *Shire of Shark Bay Standing Orders Local Law 2013* provides for how Committee Members are to disclose interests that may affect impartiality at meetings.

## **Notice and recording**

Where an impartiality interest is disclosed in a written notice given to the CEO before a meeting, then:

- (a) before the meeting the CEO is to ensure that the notice is given to the person who is to preside at the meeting
- (b) at the meeting, the person presiding is to bring the notice and its contents to the attention of the persons present immediately before the matter to which the disclosure relates is discussed.

Where an impartiality interest is disclosed or brought to the attention of the persons present at a meeting, the nature of the impartiality interest must be recorded in the minutes of the meeting.

Regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007* contain the provisions relating to

Elected Members disclosing impartiality interests:

#### 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.

## Disclosure of information in returns

Elected Members and 'designated employees' must provide primary and annual returns in accordance with the requirements of Division 6 of Part 5 of the *Local Government Act 1995*.

For these purposes, a *designated employee* is defined in section 5.74 of the *Local Government Act 1995* to mean:

- (a) the CEO
- (b) an employee, other than the CEO, to whom any power or duty has been delegated under Division 4 of the *Local Government Act 1995*
- (c) an employee who is a member of a committee comprising Elected Members and employees
- (d) an employee nominated by the Shire to be a designated employee.

# Gifts and Benefits

## General provisions

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 Shire. In particular, employees, other than the CEO, must not accept any act of hospitality without prior approval of the CEO.

Despite the general presumption 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.

For the purposes of this Code, a *gift* has the extended meaning set out in section 5.82(4) of the *Local Government Act 1995* and includes:

*“any disposition of property, or the conferral of any other financial benefit, made by one person in favour of another otherwise than by will (whether with or without an instrument in writing), without consideration in money or money’s worth passing from the person in whose favour it is made to the other, or with such consideration so passing if the consideration is not fully adequate, but does not include any financial or other contribution to travel.”*

However, a *gift* does not include:

- (a) a gift from a relative as defined in section 5.74(1) of the *Local Government Act 1995*
- (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.

Section 5.74(1) of the *Local Government Act 1995* states the following:

*relative*, in relation to a relevant person, means any of the following —

- (a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant of the relevant person or of the relevant person’s spouse or de facto partner;
- (b) the relevant person’s spouse or de facto partner or the spouse or de facto partner of any relative specified in paragraph (a),

whether or not the relationship is traced through, or to, a person whose parents were not actually married to each other at the time of the person’s birth or subsequently, and whether the relationship is a natural relationship or a relationship established by a written law;

Examples of gifts are:

- (a) a tangible item, such as a bottle of wine or a book
- (b) a contribution towards the provision of accommodation
- (c) an act of hospitality, such as payment for a meal or an invitation or tickets to a function or event or
- (d) discounts on a provider’s products.

Nothing in this Code prevents a gift from being received:

- (a) on behalf of the Shire, where it is retained by the Shire
- or
- (b) by an Elected Member, Committee Member or employee under and in accordance with the terms of a sponsorship or other commercial arrangement with the Shire.

For example, a ticket to attend a VIP event that is given to an Elected Member or employee will not be a 'gift' (and, therefore, will not be subject to the gift provisions of this Code) if it is given because of a contractual obligation to give it under a sponsorship agreement with the Shire.

However, a ticket that is given voluntarily, over and above any contractual obligation will be a gift (if it otherwise satisfies the definition of 'gift' referred to earlier) and, if so, will be subject to the gift provisions of this Code.

## Prohibited gifts

A Committee Member or employee must not accept 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.

For these purposes:

- (a) a *prohibited gift* means:
  - (i) a gift worth \$300.00 or more or
  - (ii) a gift that is one of two or more gifts given to the member or employee by the same person within a period of six months that are in total worth \$300.00 or more
- (b) *activity involving a local government discretion* is an activity:
  - (i) that cannot be undertaken without an authorisation from the Shire or
  - (ii) by way of a commercial dealing with the Shire.

Any gift valued at \$300.00 or more should be declined politely. If it is considered inappropriate to reject a gift worth \$300.00 or more (such as in the case of a gift from a foreign dignitary), the gift should be received on behalf of the Shire and provided to the CEO at the first possible opportunity. At the CEO's discretion, these gifts will be placed in an appropriate position within the Shire and/or registered in the Shire's memorabilia collection.

The value of a gift can be estimated if the Elected Member, Committee Member or employee believes its value is low. However, if it is believed its value approaches \$300.00, the precise value of the gift should be ascertained before accepting to ensure compliance with this Code.

It is also important to ensure that the full value of the gift is taken into account including all hidden costs in association with acts of hospitality. (For example, if invited to a box at a sporting event, the cost is not just the cost of an entry ticket but a proportion of the cost of the box and the hospitality provided.) It would also include the cost of the attendance of a partner at an event, should the partner be invited to accompany the Shire's representative.

Regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* prohibits an Elected Member from accepting a prohibited gift (see below).

## Notifiable gifts

A Committee Member or employee may accept a 'notifiable gift.' However, if he or she 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 intended to undertake an activity involving a local government discretion, he or she must notify the CEO within 10 days of accepting the gift.

For these purposes:

- (a) a *notifiable gift* means:
  - (i) a gift worth between \$50.00 and \$300.00 or
  - (ii) a gift that is one of two or more gifts given to an Elected Member, Committee Member or employee by the same person within a period of six months that are in total worth between \$50.00 and \$300.00
- (b) activity involving a local government discretion is an activity:
  - (i) that cannot be undertaken without an authorisation from the Shire or
  - (ii) by way of a commercial dealing with the Shire.

The notification to the CEO of the acceptance of a notifiable gift must be in writing and must include:

- (a) the name of the person who gave the gift
- (b) the date on which the gift was accepted
- (c) a description, and the estimated value, of the gift
- (d) the nature of the relationship between the person who is a member or employee and the person who gave the gift
- (e) if the gift is a notifiable gift under (ii) of the definition of a notifiable gift (whether or not it is also a notifiable gift under (i) of that definition):
  - (i) a description
  - (ii) the estimated value
  - (iii) the date of acceptance, of each other gift accepted within the six month period.

Regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* contains similar requirements relating to the acceptance and notification of a 'notifiable gift' by an Elected Member (see below).

## Register of notifiable gifts

The CEO must maintain a register of notifiable gifts and record any details of notifications given to comply with the requirement of the Code.

Regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* contain the requirements relating to the acceptance and notification of gifts by an Elected Member:

## 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.

## **Disclosure of gifts in annual returns**

Elected Members and 'designated employees', as defined in section 5.74 of the *Local Government Act 1995*, should also remember to disclose gifts, in an annual return, received and valued at over \$200.00, that are not covered by the *Local Government (Rules of Conduct) Regulations 2007* (for Elected Members) or this Code (for employees).

## **Disclosure of election campaign contributions**

All electoral candidates must comply with the *Local Government Act 1995* and the *Local Government (Elections) Regulations 1997* in disclosing electoral donations or 'gifts'. A candidate must disclose to the CEO information about any electoral or related gift with a value of \$200.00 or more that is promised or received within six months before the relevant election day.

Requirements relating to the disclosure of electoral gifts are set out in the *Local Government (Elections) Regulations 1997*, particularly Part 5A.

# Reporting Breaches and Suspected Breaches of the Code

## Breaches of the Code by employees

Any person who has reason to believe that the personal behaviour of an employee breaches the standards of conduct set out in the Code, may refer the matter to the CEO, who will consider the matter and deal with it in accordance with the management protocols, procedures or practices of the Shire and any applicable law concerning employees.

Any person who has reason to believe that the personal behaviour of the CEO breaches the standards of conduct set out in the Code, may refer the matter to the Executive Manager Finance and Administration, who will consider the matter and deal with it in accordance with the management protocols, procedures or practices of the Shire and any applicable law.

Each report of a breach is to be dealt with quickly and fairly in accordance with the principles of procedural fairness.

## Breaches of the Code by Elected Members and Committee Members

A breach by an Elected Member of the *Local Government (Rules of Conduct) Regulations 2007* may be reported to the Shire's Complaints Officer (the CEO) in accordance with the prescribed Complaints Form as determined from time to time. Such complaints will be dealt with under Division 9 of Part 5 of the *Local Government Act 1995*.

Any person who has reason to believe that the personal behaviour of an Elected Member breaches the standards of conduct set out in the Code, other than those matters set out in the *Local Government (Rules of Conduct) Regulations 2007*, may refer the matter to the CEO, who will consider the matter and deal with it as he or she sees fit.

Any person who has reason to believe that the personal behaviour of a Committee Member breaches the standards of conduct set out in the Code, may refer the matter to the CEO, who will consider the matter and deal with it as he or she sees fit.

## Reporting misconduct to the Corruption and Crime Commission

The CEO, being a 'principal officer of a notifying authority' (for the purposes of the *Corruption crime and Misconduct Act 2003*) 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 suspects on reasonable grounds concerns or may concern misconduct and is of relevance or concern to the CEO in his or her official capacity.

Notwithstanding, any Elected Member, Committee Member, employee or any other person may report directly to the Corruption and Crime Commission any matter which that person suspects on reasonable grounds concerns or may concern misconduct that:

(a) has or may have occurred

(b) is or may be occurring

(c) is or may be about to occur or

(d) is likely to occur.

Section 4 of the *Corruption Crime and Misconduct Act 2003* defines the instances when 'misconduct' occurs:

#### 4. Term used: 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).

Section 3 of the *Corruption and Crime Commission Act 2003* defines 'serious misconduct' as misconduct of a kind described in section 4(a), (b) or (c) of the *Corruption, Crime and Misconduct Act 2003*.

## Breach of Legislation

Any Elected Member, Committee Member or employee who has reason to believe that there has been a breach of any legislation relating to the local government is required to report such breach to the Chief Executive Officer. This may include an actual breach of legislation or any action that may be considered to place the Shire in a high risk situation.

Any person who reports a breach will be protected by the Corruption, Crime and Misconduct Act 2003 if made in good faith and the Chief Executive Officer has an obligation under the Local Government Act 1995 and the Public Interest Disclosure Act 2003.

## Public Interest Disclosure Act 2003

The *Public Interest Disclosure Act 2003* facilitates the reporting of public interest information and provides protection for those who report this information under that Act.

The Shire:

- (a) does not tolerate corrupt or other improper conduct, including mismanagement of public resources, in the exercise of the public functions of the Shire, by its members, employees or contractors
- (b) is committed to the aims and objectives of the *Public Interest Disclosure Act 2003*
- (c) strongly supports disclosures being made by Elected Members, Committee Members or employees as to corrupt or other improper conduct
- (d) will take all reasonable steps to provide protection to Elected Members, Committee Members and employees who make disclosures from any detrimental action in reprisal for the making of a public interest disclosure
- (e) does not tolerate any of its Elected Members, Committee Members, employees or contractors engaging in acts of victimisation or reprisal against those who make public interest disclosures.

Elected Members, Committee Members and employees are encouraged to contact the Shire's nominated Public Interest Disclosure Officer to seek guidance on their disclosure and to lodge completed Public Interest Disclosure forms.

A person who makes an appropriate disclosure of public interest information to the Shire's nominated Public Interest Disclosure Officer under section 5 of the *Public Interest Disclosure Act 2003*:

- (a) incurs no civil or criminal liability for doing so
- (b) is not, for doing so, liable:
  - (i) to any disciplinary action under a written law
  - (ii) to be dismissed
  - (iii) to have his or her services dispensed with or otherwise terminated or
- (iv) for any breach of duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by a written law) applicable to the person (Section 13).

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