



CODE OF CONDUCT FOR ELECTED MEMBERS AND STAFF

History:

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SHIRE OF YORK

CODE OF CONDUCT **(INCLUDING STAFF)**

INTRODUCTION

The Local Government Act 1995 requires that every local government is to adopt a Code of Conduct to be observed by Council members, Committee members and employees (S.5.103). The Code of Conduct is also to be reviewed within 12 months of each ordinary election.

OBJECTIVE

Briefly, the Code of Conduct provides Elected Members and staff in local government with consistent guidelines for an acceptable standard of professional conduct. The code addresses in a concise manner the broader issue of ethical responsibility and encourages greater transparency and accountability in individual local governments.

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

- a) better decisions 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 Elected Members and staff. It encourages a commitment to ethical and professional behaviour and outlines principles in which individual and collective Local Government responsibilities may be based.

POLICY

1. Conflict and Disclosure of Interest

1.1 Conflict of Interest

- a) Members and staff will ensure that there is no actual (or perceived) conflict between their personal interests and the impartial fulfilment of their professional duties.

- b) Staff will not engage in private work with or for any person or body with an interest in a proposed or current contract with the Shire of York, 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) Members and Staff will lodge written notice with the Chief Executive Officer describing an intention to undertake a dealing in land within the Shire of York of which may otherwise be in conflict with Council's functions (other than purchasing the principal place of residence).
- d) Staff who exercise a recruitment or other discretionary function will make disclosure before dealing with relatives or close friends and will disqualify themselves from dealing with those persons.
- e) Staff will refrain from partisan political activities which could cast doubt on their neutrality and impartiality in acting in their professional capacity.

1.2 Financial Interest

Members and staff will adopt the principles of disclosure of financial interest as contained with the Local Government Act 1995 (S.5.60).

1.3 Disclosure of Financial Interest

- a) In addition to disclosure of financial interests, members and staff, including persons under a contract for services:

- Attending a Council or committee meeting; or
- 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.

- c) Members and staff shall complete the following disclosure for interests which may affect their impartiality.

“With regard to The matter in item (as in agenda) 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 member or employee is encouraged to disclose the nature of the association.

2. Personal Benefit

2.1 Use of Confidential Information

Members and staff 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 (S.5.93).

2.2 Intellectual Property

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

2.3 Improper or Undue Influence

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

2.4 Token Gifts

- a) Members and staff are not to accept a gift other than a token gift from a person who is undertaking or likely to undertake business –
- that requires the person to obtain any authorisation from the local government;
 - by way of contract between the person and the local government;
 - by way of providing any service to the local government.
- b) The Chief Executive Officer will maintain a register of token gifts recorded in accordance with subclause (c).

- c) Members and staff who accept a token gift that is required to be entered in the register are to record –
 - the names of the persons who gave, and received the token gift;
 - the date of receipt of the token gift; and
 - a description and the estimated value of the token gift.
- d) A token gift is defined as being a gift of \$200 or below, but does not include gifts defined by Council as exempt token gifts providing any such exempt token gift does not exceed \$50 in value. (Refer to schedule “A”).
- e) This clause does not apply to gifts received from a relative (as defined in section 5.74(1) of the Local Government Act) or an electoral gift (to which other disclosure provisions apply).

3. Conduct of Members and Staff

3.1 Personal Behaviour

- a) Members and staff will:
 - i) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;
 - ii) perform their duties impartially and in the best interests of the Shire of York 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 Shire of York 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 obligations of fidelity to the Shire of York.
- b) Members will represent and promote the interests of the Shire of York, while recognising their special duty to their own constituents.

3.2 Honesty and Integrity

Members and staff 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 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;
- iii) be frank, honest and courteous in their official dealing with each other; and
- iv) not remove from the Council Chambers any full or part consumed bottles or containers of alcoholic drink without the permission of the President or in his absence, the Deputy President.

3.3 Performance of Duties

- a) While on duty, staff will give their whole time and attention to the Shire of York'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 Shire of York.
- b) 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. Members will be as informed as possible about the functions of the Council and treat all members of the community honestly and fairly.

3.4 Compliance with Lawful Orders

- a) Staff 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) Staff will give effect to the lawful policies of the Shire of York, whether or not they agree with or approve of them.

3.5 Administrative and Management Practices

Members and staff will ensure compliance with proper and reasonable administrative practices and conduct, and professional and responsible management practices.

3.6 Corporate Obligations

a) Standard of Dress

Staff are expected to comply with neat and respectable dress standards at all times. Management reserves the right to raise the issue of dress with individual staff.

b) Communication and Public Relations

- i) All aspects of communication by staff (including verbal, written or personal), involving the Shire of York's activities should reflect the status and objectives of the Shire of York. Communications should be accurate, polite and professional.
- ii) As a representative of the community, members need to be not only responsive to community views, but to adequately communicate the attitudes and decisions of the Council. In doing so, members 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 Council; and
 - information concerning adopted policies, procedures and decisions of the Council is conveyed accurately.

3.7 Relationships between Members and Staff

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

- Accept that their role is a leadership, not a management or administrative one;
- Acknowledge that they have no capacity to individually direct members of staff to carry out particular functions; and
- Refrain from publicly criticising staff in a way that casts aspersions on their professional competence and credibility.

3.8 Appointments to Committees

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

- Clearly understand the basis of their appointment; and
- Provide regular reports on the activities of the organisation

3.9 Access to Information

Members and 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.

4. Use of Shire of York's Resources

Members and staff will:

- a) be scrupulously honest in their use of the Shire of York's resources and shall not misuse them or permit their misuse (or the appearance of misuse) by any other person or body;
- b) use Shire of York's resources entrusted to them effectively and economically in the course of their duties; and
- c) not use Shire of York's resources (including the services of Council 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).

5. Travelling and Sustenance 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 York in accordance with the Shire of York's policy and the provisions of the Local Government Act 1995.

6. Enforcement of this Code

Breaches of this Code are considered serious by the Council and its Officers, as it outlines the way we work with each other and the community.

All breaches are to be in writing either to the Shire President or Chief Executive Officer.

A decision to deal with a breach of this Code by an elected member shall be a decision of the Council. The Council may, where the circumstances warrant, move a "Motion of Censure" against the elected member and record the reasons for such action in the minutes of the meeting.

The Chief Executive Officer shall take the appropriate disciplinary action where an officer has breached the Code and the circumstances warrant action.

SCHEDULE “A”

Schedule of Exempt Token Gifts

- Trinket gifts of an insignificant nature, i.e. biros, keyrings, diaries, coasters, etc.
- Minor items of apparel, i.e. ties, hats, tee-shirts, etc.
- Minor items of a promotional nature, i.e. mugs, etc.
- Provision of food and refreshment.
- Travel and other related benefits such as accommodation.
- Goods and materials obtained by attendance at courses, conferences and seminars and the like including items such as satchels (and contents of a minor nature), minor spot prizes and raffles, etc. and entertainment provided irrespective of value.
- Attendance or participation at sporting, cultural, recreational facilities and events.
- Receipt of professional, trade or like services, etc.
- Gifts of a seasonal or personal nature.
- Token gifts and hospitality received as a result of attendance at, or involvement with another local government, or the state or federal government (or any other committee or group which Council has endorsed councillors or employees involvement with).

The above schedule of exempt token gifts may be taken as a guide for the purpose of assessing when a gift need not be included in the token gift register provided any such gift does not exceed \$50 in value.



DEPARTMENT OF LOCAL GOVERNMENT AND REGIONAL DEVELOPMENT

WORKSHOP HANDOUT

GUIDE TO

MAKING A COMPLAINT

ABOUT THE CONDUCT

OF COUNCIL MEMBERS

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COPY of proposed OFFICIAL CONDUCT FORM 1 (Complaint of a Minor Breach Form)
COPY of proposed OFFICIAL CONDUCT FORM 2 (Complaint of a Serious Breach Form)

**COMPLAINTS ABOUT THE CONDUCT OF COUNCIL MEMBERS
PART 5 DIVISION 9 OF THE LOCAL GOVERNMENT ACT 1995**

1. Introduction

1. The *Local Government (Official Conduct) Amendment Act 2007* ("Amendment Act") is intended to commence operation from midnight of 20 October 2007 (i.e. from commencement of 21 October 2007).
2. A consequence of the Amendment Act is that the provisions of Part 5 Division 9 of the *Local Government Act 1995* ("LG Act") on codes of conduct ("the Official Conduct provisions") provide a disciplinary framework to deal with certain individual misconduct by local government council members where they do not comply with a code of conduct (rules) or they contravene particular laws applying to them in Acts and Regulations.

2. Overview

3. The key matters in the Official Conduct provisions are:
 - the establishment of a statewide primary Standards Panel ("the Standards Panel") to deal with complaints about minor breaches which are to be contraventions of the new code (rules) of conduct with penalties including public censure, public apology or an order to undertake training; and
 - for complaints about serious breaches to be sent to the Department of Local Government and Regional Development ("the Department") for possible referral to the State Administrative Tribunal ("SAT") for determination including similar penalties as above and stronger penalties of up to six months suspension or up to five years disqualification as an elected member of any local government.
4. The rules of conduct cover the following key areas:
 - principles of general behaviour;
 - local law as to conduct at meetings;
 - use of information;
 - securing personal advantage or disadvantaging others;
 - misuse of council resources;
 - prohibition against involvement in administration;
 - relations with local government employees;
 - disclosure of interest adversely affecting impartiality; and
 - gifts.
5. The Official Conduct provisions provide that contraventions of the rules of conduct are a minor breach and complaints are to be referred to the Standards Panel. Additional panels may be appointed should it be necessary.

[Note: A local government Chief Executive Officer ("CEO") must still give written notice to the Corruption and Crime Commission of any matter which the CEO suspects on reasonable grounds concerns or may concern a council member's misconduct (as defined under section 4 of the *Corruption and Crime Commission Act 2003*).]

3. Complaints Officer

6. Each council must appoint a complaints officer ("complaints officer") who is a senior local government employee, otherwise the position will fall to the local government's CEO.
7. Complaints referred to the local government must be in writing in an approved Complaint Form (as per the attached copies). It is an offence for a complainant to give false or misleading information.
8. When the complaints officer initially receives a complaint of a minor breach, it should be checked to ensure that it has been properly completed (and is dated and signed), and the complaints officer acknowledges its receipt, and sends a copy of the complaint to the council member complained about.
9. The complaints officer must refer the minor breach complaint to the Standards Panel, along with any relevant information the complaints officer has in relation to the complaint.
10. The council member complained about may respond in writing to the Standards Panel to any adverse allegations in the complaint.

4. Cautions

11. A minor breach complaint must be made according to the Complaint Form approved by the Minister for Local Government, and must follow a statutory process, in order for the Standards Panel to deal with it. Before making the formal complaint a complainant is advised to read or be aware of the following CAUTIONS, and to otherwise follow this guide.

GENERAL CAUTION AGAINST PROVIDING FALSE OR MISLEADING INFORMATION:

A person commits an offence if the person gives information in a complaint knowing the information to be false or misleading in a material particular (LG Act, section 5.124). The penalty for committing this offence is a fine of \$5,000 (LG Act, section 9.14).

CAUTION WHERE COMPLAINT BEING MADE DURING AN ELECTION CAMPAIGN PERIOD:

A person who:

- (a) **makes a complaint during a campaign period** (that is, the period beginning on the first day of the nomination period and ending on the election day); **or**
- (b) **performs a function under the LG Act in respect of a complaint made during a campaign period; or**
- (c) **as a result of anything done under [Part 5 Division 9 of the LG Act], becomes aware of any detail of a complaint made during a campaign period knowing it to be relevant to the complaint,**

and during the campaign period discloses information that the complaint has been made, or discloses information of any detail of the complaint, commits an offence (LG Act, section 5.123(1)). The penalty for committing this offence is a fine of \$5,000 (LG Act, section 9.14).

12. However, it is not an offence against section 5.123(1) of the LG Act to disclose information if:
 - (a) the disclosure is made for the purposes of investigating or dealing with the complaint;
 - (b) the disclosure is required under a written law;
 - (c) the complaint to which the information relates is a complaint of a minor breach and a standards panel has dealt with the breach under section 5.110(6)(b) or (c); or
 - (d) the complaint to which the information relates is a complaint of a serious breach and SAT has made an order under section 5.117(1).

5. Standards Panel

13. The Standards Panel deals with minor breach complaints, and details of any decisions against a council member are included in a public register and are to be entered into the local government's annual report.
14. The Standards Panel's finding that a breach has occurred in relation to the complaint must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur (balance of probabilities).
15. The Standards Panel consists of three persons, a chairperson from the Department (with his or her Deputy Member also being a Department officer), a nominee from WALGA with experience in local government (with his or her Deputy Member also being a nominee from WALGA with such experience) and a person having relevant legal knowledge (with his or her Deputy Member also having relevant legal knowledge) (LG Act, Schedule 5.1, clause 2).
16. Complaints referred to the Standards Panel are to be kept confidential by all parties and the Standards Panel if the complaint is made during the campaign period prior to a local government election.
17. The Official Conduct provisions provide for sanctions where the Standards Panel finds that a person has committed a breach. These include the Standards Panel making an order that publicly censures the council member, requires the council member to apologise publicly or requires the member to undertake training. A person not agreeing with these determinations has a right of appeal to SAT.

6. State Administrative Tribunal

18. Allegations of repeated minor breaches (3 or more) may be treated as a serious breach and referred by the Standards Panel to the Director General of the Department ("the Director General"). Allegations of serious contraventions of the LG Act, such as financial interest breaches or the misuse of information for personal gain, are serious matters for referral to the Director General.
19. The Director General may then direct those matters to SAT for assessment and the imposition of particular penalties where it appears that there is a case to answer. This will be an alternative to undertaking prosecution and other types of enforcement action also open to the Department.
20. The Director General may refer the matter to another enforcement agency if that agency is the more appropriate authority to deal with the matter. Allegations of criminal or corrupt behaviour will continue to be referred to the Police Service or other appropriate authorities.
21. For serious breaches referred to SAT by the Director General, the Tribunal will have the penalties available to the Standards Panel at its disposal, as well as being able to suspend the council member for a period of not more than six months, or disqualify the member for a period of not more than five years, from holding office as a member of a council.
22. The serious breaches to be dealt with by SAT are those which are offences under an Act or Regulations and relate to the actions of council members. The most common include non-declarations of financial interest and the failure to complete annual financial returns.
23. If SAT finds that a member has committed a recurrent breach (LG Act, section 5.105(2)), it may make the same orders as if it has found that the member has committed a serious breach. A recurrent breach is discussed later in this guide.

7. SAT powers and procedures

24. SAT's vocational regulation and other functions and powers are established by the *State Administrative Tribunal Act 2004* ("the SAT Act"). The LG Act is an enabling Act that together with the SAT Act gives SAT the jurisdiction to review decisions, consider disciplinary matters and make original decisions.

8. Types of SAT applications

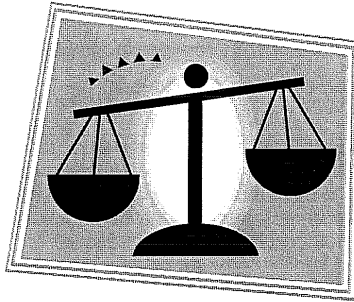
25. Under the SAT Act, SAT's activities are divided into two jurisdictions - original and review:
- *Original.* SAT can make original or primary decisions regarding recurrent breaches and serious breaches by a council member, and breaches of orders made by it or by the Standards Panel.
 - *Review.* On the application of a person who made a complaint or the member complained about, SAT can review a decision made by the Standards Panel to dismiss the complaint or make an order relating to the member.

9. Overview of SAT process

26. Once SAT accepts an application, all parties named in the application are notified whether:
- a directions hearing has been scheduled;
 - a final hearing has been scheduled; or
 - the Tribunal will be making a decision based on documents.
27. A directions hearing, if required, is usually held within a short time of the application being received. The matter may be resolved at this stage, or a Tribunal member will give directions on how the matter will be handled and what further information is required.
28. At a directions hearing, the matter may be scheduled for:
- mediation;
 - compulsory conference; or
 - final hearing.
29. A final hearing allows all parties to give their sides of the story. At the end of the final hearing, the Tribunal will consider the matter. Its decision and orders may be delivered immediately or may be held over for detailed consideration (reserved). A decision may be reserved for up to three months. The SAT gives reasons for all of its final decisions.

10. Representatives

30. Parties to SAT applications can be represented by a lawyer or other representatives at a hearing.
31. The SAT Act provides:
- a body corporate can be represented by its director, secretary or other officer;
 - a public sector body can be represented by an authorised public sector employee; and
 - a public sector employee whose performance or purported performance of their duties is the subject of the application, may be represented by another public sector employee.
32. Parties may choose to be represented by a person:
- with special knowledge or expertise relevant to the matter (not counting expertise obtained by being involved in another proceeding); or
 - who is authorised by SAT, or the SAT Regulations, Rules & Practice Notes.



11. FAQ (Frequently Asked Questions)

Q1: What conduct or behaviour of a council member can be complained about under the Official Conduct provisions of the LG Act?

Minor Breach

33. A council member commits a **minor breach** if he or she contravenes:
- a rule of conduct for council members in Part 2 (regulations 5 to 12) of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations"); or
 - a local law relating to conduct of people at council or committee meetings (standing orders local law).
34. See Q3 and Q4 in this Guide for examples of minor breaches.

Recurrent Breach

35. A recurrent breach occurs where a council member is found to have committed 3 or more minor breaches (LG Act, section 5.105(2)).

Serious Breach

36. A council member commits a **serious breach** if he or she commits an offence under a written law, other than a local law made under the LG Act, of which it is an element that the offender is a council member or is a person of a description that specifically includes a council member.
37. The usually applicable written law in this case will be the LG Act, but may be other laws where corruption or criminal offences or other offences are alleged in relation to public officers.
38. If corruption is alleged, the appropriate agency to make a complaint to in the first instance is the Corruption and Crime Commission.
39. If any criminal offence under the Criminal Code is alleged, the appropriate agency to make a complaint to in the first instance is the WA Police Service.
40. See Q11 in this Guide for examples of serious breaches.

Q2. Who may make a complaint?

41. A complaint may be made by any person (including the complaints officer) who has reason to believe that a council member has committed a minor breach or a serious breach.

Q3. What are examples of a minor breach under Part 2 of the Local Government (Rules of Conduct) Regulations 2007 ("the Regulations")?

Brief description of alleged breach	Explanatory note
Improper use of information	Reg 6 - A breach occurs where, subject to certain limited permitted disclosures under regulation 6(3), a council member discloses: (a) information that he or she derived from a confidential document (marked by the CEO to clearly show that the information in the document is not to be disclosed); or (b) any information that he or she acquired at a closed meeting other than by deriving it from a non-confidential document.
Securing personal advantage or disadvantaging others	Reg 7 - A breach occurs where a council member makes 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, (note, this does not apply to conduct that contravenes section 5.93 of the LG Act or The Criminal Code section 83).
Misuse of council resources	Reg 8 - A breach occurs where a council member directly or indirectly uses 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 LG Act, the Electoral Act 1907 or the Commonwealth Electoral Act 1918; or (b) unless authorised under the LG Act to do so, for any other purpose.
Prohibited involvement in administration	Reg 9 - A breach occurs where a council member undertakes tasks that contribute to the administration of council functions unless authorized by the council or the CEO (although this does not apply to anything that a member does as part of the deliberations at a council or committee meeting).
Direction given to or attempts to influence a local government employee	Reg 10 - A breach occurs where a council member: (a) directs a local government employee to do or not to do anything in the person's capacity as a local government employee; or (b) attempts to influence, by means of a threat or the promise of a reward, the conduct of a local government employee in the person's capacity as a local government employee (although this does not apply to anything that a member does as part of the deliberations at a council or committee meeting).
Improper statements or use of improper expression about a local government employee	Reg 10 - A breach occurs where a council member, during a council or committee meeting or other organized event at which members of the public are present, either orally, in writing or by any other means: (a) makes a statement that a local government employee is incompetent or dishonest (although this does not apply to conduct that is unlawful under The Criminal Code Chapter XXXV); or (b) uses offensive or objectionable expressions in reference to a local government employee.
Non-disclosure of interest adverse to impartiality	Reg 11 - A breach occurs where a council member, who has an interest in any matter to be discussed at a council or committee meeting attended by the member, fails 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. [Here, "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, but regulation 10(2) does not apply to a direct or indirect financial interest or a proximity interest referred to in section 5.60 of the LG Act.]

<p>Acceptance of a prohibited gift</p>	<p>Reg 12 - A breach occurs where a council member accepts 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 council discretion. [Note: Subject to the exceptions stated in regulation 12(1), a prohibited gift is a gift worth \$300 or more, or that is one of 2 or more gifts given by the same person within 6 months that are in total worth \$300 or more.]</p>
<p>Failure to notify CEO of a notifiable gift within 10 days of acceptance of the gift</p>	<p>Reg 12 - A breach occurs where a council member 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 council discretion; fails (within 10 days of accepting the gift) to notify the CEO of the acceptance in accordance with regulation 12(4). [Note: Subject to the exceptions stated in regulation 12(1), a notifiable gift is a gift worth between \$50 and \$300 or that is one of 2 or more gifts given by the same person within 6 months that are in total worth between \$50 and \$300.]</p>

Q4. What is an example of a type of conduct for a complaint of a minor breach of a Standing Orders Local Law (relating to conduct of people at council or committee meetings)?

44. It depends on the contents of the Standing Orders Local Law concerned. However, for example, in relation to conduct of persons at Council and Committee meetings a Standing Order may provide that:

"8.4(2) No member of the Council or a committee is to use offensive or objectionable expressions in reference to any member, employee of the Council, or any other person."

Q5. What is a suitable wording of a minor breach complaint in the case of an alleged breach of a relevant Standing Order?

45. It depends. For the example given under Q4, a suitable wording of a minor breach complaint may be:

"Mayor/President/Councillor *[insert name]* used an offensive or objectionable expression in reference to *[insert name and position of person]* at the *[insert type of meeting]* meeting held on *[insert date]*, which is a breach of Standing Order 8.4(2) of the *[insert name of local government]* Standing Orders Local Law *[insert year of local law]*.

The expression/s complained about is/are:

[Set out the expressions, and the context in which it was/they were used.]

Q6. Is there a time limit or restrictions to making a complaint?

46. An alleged minor breach must have occurred after midnight of 20 October 2007 (i.e. from the commencement of 21 October 2007), when the Official Conduct provisions come into operation.
47. A minor breach complaint must be made within 2 years after the breach occurred, but not later (LG Act, s. 5.107(4)).
48. If a council member has already been tried by a court for an offence the commission of which is the serious breach, the Director General cannot make an allegation to SAT that the member has committed a serious breach (LG Act, s. 5.116(4)).
49. Where a serious breach is alleged, if there is a limit on the time within which proceedings may be commenced for the relevant offence, the complaint cannot be made after that time has elapsed (LG Act, s. 5.114(3)).

Q7. How do I make a complaint about a council member's minor breach?

50. **Before** lodging a formal minor breach complaint it is advisable to check with the complaints officer to see whether a mediation service is available, to discuss the type or category of complaint and the appropriate process to deal with it. However, mediation is not a requirement under the law.
51. A minor breach complaint must be made according to the Complaint Form approved by the Minister for Local Government, and must follow a statutory process, in order for the Standards Panel to deal with it. Before making a formal complaint it is advisable to read or be aware of the CAUTIONS set out in the above Overview, and to otherwise follow this guide.
52. Attached to this guide are copies of:
 - the proposed Official Conduct Form 1 (the proposed Complaint of Minor Breach Form); and
 - the proposed Official Conduct Form 2 (the proposed approved Complaint of Serious Breach Form).
53. The completed Complaint Form is to be delivered or sent to the complaints officer, who – after issuing to you an acknowledgement of its receipt, and sending to the council member complained about a copy of the complaint – then sends it to the Departmental member of the Standards Panel.
54. To help the Standards Panel to understand what a complaint is about it is advisable to send the complaints officer photocopies (or PDFs or JPEGs if emailing the complaint) of any witness statements and documents that would help the complaint to be dealt with.

Q8. If a council member is found to have committed a minor breach, what are the possible sanctions?

55. If the Standards Panel finds that a council member has committed a minor breach, it is required to deal with the complaint by dismissing the complaint or ordering that the member be subject to or do one or more of:
 - (a) being publicly censured as specified in the order;
 - (b) apologise publicly as specified in the order; or
 - (c) undertake training as specified in the order;or a combination of these.

Q9. What are the contact addresses and details of the Standards Panel?

56. The addresses and fax number for the Standards Panel are:

The Chair
Standards Panel
Department of Local Government and Regional Development

<i>Street Address:</i> Level 1 Dumas House 2 Havelock Street WEST PERTH WA 6005	<i>Postal Address:</i> GPO Box R1250 PERTH WA 6844	<i>Fax No:</i> (08) 9217 1555
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57. You can contact the Panel's executive officer by telephone via the Department on (08) 9217 1500 or, for Country callers, FREECALL 1800 620 511.

Q10. How is a recurrent breach (3rd or more minor breach) dealt with?

58. If a minor breach is alleged, and if it were found to have been committed would be a recurrent breach, the Standards Panel may send the complaint to the Director General or proceed to make a finding and deal with the complaint.
59. If the Standards Panel sends the complaint to the Director General, the Director General has to decide whether to make an allegation to SAT that the council member has committed the breach as a recurrent breach, and if the decision is in the negative the Director General is required to send the complaint back to the Standards Panel to deal with it.
60. Under subsection 5.112(5) of the LG Act, the fact that the person who made the complaint does not want an allegation to be made to SAT does not prevent the Director General from making the allegation.
61. If the Director General decides to make such an allegation to SAT and it finds that the council member committed a recurrent breach, it may make any of the orders that it can as if the breach was a serious breach (see Q15 of this Guide).

SERIOUS BREACHES

Q11. What are examples of a serious breach under the LG Act?

Section of the LG Act	Description
5.21	A council member present at a Council or Committee meeting refuses or fails to vote
5.65	A council member fails to disclose a direct or indirect financial interest or a proximity interest in a matter to be discussed at meeting which the member attends
5.67	A council member, who discloses a direct or indirect financial interest or a proximity interest in a matter to be discussed at meeting which the member attends, wrongfully participates in the meeting
5.69	A council member, who discloses a direct or indirect financial interest or a proximity interest in a matter to be discussed at meeting which the member will attend, contravenes a condition imposed by the Minister allowing the member to participate etc. in the council or committee meeting
5.75	A council member fails to lodge a primary return with the CEO within a certain time limit
5.76	A council member fails to lodge an annual return with the CEO within a certain time limit

5.78	Non-compliance with the requirements of sections 5.79, 5.80, 5.81, 5.82, 5.83, 5.84, 5.85 and 5.86 in relation to the disclosure of information in a return
5.89	In relation to a disclosure under section 5.65, or a return lodged under section 5.75 or 5.76, a council member provides information in written or oral form that the member knows to be false or misleading in a material particular or likely to deceive in a material way
5.90	A council member publishing: (a) any information derived from a register of financial interests unless that information constitutes a fair or accurate report or summary of information contained in the register and is published in good faith; or (b) any comment on the facts set forth in a register of financial interests unless that comment is fair and published in good faith
5.93	A council member making improper use of any information acquired in the performance by him or her of any of his or her functions under the LG Act or any other written law: (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

[Note: A CEO must still give written notice to the Corruption and Crime Commission of any matter which the CEO suspects on reasonable grounds concerns or may concern a council member's misconduct (as defined under section 4 of the *Corruption and Crime Commission Act 2003*).]

Q12. What are examples of a serious breach under the Criminal Code?

62. Although the following examples are included within the definition of a 'serious breach' under the LG Act, if there is evidence that any of these offences have occurred **the matter should be reported to the Police Service**, as they are the appropriate agency to investigate and deal with the matter.

Section of the Criminal Code	Offence
s. 82 Bribery of public officer	"Any public officer who obtains, or who seeks or agrees to receive, a bribe ... is guilty of a crime and is liable to imprisonment for 7 years."
s. 83 Corruption of public officer	"Any public officer who, without lawful authority or a reasonable excuse: (a) acts upon any knowledge or information obtained by reason of his office or employment; (b) acts in any matter, in the performance or discharge of the functions of his office or employment, in relation to which he has, directly or indirectly, any pecuniary interest; or (c) acts corruptly in the performance or discharge of the functions of his office or employment, so as to gain a benefit, whether pecuniary or otherwise, for any person, or so as to cause a detriment, whether pecuniary or otherwise, to any person, is guilty of a crime and is liable to imprisonment for 7 years."
s. 85 Falsification of records by public officer	"Any public officer who, in the performance or discharge of the functions of his office or employment, corruptly: (a) makes any false entry in any record; (b) omits to make any entry in any record; (c) gives any certificate or information which is false in a material particular; (d) by act or omission falsifies, destroys, alters or damages any record; (e) furnishes a return relating to any property or remuneration which is false in a material particular; or (f) omits to furnish any return relating to any property or remuneration, or to give any other information which he is required by law to give, is guilty of a crime and is liable to imprisonment for 7 years."

Q13. How do I make a complaint about a council member's serious breach?

- 63. It is advisable that a serious breach complaint should be made only after the complainant has read or been made aware of the CAUTIONS set out in the above Overview and in the Complaints Forms on the possible offences that may be committed in relation to a formal complaint, and then by completing the approved Complaint Form attached as discussed or suggested under this guide.
- 64. The Department requires that all serious breach complaints are made by a completed Complaint Form. However, if a complainant has a disability that makes it difficult to complete forms, the complainant can contact the Standards Panel's executive officer on (08) 9217 1500 [Freecall Country 1800 620 511] and ask if the complaint can be lodged by another method.
- 65. To help the Department to understand what a complaint is about it is advisable to send it photocopies (or PDFs or JPEGS if a complainant is emailing information relating to a complaint) of any witness statements and documents that would help the complaint to be dealt with.
- 66. A serious breach complaint can be lodged with the Department by completing a Complaint Form as discussed or suggested under this guide and then sending it:

By mail to:	The Director General Department of Local Government and Regional Development GPO R1250 PERTH WA 6844
By fax to:	(08) 9217 1555
By email to:	The current email address for that purpose (please telephone the Department between 8.30am and 5.00pm Monday to Friday, on (08) 9217 1500 [Freecall Country 1800 620 511] to find out that address)

Q14. What happens after a serious breach complaint is made?

- 67. Within 14 days after the Director General of the Department of Local Government and Regional Development receives a serious breach complaint, the Director General is to give each party notice in writing:
 - (a) acknowledging that the complaint is in accordance with the LG Act; and
 - (b) advising that the Director General has commenced the process of assessing the complaint to decide whether to make an allegation of serious breach to SAT or if the allegation should be dealt with in a more appropriate way.
- 68. After this process is completed, the Director General will make a decision as to whether the matter will be referred to SAT or dealt with in another way.
- 69. The fact that a person who made the serious breach complaint does not want an allegation arising from the complaint to be made to the SAT does not prevent the Director General from making the allegation (LG Act, section 5.116(6)).
- 70. Serious breaches may be dealt with by:
 - the Corruption and Crime Commission;
 - the Police Service;
 - the Western Australia Electoral Commissioner; or
 - SAT, on the Director General's allegation under section 5.116(2) of the LG Act.

Q15. If a council member is found to have committed a serious breach, what are the possible sanctions?

71. If SAT finds that a council member has committed a serious breach, it may:
- (a) order that:
 - (i) the member be publicly censured as specified in the order;
 - (ii) the member apologise publicly as specified in the order;
 - (iii) the member undertake training as specified in the order;
 - (iv) the member is suspended for a period of not more than 6 months specified in the order; or
 - (v) the member is, for a period of not more than 5 years specified in the order, disqualified from holding office as a member of a council;
 - or
 - (b) order 2 or more of the sanctions described in paragraph (a).
72. Any such SAT order may be suspended by SAT so that the order is a "suspended order" for up to 2 years.

REPORTING FORMS

The Local Government (Official Conduct) amendment Act 2007 and associated regulations came into effect from midnight on 20th October 2007.

The Department of Local Government & Regional Development is responsible for the administration of the Standards Panel.

Attached is the documentation required to meet the legislative and administrative requirements in regard to reporting and investigation of complaints. These forms are:

- A pro forma Complaints Officer Details Form
- A copy of the Complaint of Minor Breach Form approved by the Minister under sections 5.107(1) and (2) and 5.109(1) of the Act
- A copy of the Complaint of Serious Breach ?Form approved by the Minister under sections 5.114(1) and (2) of the Act
- A copy of the Complainant Details Form
- A copy of the Council Member Details Form

NOTICE OF COMPLAINT OFFICERS DETAILS

To: The Standards Panel
Email:

The local government specified below hereby gives notice that the details of its complaints officer under section 5.120 of the Local Government Act 1995 are as specified below:

Name of local government:

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Complaints officer details:

Full name	
Other position / office held	
Street address for notices	
Postal address	
Work phone number	
Mobile / Cell phone number	
Email address	

Chief Executive Officer

Full name of Chief Executive Officer:

COMPLAINT OF MINOR BREACH FORM

(Subsections 5.107(1) and (2) of the *Local Government Act 1995* ("the LG Act"))

NOTE: A person who makes a false or misleading complaint commits an offence (penalty: \$5,000). If this complaint is made during the campaign period for a local government election (that is, during the period from opening of nominations to the Election Day), the fact of making the complaint and its details must be kept confidential during that period (penalty: \$5,000).

The law requires a copy of this complaint to be given to the Council member complained about.

NAME OF PERSON WHO IS MAKING THE COMPLAINT:
<p>Name: _____</p> <p style="text-align: center;"><i>Given Name(s)</i> <i>Family Name</i></p>

NAME OF THE LOCAL GOVERNMENT (CITY, TOWN, SHIRE) CONCERNED:

NAME OF COUNCIL MEMBER/S ALLEGED TO HAVE COMMITTED BREACH:

WHAT IS YOUR COMPLAINT: State the type of your complaint by ticking the box of the particular breach that occurred under the Local Government (Rules of Conduct) Regulations 2007.
<ul style="list-style-type: none"> <input type="checkbox"/> Regulation 4 - Breach of Meeting Procedures Local Law (Standing Orders) <input type="checkbox"/> Regulation 6 - Improper use of information <input type="checkbox"/> Regulation 7 - Securing personal advantage or disadvantaging others <input type="checkbox"/> Regulation 8 - Misuse of local government resources <input type="checkbox"/> Regulation 9 - Prohibition against involvement in administration <input type="checkbox"/> Regulation 10 - Relations with local government employees <input type="checkbox"/> Regulation 11 - Non-disclosure of interest adverse to impartiality <input type="checkbox"/> Regulation 12 - Gifts <p><i>(State full details of What Happened in that section on the next page)</i></p>

DATE OF INCIDENT:
<p>_____ / _____ / 20__</p>

WHAT HAPPENED? What are the details of the contravention that is alleged to have resulted in the breach? *[Attach further information if insufficient space]*

I declare that, to the best of my knowledge and belief, the information I have given in this complaint is not false or misleading.

SIGNED:

Complainant's Signature:

Date of signing: _____ / _____ / 20_____

COMPLAINT OF SERIOUS BREACH FORM

(Subsections 5.114(1) and (2) of the *Local Government Act 1995* ("the LG Act"))

NOTE: A person who makes a false or misleading complaint commits an offence (penalty: \$5,000). If this complaint is made during the campaign period for a local government election (that is, during the period from opening of nominations to the Election Day), the fact of making the complaint and its details must be kept confidential during that period (penalty: \$5,000).

NAME OF PERSON WHO IS MAKING THE COMPLAINT:
Name: _____ <i>Given Name(s)</i> <i>Family Name</i>
NAME OF THE LOCAL GOVERNMENT (CITY, TOWN, SHIRE) CONCERNED:
NAME OF COUNCIL MEMBER/S ALLEGED TO HAVE COMMITTED BREACH:
DATE OF INCIDENT:

WHAT IS YOUR COMPLAINT: State the type of your complaint by ticking the appropriate box, and include full details of What Happened in that section on the next page	
SECTION OF LG ACT	SECTION OF LG ACT
<input type="checkbox"/> s. 5.21 - Member failed to vote on a matter at a Council meeting or a delegated power Committee meeting	<input type="checkbox"/> s. 5.78 - Non-compliance by Member with the requirements of sections 5.79, 5.80, 5.81, 5.82, 5.83, 5.84, 5.85 and 5.86 in relation to the disclosure of information in a return
<input type="checkbox"/> s. 5.65 - Member failed to disclose a disclosable or non-exempted direct or indirect financial interest or a proximity interest in a matter discussed at a Council or Committee meeting	<input type="checkbox"/> s. 5.89 - In relation to a disclosure under section 5.65, or a return lodged under section 5.75 or 5.76, Member provided information in written or oral form that he or she knew to be false or misleading in a material particular or likely to deceive in a material way
<input type="checkbox"/> s. 5.67 - After disclosing a direct or indirect financial interest or a proximity interest in a matter before a Council or Committee meeting, Member remained in the meeting or participated in the discussion or decision-making process on the matter without being allowed to do so under s. 5.68 or s. 5.69 of the LG Act	<input type="checkbox"/> s. 5.90 - Member published information, derived from register of financial interests, without it being a fair or accurate report or summary of the information contained in the register, and without it being published in good faith
<input type="checkbox"/> s. 5.69 - Member, with a direct or indirect financial interest or a proximity interest in a matter at Council or any Committee meeting, contravened a condition imposed by the Minister under s. 5.69 of the LG Act allowing the member to participate etc. in the meeting	<input type="checkbox"/> s. 5.90 - Member published comment on the facts in register of financial interests, without comment being fair and published in good faith
<input type="checkbox"/> s. 5.75 - Member failed to lodge a primary return when due	<input type="checkbox"/> s. 5.93 - Member made improper use of information acquired in the performance of his or her functions under the LG Act or any other written law: (a) to gain directly or indirectly a [financial] advantage for the member or any other person; or (b) to cause [financial] detriment to the local government or any other person
<input type="checkbox"/> s. 5.76 - Member failed to lodge an annual return when due	
<input type="checkbox"/> Other (specify section and Act, as applicable):	

WHAT HAPPENED? What are the details of the contravention that is alleged to have resulted in the breach? *[Attach further information if insufficient space]*

I declare that, to the best of my knowledge and belief, the information I have given in this complaint is not false or misleading.

SIGNED:

Complainant's Signature:

Date of signing: _____ / _____ / 20_____

COMPLAINANT DETAILS FORM

NOTE TO PERSON MAKING THE COMPLAINT: This form should be completed, dated and signed by the person making a complaint of a minor breach or a serious breach, and should be submitted with the complaint when it is given to the Complaints Officer of the local government concerned (if a minor breach is alleged) or the Director General of the Department of Local Government and Regional Development (if a serious breach is alleged), so that the Standards Panel or the Department, as the case requires, can contact the person making the complaint to follow up on and deal with the complaint.

NOTE TO COMPLAINTS OFFICER: The Council member complained about is not entitled to, and must not be sent or provided with, a copy of this form (or any address or contact details in it) submitted by a person making a complaint.

DETAILS OF PERSON WHO IS MAKING THE COMPLAINT:
Name: _____ <div style="display: flex; justify-content: space-around; width: 100%;"> <u>Given Name(s)</u> <u>Family Name</u> </div>
Address: _____ _____ Postcode: _____
Telephone No.(s): _____ (Hm) _____ (Wk) _____ (Mob)
Email address: _____

NAME OF THE LOCAL GOVERNMENT (CITY, TOWN, SHIRE) CONCERNED:

NAME OF COUNCIL MEMBER/S ALLEGED TO HAVE COMMITTED BREACH:

DATE OF INCIDENT:
_____ / _____ / 20____

WITNESS DETAILS: If there is/are any person/s who witnessed the alleged breach, and who is/are willing to provide information, state the name and contact details of each such person.

Name: _____ <div style="display: flex; justify-content: space-around; width: 100%;"> <u>Given Name(s)</u> <u>Family Name</u> </div>
Telephone No.(s): _____ (Hm) _____ (Wk) _____ (Mob)
Email address: _____

Name: _____ <div style="display: flex; justify-content: space-around; width: 100%;"> <u>Given Name(s)</u> <u>Family Name</u> </div>
Telephone No.(s): _____ (Hm) _____ (Wk) _____ (Mob)
Email address: _____

SIGNED:

.....
Complainant / Complaints Officer [*Delete as appropriate*]

COUNCIL MEMBER DETAILS FORM

DETAILS OF COUNCIL MEMBER/S ALLEGED TO HAVE COMMITTED BREACH:
Name: _____ <div style="display: flex; justify-content: space-around; width: 100%;"> <i>Given Name(s)</i> <i>Family Name</i> </div>
Address: _____ _____ Postcode: _____
Telephone No.(s): _____(Hm) _____(Wk) _____(Mob)
Email address: _____

NAME OF THE LOCAL GOVERNMENT (CITY, TOWN, SHIRE) CONCERNED:
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--

NAME OF PERSON WHO IS MAKING THE COMPLAINT:
--

--

DATE OF INCIDENT:

_____ / _____ / 20_____

WITNESS DETAILS: If there is/are any person/s who witnessed the alleged breach, and who is/are willing to provide information on behalf of the Council member complained about , state the name and contact details of each such person.
--

Name: _____ <div style="display: flex; justify-content: space-around; width: 100%;"> <i>Given Name(s)</i> <i>Family Name</i> </div>
Telephone No.(s): _____(Hm) _____(Wk) _____(Mob)
Email address: _____

Name: _____ <div style="display: flex; justify-content: space-around; width: 100%;"> <i>Given Name(s)</i> <i>Family Name</i> </div>
Telephone No.(s): _____(Hm) _____(Wk) _____(Mob)
Email address: _____

SIGNED:

.....
Complaints Officer