



Code of Conduct

**For Council Members, Committee & Working
Group Members and Employees**

xx April 2018

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OUR VISION

A thriving and friendly community that recognises our history and embraces cultural diversity and economic opportunity, whilst nurturing our unique natural and built environment.

OUR MISSION

To deliver affordable and quality Local Government Services.

OUR VALUES

Communication

Actively consult, engage and communicate with, and on behalf of the community.

Integrity

Be honest, equitable and ethical in all our dealings.

Respect

Recognise and respect the individual and unique requirements of all people, cultures and groups.

Innovation

Drive change through leadership and energy.

Transparency

Be open and accountable in all our activities.

Courtesy

Provide courteous service and helpful solutions.

Council Members, Committee Members and employees are expected to apply the current values in all their activities associated with the business of the Shire of Broome.

PREAMBLE

This Code of Conduct (Code) provides Shire of Broome (Shire) Council Members, Committee & Working Group Members and employees 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.

This Code is complementary to the principles adopted in *the Local Government Act 1995* and regulations which incorporates four fundamental aims to result in:

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

This Code provides a guide and a basis of expectations for Council Members, Committee & Working Group Members and employees. It encourages a commitment to ethical and professional behaviour and outlines principles in which individual and collective Local Government responsibilities may be based.

It is the personal responsibility of Council Members, Committee & Working Group Members and employees to comply with the standards in the code and regularly review their understanding of the code to ensure ongoing compliance.

STATUTORY ENVIRONMENT

This Code observes statutory requirements of the *Local Government Act 1995* (section 5.103 – Codes of Conduct), *Local Government (Administration) Regulations 1996* (Regulations 34B and 34C) and *Local Government (Rules of Conduct) Regulations 2007*.

RULES OF CONDUCT

Council Members acknowledge their activities, behaviour and statutory compliance obligations may be scrutinised in accordance with prescribed Rules of Conduct as described in the *Local Government Act 1995* and *Local Government (Rules of Conduct) Regulations 2007*. ~~(Refer Annexure 1).~~

1. ROLES

1.1 Role of Council

The Role of the Council is in accordance with section 2.7 of the *Local Government Act 1995*.

2.7. Role of council

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

- and
- (b) *determine the local government's policies.*

1.2 Role of Shire President

In addition to performing the role of a Council Member, section 2.8 of the *Local Government Act 1995* sets out the role of the Shire President.

- 2.8. *Role of mayor or president*
- (1) *The mayor or president —*
- (a) *presides at meetings in accordance with this Act; and*
 - (b) *provides leadership and guidance to the community in the district; and*
 - (c) *carries out civic and ceremonial duties on behalf of the local government; and*
 - (d) *speaks on behalf of the local government; and*
 - (e) *performs such other functions as are given to the mayor or president by this Act or any other written law; and*
 - (f) *liaises with the CEO on the local government's affairs and the performance of its functions.*
- (2) *Section 2.10 applies to a councillor who is also the mayor or president and extends to a mayor or president who is not a councillor.*

1.3 Role of Deputy Shire President

The Role of the Deputy Shire President is in accordance with section 2.9 of the *Local Government Act 1995*.

- 2.9. *Role of deputy mayor or deputy president*
The deputy mayor or deputy president performs the functions of the mayor or president when authorised to do so under section 5.34.

1.4 Role of Council Member

The primary role of a Council Member 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 Broome, will be the focus of the Council Member's public life.

Section 2.10 of the *Local Government Act 1995* sets out the role of Council Members.

2.10. Role of councillors

A councillor —

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

A Council Member 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 Council representatives. In fulfilling the various roles, Council 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'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 a local and regional level;
- having an awareness of the statutory obligations imposed on Council Members and on Local Governments.

In carrying out its functions, the Shire is to use its best endeavours to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity.

1.5 Role of the Chief Executive Officer (CEO) and Employees

The role of employees is determined by the functions of the Chief Executive Officer CEO as set out in section 5.41 of the *Local Government Act 1995*.

5.41. Functions of CEO

The CEO's functions are to —

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

The CEO is responsible for the effective and efficient implementation of Council decisions and in turn all employees of the Shire are subject to the direction of the CEO.

Employees enable the functions of the Shire and Council to be performed, and they have an obligation to:

- (a) give their attention to the business of Council while on duty,
- (b) ensure that their work is carried out efficiently, economically and effectively,
- (c) carry out lawful directions given by any person having authority to give such directions; and
- (d) give effect to the lawful policies, decisions and practices of the Council, whether or not the employee agrees or approves of them.

1.4 Principles affecting the employment of employees by the Shire

Section 5.40 of the Act sets out the principles that apply to the employment of the Shire's employees.

5.40. Principles affecting employment by local governments

The following principles apply to a local government in respect of its employees -

- (a) employees are to be selected and promoted in accordance with the principles of merit and equity; and*
- (b) no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage; and*
- (c) employees are to be treated fairly and consistently; and*
- (d) there is to be no unlawful discrimination against employees or persons seeking employment by the Shire on a ground referred to in the Equal Opportunity Act 1984 or on any other ground; and*
- (e) employees are to be provided with safe and healthy working conditions in accordance with the Occupational Safety and Health Act 1984; and*
- (f) such other principles, not inconsistent with this Division, as may be prescribed.*

1.6 Relationships between Council Members and Employees

An effective Councillor will work as part of the Council team with the ~~Chief Executive Officer~~ **CEO** and other employees. That teamwork will only occur if Council Members and employees have a mutual respect and co-operate with each other to achieve the Council's corporate goals and implement the Council's strategies. To achieve that position, Council Members need to observe their statutory obligations which include, but are not limited to, the following:

- accept that their role is a leadership, not a management or administrative one;
- acknowledge that they have no capacity to individually direct employees to carry out particular functions;
- refrain from publicly criticising employees in a way that casts aspersions on their professional competence and credibility.

Regulations 9 and 10 of the *Local Government (Rules of Conduct) Regulations 2007* apply

to Council 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.

2. CONFLICT AND DISCLOSURE OF INTEREST

Guiding principles

Regional local governments by the nature of their geographical isolation have a higher potential for ~~The nature of the Shire's business is conducive to~~ conflicts of interest between a Council Member, Committee & Working Group Members and an 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 circumstances?
- **Presence of mind**
What are the consequences if I ignore a conflict of interest? What if my involvement was questionable 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?

2.1 Conflict of Interest

- (a) Council Members, Committee & Working Group Members and employees will ensure that there is no actual (or perceived) conflict of interest between their personal interests and the impartial fulfilment of their professional duties.
- (b) Employees will not engage in private work with or for any person or body with an interest in a proposed or current contract with the Shire, without first making disclosure to the ~~Chief Executive Officer~~ CEO. 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) Council Members, Committee & Working Group Members and employees will lodge written notice with the ~~Chief Executive Officer~~ CEO describing an intention to undertake a dealing in land within the local government area or which may otherwise be in conflict with the Council's functions (other than purchasing the principal place of residence).
- (d) Council Members, Committee & Working Group Members and employees 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) Employees will refrain from partisan political activities which could cast doubt on their neutrality and impartiality in acting in their professional capacity. An individual's rights to maintain their own political convictions are not impinged upon by this clause. It is recognised that such convictions cannot be a basis for discrimination and this is supported by anti-discriminatory legislation.

2.2 Financial Interest

Council Members, Committee & Working Group 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 Council Members, Committee Members or employees of financial interests (including proximity interests).

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

2.3 Impartiality Interests

For the purpose of this Code, an **impartiality interest** as defined under regulation 11(1) of the *Local Government (Rules of Conduct) Regulations 2007* and regulation 34(C)(1) of the *Local Government (Administration) Regulations 1996* is:

Definition:

In this clause, "interest" has the meaning given to that term in regulation 11(1) of the Local Government (Rules of Conduct) Regulations 2007 and regulation 34(C)(1) of the Local Government (Administration) Regulations 1996.

"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.

An 'Impartiality Interest' does not include a 'Financial Interest' that is subject to the requirements of the *Local Government Act 1995*.

Impartiality Interest – Employees

- (a) A person who is an employee and who has an interest in any matter to be discussed at a Council or Committee meeting attended by the person is required to disclose the nature of the interest -
 - (i) in a written notice given to the CEO before the meeting; or
 - (ii) at the meeting immediately before the matter is discussed.

- (b) A person who is an employee and who has given, or will give, advice in respect of any matter to be discussed at a council or committee meeting not attended by the person is required to disclose the nature of any interest the person has in the matter -
 - (i) in a written notice given to the CEO before the meeting; or
 - (ii) at the time the advice is given.

- (c) A requirement described under items (a) and (b) excludes an interest referred to in section 5.60 of the *Local Government Act 1995*.

- (d) A person is excused from a requirement made under items (a) or (b) to disclose the nature of an interest if:
 - (i) the person's failure to disclose occurs because the person did not know he or she had an interest in the matter; or
 - (ii) the person's failure to disclose occurs because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person discloses the nature of the interest as soon as possible after becoming aware of the discussion of a matter of that kind.

- (e) If a person who is an employee makes a disclosure in a written notice given to the CEO before a meeting to comply with requirements of items (a) or (b), then:
 - (i) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
 - (ii) immediately before a matter to which the disclosure relates is discussed at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present.
- (f) If -
 - (i) to comply with a requirement made under item (a), the nature of a person's interest in a matter is disclosed at a meeting; or
 - (ii) a disclosure is made as described in item (d)(ii) at a meeting; or
 - (iii) to comply with a requirement made under item (e)(ii), a notice disclosing the nature of a person's interest in a matter is brought to the attention of the persons present at a meeting,
 the nature of the interest is to be recorded in the minutes of the meeting.

Impartiality Interests – Council Members

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

2.4 Disclosure of information in returns

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

Definitions:

In this clause, "designated employee" has the meaning given to that term in section 5.74 of the *Local Government Act 1995*.

designated employee means —

- (a) a CEO; and
- (b) an employee, other than the CEO, to whom any power or duty has been delegated under Division 4; and
- (c) an employee who is a member of a committee comprising council members and employees; and
- (d) an employee nominated by the local government to be a designated employee;

Section 5.75 and 5.76 of the *Local Government Act 1995* contains the requirement for Council Members and "Designated Employees" to complete Primary and Annual Returns.

5.75. Primary returns

- (1) A relevant person other than the CEO must lodge with the CEO a primary return in the prescribed form within 3 months of the start day.
- (2) A CEO must lodge with the mayor or president a primary return in the prescribed form within 3 months of the start day.
- (3) This section does not apply to a person who —
 - (a) has lodged a return within the previous year; or
 - (b) has, within 3 months of the start day, ceased to be a relevant person.

Penalty: \$10 000 or imprisonment for 2 years.

5.76. Annual returns

- (1) Each year, a relevant person other than the CEO must lodge with the CEO an annual return in the prescribed form by 31 August of that year.
- (2) Each year, a CEO must lodge with the mayor or president an annual return in the prescribed form by 31 August of that year.

Penalty applicable to subsections (1) and (2): \$10 000 or imprisonment for 2 years.

[Section 5.76 amended by No. 1 of 1998 s. 18; No. 66 of 2006 s. 12.]

3. INFORMATION AND PERSONAL BENEFIT (INCLUDING GIFTS)

3.1 Access to Information

Employees will ensure that Council Members **are** given access to all information necessary for them to properly perform their functions and comply with their responsibilities.

Council 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.

The *Local Government Act 1995* provides for access to information by Council Members which is detailed in sections 5.91 and 5.92.

The *Local Government Act 1995* provides the following in relation to access to information:

5.91. Interpretation

A reference in this Division to a council member, a committee member or an employee performing a function under a written law other than this Act does not include a reference to a council member, a committee member or an employee performing a function in a capacity other than that of council member, a committee member or an employee, as the case may be, under this Act.

5.92. Access to information by council, committee members

- (1) *A person who is a council member or a committee member can have access to any information held by the local government that is relevant to the performance by the person of any of his or her functions under this Act or under any other written law.*
- (2) *Without limiting subsection (1), a council member can have access to —*
 - (a) *all written contracts entered into by the local government; and*
 - (b) *all documents relating to written contracts proposed to be entered into by the local government.*

3.2 Improper Use of Information

Council 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.

Improper use of information also applies to Working Groups, Workshops, informal meeting groups, Concept Forums or any body formed for the purpose of assisting the Shire in whatever capacity whether they are a Council Member, employee or other person.

Due discretion must be exercised by all those who have access to confidential or sensitive information. This discretion applies to the proper disclosure of that information, and 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 a Council 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.

5.93. Improper use of information

A person who is a council member, a committee member or an employee must not make improper use of any information acquired in the performance by the person of any of his or her functions under this 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.

Penalty: \$10 000 or imprisonment for 2 years.

3.3 Use of Confidential Information

Council Members, Committee & Working Group Members and employees ~~will~~ shall 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 and in good faith, or to improperly cause harm, ~~or~~ detriment or impairment to any person, body, or the Council. ~~or organisation.~~

Council Members, Committee & Working Group Members and employees must not release information that they know, or should reasonably know, is confidential to the local government other than to authorities or persons with a right of access to such information.

~~Council Members, Committee Members and employees must not disclose to another person, written or oral information that is provided to 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.~~

Due discretion shall be exercised by all those who have access to confidential or sensitive information. Every matter dealt with by, or brought before, a meeting sitting behind closed doors, shall be treated as strictly confidential, and shall not without the authority of the Council be disclosed to any person other than the Council Members and/or employees of the Shire (and in the case of employees only so far as may be necessary for the performance of their duties) prior to the discussion of the matter at a meeting of the Council held with open doors.

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*.

5.23. Meetings generally open to public

(1) Subject to subsection (2), the following are to be open to members of the public —

- (a) all council meetings; and
- (b) all meetings of any committee to which a local government power or duty has been delegated.

(2) If a meeting is being held by a council or by a committee referred to in subsection (1)(b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following —

- (a) a matter affecting an employee or employees; and
- (b) the personal affairs of any person; and
- (c) a contract entered into, or which may be entered into, by the local

- government and which relates to a matter to be discussed at the meeting;
and
- (d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;
and
- (e) a matter that if disclosed, would reveal —
- (i) a trade secret; or
 - (ii) information that has a commercial value to a person; or
 - (iii) information about the business, professional, commercial or financial affairs of a person,
- where the trade secret or information is held by, or is about, a person other than the local government; and
- (f) a matter that if disclosed, could be reasonably expected to —
- (i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law; or
 - (ii) endanger the security of the local government's property; or
 - (iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety;
- and
- (g) information which is the subject of a direction given under section 23(1a) of the Parliamentary Commissioner Act 1971; and
- (h) such other matters as may be prescribed.
- (3) A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.

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

- (a) to an officer of the Department of Local Government and Communities ~~and Communities~~ **Sport and Cultural Industries**
- (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.

Regulation 6 of the *Local Government (Rules of Conduct) Regulations 2007* prohibits a Council 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.

3.4 Intellectual Property

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

3.5 Improper or Undue Influence

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

Council Members, Committee Members and employees shall not take advantage of their position to improperly influence any other person in order to gain undue or improper (direct or indirect) advantage or gain, pecuniary or otherwise, for themselves or for any other person or body. Similarly, Council members, committee members and employees shall not take advantage of their positions to improperly disadvantage or cause detriment to the Shire or any other person.

3.6 Gifts

In relation to acceptance of gifts, Council Members and employees are required to comply with the provisions of the Regulations. For Employees Regulation 34B of the *Local Government (Administration) Regulations 1996* applies. For Council Members Regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* applies.

It should be noted that electoral gift restrictions referenced in these regulations only apply to candidates at an election. They do not apply to employees or sitting members who are not candidates.

Gifts – Employees

- (a) A person who is an employee is to refrain from accepting a prohibited gift from a person who -
 - (i) is undertaking or seeking to undertake an activity involving a local government discretion; or

- (ii) it is reasonable to believe is intending to undertake an activity involving a local government discretion.
- (b) A person who is an employee and who accepts a notifiable gift from a person who -
 - (i) is undertaking or seeking to undertake an activity involving a local government discretion; or
 - (ii) it is reasonable to believe is intending to undertake an activity involving a local government discretion,
 must ~~is to~~ notify the CEO, in accordance with item (c) and within 10 days of accepting the gift, of the acceptance.
- (c) The notification of the acceptance of a notifiable gift must be in writing and include -
 - (i) the name of the person who gave the gift; and
 - (ii) the date on which the gift was accepted; and
 - (iii) a description, and the estimated value, of the gift; and
 - (iv) the nature of the relationship between the person who is an employee and the person who gave the gift; and
 - (v) 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) -
 - (1) a description; and
 - (2) the estimated value; and
 - (3) the date of acceptance,
 of each other gift accepted within the 6 month period.
- (d) The CEO is to maintain a register of notifiable gifts and record in it details of notifications given to comply with a requirement made under item (c).
- (e) This clause does not apply to gifts received from a relative (as defined in Section 5.74(1) of the *Local Government Act 1995*), or an electoral gift (to which other disclosure provisions apply under Regulation 30B of the *Local Government (Elections) Regulations 1997*), or a gift from a statutory authority, government instrumentality or non-profit association for professional training.
- (f) This clause does not prevent the acceptance of a gift on behalf of the Shire in the course of performing professional or ceremonial duties in circumstances where the gift is presented in whole to the CEO, entered into the Register of Notifiable Gifts and used or retained exclusively for the benefit of the Shire.

Regulation 34B of the *Local Government (Administration) Regulations 1996* describes that a Code of Conduct is to contain specific requirements in relation to employees and gifts.

The following definitions are provided under regulation 34B of the *Local Government (Administration) Regulations 1996* :

"activity involving a local government discretion" means an activity -

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

"gift" has the meaning given to that term in section 5.82(4) except that it does not include -

- (a) a gift from a relative as defined in section 5.74(1); or
- (b) a gift that must be disclosed under Regulation 30B of the *Local Government (Elections) Regulations 1997*; or

(c) a gift from a statutory authority, government instrumentality or non-profit association for professional training; or

(d) A gift from WALGA, the Australian Local Government Association Limited (ABN 31 008 613 876) or the Local Government Managers Australia Division Incorporated (ABN 91 208 607 072);

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

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

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

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

(b) a gift worth \$300 or more; or

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

Gifts - Council Members

Regulation 12 of the Local Government (Rules of Conduct) Regulations 2007:

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; or

(d) A gift from WALGA, the Australian Local Government Association Limited (ABN 31 008 613 876) or the Local Government Managers Australia Division Incorporated (ABN 91 208 607 072);

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.

[Regulation 12 amended in Gazette 20 Jan 2017 p. 649-50.]

3.7 — Disclosure of Gifts in Annual Returns

Council 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 Council Members) or this Code (for employees).

Section 5.82 of the Local Government Act 1995 provides the requirement for Council Members and ‘designated employees’ to provide this information.

5.82. — Gifts

- (1) — A relevant person is to disclose in an annual return —
- (a) — the description and the amount of each gift received by the person at any time during the return period; and
 - (b) — the name and address of the person who made each gift to which paragraph (a) applies.
- (2) — Nothing in this Subdivision requires a relevant person to disclose in a return a gift received by the person if —
- (a) — the amount of the gift did not exceed the prescribed amount unless —
 - (i) — the gift was one of 2 or more gifts made by one person at any time during the return period; and
 - (ii) — the sum of those 2 or more gifts exceeded the prescribed amount;
 - or
 - (b) — the donor was a relative of the person.
- (3) — For the purposes of this section, the amount of a gift comprising property, other than money, or the conferral of a financial benefit is to be treated as being an amount equal to the value of the property or the financial benefit at the time the gift was made.
- (4) — In this section —
- gift** means 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.~~

~~[Section 5.82 amended by No. 17 of 2009 s. 29.]~~

3.7 Gifts and Travel Contributions – Council Members and Designated Employees

Council Members and Designated Employees as defined in section 5.74 of the *Local Government Act 1995* must declare the receipt of gifts (other than those received from relatives as defined in section 5.74) valued at \$200 or more to the CEO within 10 days of receipt so that the relevant details may be included in the Gifts and Contributions to Travel Register and placed on the Shire's website. Section 5.82 of the *Local Government Act 1995* provides additional detail.

Council Members and Designated Employees must also declare to the CEO any contribution to travel (or accommodation incidental to travel) worth more than \$200. Section 5.83 of the *Local Government Act 1995* provides further detail of when such contributions are exempt from the declaration requirement.

4. CONDUCT OF COUNCIL MEMBERS, COMMITTEE & WORKING GROUP MEMBERS AND EMPLOYEES

High standards of professional conduct displayed by Council Members, Committee & Working Group Members and employees, ensures that a positive image of the Shire is conveyed when interacting with stakeholders and the community. The conduct displayed should encourage fair, equitable and lawful operation of the Shire.

4.1 Personal Behaviour

- (a) Council Members, Committee & Working Group Members and employees 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 uninfluenced by fear or favour;
 - (iii) act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the Shire and the community;
 - (iv) make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment; and
 - (v) always act in accordance with their obligation of fidelity to the Shire.
- (b) Council Members will represent and promote the interests of the Shire, while recognising their special duty to their own constituents.

4.2 Honesty and Integrity

Council Members, Committee & Working Group Members and employees 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~~ CEO.
- (c) be **professional**, frank and honest in their official dealings with each other.

4.3 Performance of Duties

- (a) While on duty, employees will give their whole time and attention to the Shire'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.
- (b) Council Members and Committee & Working Group 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. Council Members and Committee Members will be as informed as possible about the functions of the Council, and treat all members of the community honestly and fairly. **In order to facilitate this, Council Members and Committee & Working Group Members must read agendas and be adequately informed.**

The office of a Council Member is not a discretionary one that can be relinquished when inconvenient and reclaimed when convenient to the holder. The office is carried with the individual at all times.

4.4 Meeting Attendance and Obligations

Council Members make a commitment to attend meetings when elected or appointed to Committees. If a Council Member or Committee Member is unable to attend a meeting:

- (a) an apology should be given, or
- (b) a leave of absence should be sought.

If a Council Member has a deputy delegate for the relevant Committee, the Council Member who is unable to attend the meeting should inform the deputy delegate to ensure that person's attendance if possible.

4.5 Quasi-judicial Decisions (Planning matters)

When making quasi-judicial decisions in matters of Planning, Council in some cases is acting on behalf of the WA Planning Commission. Council Members must base their decisions on the:

- (a) law and Council Policies as they exist; and
- (b) facts and merits of the case.

In matters of Planning, Council Members must not:

- (a) act with bias or a conflict of interest; or
- (b) initiate site visits directly with an applicant or affected person. If a site visit is desired, a request should be made to the CEO. The CEO will coordinate a site visit if appropriate

and if circumstances permit. This will enable all Council Members to attend and have the same information when making decisions.

If contacted by an applicant or affected person, Council Members will:

- (a) endeavour to understand the reason for the applicant or affected person making contact;
- (b) advise the applicant or affected person of the role and principles of a Council Member in the role of quasi-judicial decisions maker;
- (c) encourage the applicant or affected person to make their views known through processes such as deputations and presentations to Council, or making submissions during a public consultation period; and
- (d) ensure that they do not commit their vote, or give an impression that they have committed their vote on the matter.

Council Members may offer support or otherwise, but are obliged to consider all relevant facts and have regard to the debate at the meeting, prior to making their quasi-judicial decision. If an applicant or affected person provides information to a Council Member which is substantive to the decision making process, the Council Member must communicate that information to all other Council Members and the CEO prior to the meeting where a decision is proposed on the matter.

4.46 Compliance with Lawful Orders

- (a) Council Members, Committee & Working Group Members and employees 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 can not be achieved, with the ~~Chief Executive Officer~~ CEO.
- (b) Council Members, Committee Members and employees will give effect to the lawful decisions and policies of the Shire, whether or not they agree with or approve of them.

4.57 Compliance with local laws and policies

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

All meetings of the Council or a Committee are to be conducted in accordance with the Shire of Broome Standing Orders Local Law 2003.

4.68 Administrative and Management Practices

Council Members, Committee & Working Group Members and employees will ensure compliance with proper and reasonable administrative practices and conduct, and professional and responsible management practices.

4.79 Corporate Obligations

- (a) Standard of Dress

Council Members, Committee & Working Group Members and employees are expected to comply with neat and responsible dress standards at all times. Accordingly:

- (i) Council Members and Committee & Working Group Members will dress in a manner appropriate to their position, in particular when attending meetings or representing the Shire in an official capacity.
 - (ii) Management reserves the right to adopt policies relating to corporate dress and to raise the issue of dress with individual employees.
- (b) Communication and Public Relations
- (i) All aspects of communication by employees (including verbal, written or personal), involving the Shire's activities should reflect the status and objectives of the Shire. Communications should be accurate, polite and professional.
 - (ii) As a representative of the community, Council Members need to be responsive to community views, and adequately communicate the attitudes and decisions of the Council. In doing so Council 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;
 - information concerning adopted policies, procedures and decisions of the Council is conveyed accurately.
 - (iii) Committee Members accept and acknowledge it is their responsibility to observe any direction the Shire may adopt in terms of advancing and promoting the objectives of the Committee to which they have been appointed.

4.810 Appointments to external boards, committees and working groups

Council 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, and
- (b) provide regular reports on the activities of the organisation in accordance with the confidentiality requirements of that organisation.

4.911 Forums of Council (Concept Forums, Agenda Forums and Workshops)

Forums of Council include Concept Forums, Agenda Forums and Workshops and are scheduled and held in accordance with Council Policy ~~1.2.13~~ **1.1.5** – Forums of Council.

Council Members and employees shall make a disclosure of interest in writing through the Chair to the members at any Concept Forum, Agenda Forum or Workshop. Where the declaration is a Financial or a Proximity Interest, the Council Member or employee shall leave the room for the duration of the discussion relating to their declaration.

4.12 Personal Communications and Social Media

- (a) Personal communications and statements made privately in conversation, written, recorded, emailed or posted in personal social media, have the potential to be made public, whether it was intended to be made public or not. Therefore, on the basis that personal or private communications may be shared or become public at some point in the future Council Members and employees must ensure that their personal and private communications do not breach the requirements of this Code of Conduct and for Council Members, *the Local Government (Rules of Conduct) Regulations 2007*.
- (b) Employees must not, unless specifically authorised to do so, disclose information, make comments or engage in communication activities about or on behalf of the Shire, Council Members, employees or contractors.
- (c) Council Member comments which become public may breach the *Local Government (Rules of Conduct) Regulations 2007* and may be referred for investigation.
- (d) Employee comments which become public and breach the Code of Conduct, or any other operational policy or procedure, may constitute a disciplinary matter and may also be determined as misconduct and be reported under the *Public Sector Management Act 1994*.
- (e) A Council Member's right to express a personal opinion on any issue of public interest is recognised and it should always be made clear that they are expressing a personal opinion.

4.13 Drugs and Alcohol

The Shire is committed to developing, implementing and maintaining a safe workplace. Council Members, Committee & Working Group Members and employees must take all reasonable care not to endanger the safety of themselves or others whilst on Shire premises.

Employees are to comply with internal procedures relating to Drugs and Alcohol in the Workplace.

Responsible alcohol consumption is permitted at dedicated functions hosted by the Shire or when attending external functions as a representative of the Shire.

5. DEALING WITH COUNCIL PROPERTY

5.1 Use of Local Government Resources

Council Members and employees will:

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

5.2 Travelling and Sustenance Expenses

Council Members, Committee Members and employees will only claim or accept travelling and sustenance expenses arising out of travel-related matters which have a direct bearing

on the services, policies or business of the Shire in accordance with Shire policy and the provisions of the *Local Government Act 1995*.

6.0 COUNCIL MEMBER AND EMPLOYEES COMMUNICATION

In addition to this Code of Conduct, Council Policy ~~1.1.5~~ **1.1.2 - Formal Communication - Elected Members and Staff** ~~between Council Members and Employees~~, establishes communication parameters between Council Members and Employees of the Shire. ~~of Broome. and guidelines on access to information by Council Members.~~

6.1 Aim

- ~~(a) To ensure the effective manner in which to provide information and messages at the Shire of Broome is maintained at all times for Council members.~~
- ~~(b) To ensure a prompt and accurate medium for providing information to Council members and measuring response.~~
- ~~(c) Effective time management to meet critical competing needs of Council members and senior employees.~~
- ~~(d) To determine the appropriate medium for different levels of information supply.~~

6.21 Processes - Digital information

Digital information **technology** is the prime medium for distributing information to Council members.

- (a) Digital information **technology** (e.g. E-mail) has evolved to become the primary business communication tool within the Shire of Broome. To a large extent it is replacing internal memos, phone calls and facsimile usage. With the use of digital information **technology**, Shire of Broome Council Members and employees send key information to each other and at the same time to all interested parties. The speed of response and the 'informal' nature of the medium, result in fairly rapid decisions being facilitated. Digital information **technology** is one of the most effective and efficient means of communication within an organisation and with clients or other agencies. Messages are easy to send and mass distribution is almost instantaneous. Importantly, digital information and documents **in a digital form** deserve the same level of management that is given to all other forms of business records.
- (b) The aim of this Code is to outline the procedures and practices to be employed at all times when using digital information in the Shire of Broome workplace. In doing so, the document specifically draws attention to Equal Employment Opportunity (EEO) legislation which has a direct impact on the use of digital information.

This Code also provides for stored electronic messages derived from the Shire of Broome's business transactions to be regarded as official records and, as such, professionally managed. In establishing that electronic messages are records, procedures are defined covering the requirement to retain electronic messages in record keeping systems for as long as required under the terms of the *State Records Act 2000*.

Users of digital information technology must respect the law and the legal rights of others. Transmission of any material by using digital information technology in violation of any Australian law is prohibited. This includes, but is not limited to, copyright material, threatening or obscene material, material contrary to the EEO principles or material protected by trade secret. Plagiarising information from digital information source should be regarded in the same manner as copying from any other source. Copyright does apply to information transmitted via digital information technology.

- (c) Digital information technology is inherently not secure. People often believe that digital information is private; that only the intended recipients will read the messages and that they are free to say anything. Digital information should be treated as though it is a conversation that has been written down. It can be "overheard".

Even after a user deletes a digital information record from a computer or digital information account, it may persist in an archived form. Digital information messages can be saved indefinitely on the receiving computer. Copies can easily be made and forwarded to others either electronically digitally or on paper. A message is not "deleted" from the system until all recipients of the message, and recipients of any forwarded or attached copies, have deleted their copies. In addition the message may be archived according to Record Keeping requirements for a number of years, or permanently.

- (d) Digital information, whether or not created or stored on the Shire of Broome's equipment, may constitute an official record subject to disclosure under the *Freedom of Information Act* or other laws.

Mail sent to outside organisations will be subject to the policies of those organisations. These policies may differ from those of the Shire of Broome, especially in relation to privacy.

While it is not the practice of the Shire of Broome's records department to read or to discuss the content of any message, it may be necessary to read a digital information message that has failed to reach its destination. This may be required to assist with the determination of the intended addressee and to redirect the message to the correct address.

- (e) **All confidential digital information** sent from the Shire of Broome is for the intended person(s) only and not for dissemination to third parties. ~~and is to be considered as confidential information.~~ Breach of this protocol may result in repercussions.

Improper uses of information and consequences are listed in the *Local Government Act 1995* as detailed in this document.

6.32 Other Means of Communication

- Councillor Memos

COUHELP has been developed to provide a centralised email address for Councillor enquiries and is not available to the general public. The emails are monitored by the Manager Governance and Senior Administration & Governance Officer, recorded in a Register and referred to the responsible Senior Employee for a response.

Councillor memos were developed so that Councillors can write to the CEO and enquire as to a particular matter at any time and provide a tracked process that may be answered by the CEO or by another officer as directed by the CEO.

The preferred means for Councillors to make enquiries is via the COUHELP email.

~~Staff will endeavour to respond to a Councillor enquiry within 72 hours of receipt of the COUHELP email or Councillor Memorandum. Councillors must use their judgement in deciding to submit an enquiry, as each question may take several hours to prepare a response and recognise that the employees resources will be directed away from other operational matters.~~

~~A response from employees may be to at least recognise the question raised and respond to Council member that the matter requires further investigation or is not within the resource capability of the Shire of Broome at that time.~~

- Telephone

This Code does not stop telephone communication, though Council Members must acknowledge that communications while acting in the position as a Council Member shall only be to the ~~Chief Executive Officer~~ CEO or a Senior Employee of the Shire of Broome being;

~~Deputy Chief Executive Officer
Director of Corporate Services
Director of Community Services
Director of Engineering Services-Infrastructure
Director of Development & Community Services~~

(The above list may be changed at the discretion of the ~~Chief Executive Officer~~ CEO from time to time)

It is acknowledged that liaison of a general nature is also required between Council Members, the ~~Personal~~ Executive Assistant to CEO, Manager Governance and ~~Council Secretary~~ Senior Administration and Governance Officer.

- Facsimile

~~Some Council members have facsimile machines though these have tended to be an unreliable means of communication. Primary communications will be through the digital information system.~~

~~An allowance is paid to Council members in accordance with s 5.99A and it is the Council member's responsibility to ensure that a communication medium is installed that allows digital information transmission as the primary communication means. This allowance is adopted as part of the annual budget. Council Members may reference the Councillor Information Technology Provision, Service and Use Policy (1.1.8) and Councillor Fees Policy (1.1.4) for further details.~~

The Shire of Broome ~~will~~ does not provide support for facsimile machines, or Laptops as of 1 July 2008.

- Hard Copy (paper or similar material)

A hard copy of information circulated via digital information shall be printed and placed in a Councillor's "in-tray" if so requested by a Council member.

All other hard copy information not able to be transmitted by digital information shall be provided to Council members in their "in-tray". Councillors will be responsible for collection of material from their "in-tray".

Hard Copy information stamped "Confidential – Councillor Information Only (not for dissemination)" shall not be provided to any third party.

7. Reporting Breaches and Suspected Breaches of the Code

7.1 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 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 Shire President, who will consider the matter and deal with it in accordance with the management protocols, procedures and any applicable law.

7.2 Breaches of Code by Council Members and Committee Members

A breach by a Council Member under the *Local Government (Rules of Conduct) Regulations 2007* may be reported to the CEO and will be dealt with under Part 5 Division 9 of the *Local Government Act 1995*.

Any person who has reason to believe that the personal behaviour of a Council 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 accordingly as he or she sees fit.

7.3 Reporting Misconduct to the Corruption and Crime Commission or the Public Sector Commission

Misconduct means misconduct as defined in section 4 of the ~~*Corruption and Crime Commission Act 2003*~~ *Corruption, Crime and Misconduct Act 2003*. It can involve activities such as improper handling of conflicts of interest, abuse of position, unauthorised access to or disclosure of confidential information, biased or preferential employment practices, allegations involving improper practices concerning contracts and tendering and misappropriation of public funds or property.

Section 4 of the *Corruption and Crime Commission Act 2003*:

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; or*
- (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; or

(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; or

(ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or

(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) (deleted)

(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 4 inserted by No. 78 of 2003 s. 6.]

The CEO, being the 'principal officer of a notifying authority' (for the purposes of the ~~Corruption and Crime Commission Act 2003~~ **Corruption, Crime and Misconduct Act 2003**) has a statutory obligation to report to the Corruption and Crime Commission (CCC) **or the Public Sector Commission (PSC)**:

(a) any allegations 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.

The Corruption, Crime and Misconduct Act 2003 requires that matters of serious misconduct are reported to the CCC and minor misconduct to the PSC.