



# Council Policy Manual

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## CP10.1 Code of Conduct

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### POLICY OBJECTIVE

The primary objective of this Code of Conduct is to set out the standards of ethical and professional behaviour expected of the City's Elected Members, External Members and Employees.

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## POLICY STATEMENT

### PART 1 - INTRODUCTION

#### 1.1 Application

This Code of Conduct applies to:

- Elected Members;
- External Members who are not Elected Members or Employees; and



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- Employees.

### 1.2 Definitions

In this Code:

“**CEO**” means the Chief Executive Officer of the City

“**City**” means the City of Perth

“**Clear intention**” in relation to a “**dealing in land**” occurs when an individual concerned either:

- a) accepts an offer; or
- b) makes an offer; or
- c) enters into any contract for a dealing in land.

“**Closely associated person**” has the meaning given in section 5.62 of the *Local Government Act 1995*

“**Committee**” means a committee established by the Council

“**Council**” means the council of the City

“**Dealing in land**” means, for the purposes of clause 3.1, a dealing of a person that involves:

- a) acquiring or selling real property;
- b) acquiring or selling a lease or other interest in real property; or
- c) a proposal to develop land or a building;

that is within the City, other than a dealing related to the person’s principal place of residence.

“**Designated Employee**” is defined in section 5.74 of the *Local Government Act 1995 (Act)* to mean:

- a) the CEO;
- b) an employee, other than the CEO, to whom any power or duty has been delegated under Division 4 of the Act;
- c) an employee who is a member of a Committee comprising Council members and employees;  
or
- d) an employee nominated by the City to be a designated employee.

“**Elected Member**” means an elected member of the Council

“**Employee**” means an employee at the City of Perth including agency staff.

“**External Member**” means a member of a Committee who is not an Elected Member.



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“**Secondary Employment**” means any work, employment, or engagement in a business unconnected to an Employee’s role at the City of Perth.

### 1.3 Rules of Conduct

This Code must be read with the Rules of Conduct which are made under the *Local Government (Rules of Conduct) Regulations 2007* and apply to all elected members in Western Australia. The Rules of Conduct have their own enforcement regime. A breach by an Elected Member of a Rule of Conduct may be reported to the City’s Complaints Officer (the CEO). If so, it will be dealt with under Part 5, Division 9 of the *Local Government Act 1995*.

However, it is important to note that a breach, or suspected breach, of this Code of Conduct by an Elected Member can be the subject of a complaint to the Standards Panel.

### 1.4 Legislative Obligations

This Code is not a complete statement of the obligations that Elected Members, External Members and Employees must observe. Legislative obligations, such as those included in the *Local Government Act 1995* and its subsidiary legislation, must be complied with.

## PART 2 - VALUES AND ETHICAL PRINCIPLES

### 2.1 Values

These values establish the broad parameters within which Elected Members, External Members and Employees are expected to work in order to deliver the Council’s Strategic Plan. The City’s values are:

#### 1. Trust and Respect

- Be Honest
- Keep your promises
- Respect others
- Be fair
- Support each other
- Appreciate each others’ contributions
- Recognise that we are all different
- Share information and communicate openly

#### 2. Strive for excellence

- Do your best
- Be enthusiastic
- Be outcome-focused
- Take ownership (be accountable and responsible)



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- Take pride

### 3. Be Creative

- Look for new ways
- Think laterally
- Seek opportunities
- Be flexible and adaptive
- Be receptive to ideas and feedback

## 2.2 Ethical principles

This Code of Conduct is also governed by three ethical principles - justice, respect for persons, and responsible care.

**Justice** A responsibility to:

- be fair and equitable in our treatment of others, not treating people as a means to an end;
- use and share power for the common good of both individuals and society; and
- avoid discrimination, abuse or exploitation of others.

**Respect for persons** A responsibility to:

- respect the rights of individuals and groups allowing them their opinion and their right to be different;
- enable and empower others to achieve their potential by promoting their physical, mental and social wellbeing; and
- encourage honest working relationships by being truthful and sincere when dealing with others.

**Responsible Care** A responsibility to:

- contribute to the wellbeing of individuals and society by exercising due diligence and a duty of care to others;
- treat others as they would like to be treated, doing good and not doing harm;
- uphold the rights of those who are unable to do so, advocating for others where required; and
- protect and responsibly manage the resources of the City of Perth.

## 2.3 Rules of Conduct Principles



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The following principles (set out in the *Local government (Rules of Conduct) Regulations 2007*) should be used to guide Elected Members, External Members and Employees in their conduct:

- (a) act with reasonable care and diligence;
- (b) act with honesty and integrity;
- (c) act lawfully;
- (d) avoid damage to the reputation of the local government;
- (e) be open and accountable to the public;
- (f) base decisions on relevant and factually correct information;
- (g) treat others with respect and fairness; and
- (h) not be impaired by mind affecting substances.

In carrying out their respective functions, Elected Members, External Members and Employees of the City will use their best endeavours to meet the needs of current and future generations through the integration of environmental protection, social advancement and economic prosperity.

Regulation 3 of the *Local Government (Rules of Conduct) Regulations 2007* sets out principles to guide the behaviour of Elected Members which includes the principles listed above. For the purposes of this Code, the guiding principles set out in the Rules of Conduct apply to Elected Members, External Members and Employees of the City.

## PART 3 - CONFLICT AND DISCLOSURE OF INTERESTS

### 3.1 Conflict of interests

Elected Members are bound by the provisions of the *Local Government (Rules of Conduct) Regulations 2007* and the *Local Government Act 1995* in relation to conflicts of interests and must comply with those provisions. Employees are bound by the provisions of the *Local Government Act 1995* and the provisions of this Code in relation to conflicts of interest and must comply with those provisions.

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

In applying this principle, Elected Members, External Members, and Employees must:

- (a) familiarise themselves with the different types of interests that are regulated by legislation and this Code and the disclosure requirements that apply to them;
- (b) understand in what circumstances gifts, benefits and hospitality may be accepted or rejected in accordance with legislation, this Code and the City's policies and procedures;



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- (c) exercise diligence in identifying, and making timely disclosure of, any interests requiring disclosure as they perform their duties;
- (d) not engage in private work with or for any person or body with an interest in a proposed or current contract with the City, without first making written disclosure to the CEO. Elected Members, External Members and Employees undertaking private works shall under no circumstances use City equipment, premises, time, resources or consumables to conduct or undertake activities associated with private works;
- (e) lodge written notice with the CEO describing an intention to undertake a dealing in land which either occurs within the district or which may otherwise be in conflict with the City's functions. The notice must be received within 10 days of the individual concerned forming a clear intention to undertake a dealing in land. It is intended that the Elected Member, External Member, or Employee will be removed by the City from any City process related to that dealing and should act accordingly;
- (f) if they exercise a discretionary function, make written disclosure to the CEO before dealing with any matter where they have an interest that could affect, or could reasonably be perceived to affect, their impartiality. This includes interests arising from kinship, friendship, or membership of an association, and will disqualify themselves from dealing with the matter unless the CEO has authorised their continued involvement and there is no other prohibition under law or the Code which precludes their involvement. Where the CEO has authorised an Employee who has an actual or perceived conflict of interest in the matter to continue acting in some capacity, that Employee must follow all conditions and limitations that the CEO has placed on their involvement; and
- (g) if disclosure is required under any law or this Code, complete a disclosure form in writing and submit it to the CEO, or where the disclosure is by the CEO to the Director Corporate Services.

In addition, an Employee must:

- (h) refrain from partisan political activities associated with City of Perth local government elections which could cast doubt on their neutrality and impartiality in carrying out their public duties and functions. This does not include non-partisan activity such as work associated with the administration of a local government election; and
- (i) lodge a notice with Human Resources prior to undertaking any Secondary Employment. An Employee must not undertake secondary employment without CEO approval, or approval from Human Resources in line with the City's procedures. If an Employee is already undertaking secondary employment they must ensure a notice is lodged immediately.



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Employees should refer to **PR0026** in relation to lodging notices prior to undertaking Secondary Employment.

### 3.2 Financial and non-financial interests

Elected Members must comply with the laws governing financial interests, including the disclosure of financial interests, as set out in the *Local Government Act 1995*. Elected Members must also comply with the laws governing the disclosure of impartiality interests, as set out in the *Local Government (Rules of Conduct) Regulations 2007*.

External 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*. External Members and Employees must also comply with the rules governing the disclosure of impartiality interests, as set out in this Code, which are consistent with Part 6 of the *Local Government (Administration) Regulations 1996*.

The onus is on Elected Members, External Members and Employees to identify possible financial interests and other interests ( such as proximity interests and non-financial interests), to determine whether an interest exists, what disclosure is required by this Code or applicable laws and whether any statutory exemption applies.

Sections 5.59-5.90 of the *Local Government Act 1995* establish the requirements for disclosure by Elected Members, External Members or Employees of financial interests, non-financial interests, indirect financial interests and proximity interests.

Section 5.60A of the Act states that a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government (or by an Employee, Elected Member, Council, or Committee of local government) in a particular way, result in a financial gain, loss, benefit or detriment for the person.

A financial interest may be direct or indirect. An indirect financial interest includes where a financial relationship exists between a relevant person and another person who requires a local government decision in relation to the matter.

A relevant person is also required to disclose (unless the matter is exempt) if a closely associated (as defined by section 5.62 of the Act) person has either a financial or proximity interest.

### 3.3 Proximity Interests

A proximity interests is defined by section 5.60B of the *Local Government Act 1995*. Elected Members, External Members and Employees, are bound by the disclosure requirements of the Act.



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Section 5.60B of the *Local Government Act 1995* states a person has a proximity interest if the matter concerns:

- (a) a proposed change to a planning scheme affecting land that adjoins the person's land; or
- (b) a proposed change to the zoning or use of land that adjoins the person's land; or
- (c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person's land.

Land is considered to adjoin the person's land if it:

- (a) has a common boundary with the person's land; or
- (b) any part of the land is directly across a thoroughfare from the person's land.

The term land includes any land owned by the person or in which the person has any estate or interest.

### 3.4 Impartiality Interests

Elected Members are bound by the impartiality provisions of the *Local Government (Rules of Conduct) Regulations 2007*. This Code is intended to accurately reflect those provisions and Elected Members must also comply with the impartiality interest provisions contained within the Code.

External Members and Employees must comply with the impartiality interest provisions set out in this Code.

#### 3.4.1 Meaning of impartiality interest

For the purposes of this Code, an impartiality interest means:

"an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association" (see regulation 34(C)(1) of the *Local Government (Administration) Regulations 1996* and regulation 11(1) of the *Local Government (Rules of Conduct) Regulations 2007*).

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

#### 3.4.2 Requirement to Disclose

An Elected Member, External Member or Employee who has an impartiality interest in any matter to be discussed at a Council or Committee meeting attended by that person must disclose the nature of the impartiality interest:

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



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In addition, an External Member or Employee who has given, or will give, advice in respect of any matter to be discussed at a Council or Committee meeting not attended by the External Member or Employee must disclose the nature of any impartiality interest he or she has in the matter:

- (a) in a written notice given to the CEO before the meeting; or
- (b) at the time the advice is given.

An Elected Member, External Member or Employee is excused from the requirement to disclose an impartiality interest if the failure to disclose occurs because the person:

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

The disclosure of an impartiality interest does not necessarily affect the ability of the Elected Member or External Member to discuss or vote on the matter.

Where a verbal disclosure is made at a meeting without a prior written disclosure being made, a written disclosure form must be completed in relation to the impartiality interest disclosed. The completed disclosure form must be submitted as soon as practicable following the meeting.

### 3.4.3 Notice and Recording

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

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

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

Regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007* contains detailed provisions relating to the disclosure by Elected Members of impartiality interests.



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An Elected Member who does not comply with an impartiality 'interest provision' would be in breach of this regulation.

Employees and External Members who do not comply with an 'impartiality interest' provision would be in breach of this Code of Conduct.

### 3.5 Disclosure of Information in Returns

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

Employees should refer to City of Perth Procedure PR0934 Financial Interest in Returns – Primary and Annual Returns for further information and guidance on completing Returns.

## PART 4 - PERSONAL BENEFIT

### 4.1 Disclosure of Confidential Information

An Elected Member, External Member or Employee must not disclose to another person, unless it is required for the performance of their duties at the City, written or oral information that is provided to them, or obtained by them, in confidence or, in the case of a document, is marked by the CEO to be confidential.

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

### 4.2 Improper use of information

An Elected Member, External Member or Employees must not make improper use of any information acquired in the performance by the person of any of his or her functions under the *Local Government Act 1995* or any other written law. Elected Members, External Members and Employees shall use discretion with information and avoid improperly causing harm or detriment to any person, organisation or the City.

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



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Elected Members, External Members and Employees must not use information, whether assigned confidential status or not, to gain improper advantage for themselves or for any other person or body, or in ways which are inconsistent with their obligation to act impartially.

Section 5.93 of the *Local Government Act 1995* prohibits an Elected Member, External Member or Employee from making '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 persons; or
- (b) to cause detriment to the local government or any other person.

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

### 4.3 Improper Use of Position

An Elected Member, External Member or Employee must not make improper use of his or her office or position:

- (a) to gain directly or indirectly an advantage for him or her, or for any other person; or
- (b) to cause detriment to the City or any other person.

Regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007* prohibits, in similar terms, the improper use by an Elected Member of his or her office.

### 4.4 Improper or undue influence

An Elected Member, External Member or Employee must not take advantage of his or her position to improperly influence any other person:

- (a) to gain directly or indirectly an advantage for him or her, or any other person; or
- (b) to cause detriment to the City or any other person.

Regulation 10(1) and (2) of the *Local Government (Rules of Conduct) Regulations 2007* prohibit an Elected Member from:

- (a) directing or attempting to direct a local government employee; or
- (b) attempting to influence, by means of a threat or the promise of a reward, the conduct of a local government employee.



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### 4.5 Gifts

#### 4.5.1 General

In general, an Elected Member, External Member or Employees must not seek or accept (either directly or indirectly) any immediate or future gift (including any financial benefit, reward, donation or hospitality) for themselves, or for any other person or body, as a result of their role with the City. In particular, an Employee must not accept any act of hospitality without prior approval of the CEO or a Director, as appropriate.

Despite the general prohibition against seeking or accepting gifts or acts of hospitality, an Elected Member, External Member or Employee may accept some types of gifts which are excluded from this Code's coverage.

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

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

However, a 'gift' does not include a gift from a relative as defined in section 5.74(1) of the *Local Government Act 1995*.

An Elected Member, External Member or Employee, should carefully consider if the Act, regulations, or this Code requires disclosure of a gift or prohibits accepting it.

Nothing in this Code prevents a gift from being received on behalf of the City, where it is retained by the City.

#### 4.5.2 Prohibited gifts

An Elected Member, External Member or Employee must not accept a **prohibited gift** from a person who:

- (a) is undertaking or seeking to undertake an **activity involving a local government discretion**; or



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- (b) it is reasonable to believe is intending to undertake an **activity involving a local government discretion**.

For the purpose of this clause:

- (a) a **'prohibited gift'** means:
  - (i) a gift worth \$300 or more; or
  - (ii) a gift that is one of 2 or more gifts given to the Elected Member, External Member or Employee by the same person within a period of 6 months that are in total worth \$300 or more; and
- (b) **'activity involving a local government discretion'** is an activity:
  - (i) that cannot be undertaken without an authorisation from the City; or
  - (ii) by way of a commercial dealing with the City; and
- (c) a **'gift'** has the meaning set out in section 5.82(4) of the *Local Government Act 1995* but does not include:
  - (i) a gift from a relative as defined in section 5.74(1); or
  - (ii) a gift that must be disclosed under regulation 30B of the *Local Government (Elections) Regulations 1997*; or
  - (iii) a gift from a statutory authority, government instrumentality or non-profit association for professional training; or
  - (iv) a gift from WALGA, the Australian Local Government Association Limited (ABN 31 008 613 876) or the Local Government Managers Australia WA Division Incorporated (ABN 91 208 607 072).

Any gift valued at \$300 or more should be declined politely. If it is considered inappropriate to reject a gift worth \$300 or more (such as in the case of a gift from a foreign dignitary), the gift should be received on behalf of the City and provided to the CEO at the first possible opportunity. At the CEO's discretion, these gifts will be placed in an appropriate position within the City and/or registered in the City's memorabilia collection.

The value of a gift can be estimated if you believe its value is low. However, if it is believed its value approaches \$300, the precise value of the gift should be checked before accepting to ensure compliance with this Code.

It is also important to ensure that the full value of the gift is taken into account.

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



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### 4.5.3 Notifiable gifts

An Elected Member, External Member or Employee may accept a **'notifiable gift'**. However, if he or she accepts a **notifiable gift** from a person who:

- (c) is undertaking or seeking to undertake an **activity involving a local government discretion**; or
- (d) it is reasonable to believe is intended to undertake **an activity involving a local government discretion**,

he or she must notify the CEO within 10 days of accepting the gift.

For the purposes of this clause:

- (a) a **'notifiable gift'** means
  - (i) a gift worth between \$50 and \$300; or
  - (ii) a gift that is one of two or more gifts given to an Elected Member, External Member or Employee by the same person within a period of six months that are in total worth between \$50 and \$300
- (b) **'activity involving a local government discretion'** has the same meaning as referred to in 4.5(2)(b) above.
- (c) a **'gift'** has the meaning set out in section 5.82(4) of the *Local Government Act 1995* but does not include:
  - (i) a gift from a relative as defined in section 5.74(1); or
  - (ii) a gift that must be disclosed under regulation 30B of the *Local Government (Elections) Regulations 1997*; or
  - (iii) a gift from a statutory authority, government instrumentality or non-profit association for professional training; or
  - (iv) a gift from WALGA, the Australian Local Government Association Limited (ABN 31 008 613 876) or the Local Government Managers Australia WA Division Incorporated (ABN 91 208 607 072).

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

- (a) the name of the person who gave the gift;



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- (b) the date on which the gift was accepted;
- (c) a description, and the estimated value, of the gift; and
- (d) the nature of the relationship between the person who is an Elected Member, External Member or Employee and the person who gave the gift.

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

### 4.5.4 Disclosure of Gifts

An Elected Members or Designated Employees must disclose, within 10 days of receipt, gifts valued at over \$200 (either as an individual gift or the total of two or more gifts received within a year period) except where they are exempt by section 5.82(2) of the *Local Government Act 1995*

The disclosure must be made in writing to the CEO and include:

- (a) a description of the gift;
- (b) the name and address of the person who made the gift;
- (c) the date on which the gift was received;
- (d) the estimated value of the gift at the time it was made; and
- (e) the nature of the relationship between the Elected Member or Employee and the person who made the gift.

### 4.5.5 Register of Notifiable gifts and Disclosed Gifts

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

## 4.6 Travel Contribution

### 4.6.1 General

Elected Members and Employees must disclose, within 10 days of receipt, any financial or other contribution made towards any travel undertaken unless that contribution is exempt from disclosure under section 5.83(2) of the *Local Government Act 1995*

'travel' includes 'accommodation incidental to a journey' (as defined in section 5.83(4) of the *Local Government Act 1995*).



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**‘travel contribution’**, in relation to a person, means a financial or other contribution that has been made to any travel undertaken by the person.

A contribution to travel will be something that facilitates such a journey(s) and may include the following:

- Airline ticket price;
- Visa fees;
- Travel insurances;
- Accommodation; and
- Taxi costs.

Travel contribution does not need to be disclosed in the following cases:

- the contribution was made from Commonwealth, State or local government funds;
- the contribution was made by a ‘relative’ of the person (as defined in section 5.74(1) of the *Local Government Act 1995*);
- the contribution was made in the ordinary course of an occupation of the person which is not related to his or her duties as an Elected Member or Employee;
- the contribution was made by a political party of which the person was a member and the travel was undertaken for the purpose of political activity of the party, or to enable the person to represent the party. A political party is defined as a body or organization, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the Parliament of the Commonwealth or of the State of a candidate or candidates endorsed by it or by a body or organisation of which it forms part;
- the value of the contribution does not exceed the prescribed amount (\$200) or where there are multiple contributions from the same donor in a year, the aggregate value does not exceed \$200. The amount of a contribution (other than a financial contribution) is to be treated as being an amount equal to the value of the contribution at the time the contribution was made.

The disclosure must be made in writing to the CEO and include:

- (a) a description of the contribution;



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- (b) the name and address of the person who made the contribution;
- (c) the date on which the contribution was received;
- (d) the estimated value of the contribution at the time it was made;
- (e) the nature of the relationship between the relevant person and the person who made the contribution;
- (f) a description of the travel; and
- (g) the date of travel.

### 4.6.2 Third Party Travel Contributions

Any travel contribution from a third party related to the City of Perth or an individual's role (as an Employee, External Member or Committee Member) must be approved by Council prior to acceptance. The recipient must ensure the online third party travel register is updated with the details of their travel.

### 4.7 Disclosure of Election Campaign Contributions

All electoral candidates must comply with the *Local Government Act 1995* and the *Local Government (Elections) Regulations 1997* in disclosing electoral donations or 'gifts'. A candidate must disclose to the CEO information about any electoral or related gift with a value of \$200 or more that is promised or received within 6 months before the relevant election day.

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

## PART 5 - CONDUCT OF ELECTED MEMBERS, EXTERNAL MEMBERS AND EMPLOYEES

### 5.1 Objectives

High standards of professional conduct are required of Elected Members, External Members and Employees, to ensure that a positive image of the City is conveyed when the City interacts with its stakeholders and the general public. The conduct displayed should encourage fair, equitable and lawful management and operation of the City.



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### 5.2 Personal Behaviour

An Elected Member, External Member or Employee must:

- (a) act, and be seen to act, properly and in accordance with the requirements of the law and City of Perth policies and procedures including the terms of this Code;
- (b) perform their duties impartially and in the best interests of the City uninfluenced by fear or favour;
- (c) act in good faith in the interests of the City and the community;
- (d) make no allegations which are improper or derogatory and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any person unwarranted offence or embarrassment;
- (e) treat others with respects, courtesy, honesty and fairness, having regard for their interests, rights, safety and welfare;
- (f) be open and accountable to the public;
- (g) not harass or intimidate others in the conduct of the City's functions, duties or business;
- (h) make decisions that are based on relevant and factually correct information;
- (i) always act in accordance with their obligation of fidelity to the City and not publicly reflect adversely upon any decision of Council or Employees; and
- (j) be fit for work or any other duties associated with the role of the Elected Member, External Member or Employee.

Regulation 10(3) of the *Local Government (Rules of Conduct) Regulations 2007* prohibit an Elected Member from:

- (a) making a statement that a local government employee is incompetent or dishonest; or
- (b) using offensive or objectionable expressions in reference to a local government employee.

### 5.3 Honesty and Integrity

An Elected Member, External Member or Employee must:

- (a) observe the highest standards of honesty and integrity;
- (b) bring to the notice of the Lord Mayor any dishonesty or possible dishonesty on the part of the CEO;



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## CP 10.1 Code of Conduct

- (c) bring to the notice of the CEO any dishonesty or possible dishonesty on the part of any Elected Member, External Member or Employee (other than the CEO); and
- (d) be frank and honest in their official dealings with each other.

A notice under paragraph 5.3(b) or 5.3(c) must be given strict confidentiality and the City will give appropriate support to all parties during any investigation.

## 5.4 Performance of Duties

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

In addition, an Employee must:

- (a) act within the limits of their delegations; and
- (b) ensure recommendations to Council or Committees of Council are made with due diligence and care taken in the collation and inclusion of relevant information.

An Elected Member or External Member must 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. Elected Members and External Members will be as informed as possible about the functions of the City and will treat all members of the community honestly and fairly. They shall ensure they are well informed on matters before Council by reading all agendas and reports provided.

The *Local Government Act 1995* limits the delegation of certain powers and duties from the local government to the Chief Executive Officer. The limits are detailed in section 5.43 of the Local Government Act.

## 5.5 Quasi-Judicial Role and Principles

### 5.5.1 Role

'Quasi-judicial' functions are those which involve the making of a decision by the Council or an Employee in the exercise of a discretionary power. The City performs quasi-judicial functions when



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deciding to approve or not approve applications for planning approval, and for other approvals, licences, consents and permits.

### 5.5.2 Principles

- (a) The community expects Elected Members, External Members and Employees to act in a quasi-judicial manner when exercising discretionary power. To act in a quasi-judicial manner, an Elected Member, External Member or Employee must apply the principles of natural justice and, without bias or conflict of interest, make decisions in a judicial manner based on:
  - (i) the law and Council policies as they exist; and
  - (ii) the facts and the merits of the case.
- (b) Applicants submitting approval documents may attempt to persuade individual Elected Members or Employees in favour of their proposals. An Elected Member, External Member or Employees must remain objective and deal with applicants or affected persons impartially.
- (c) Decisions must be made on sound legislative rationale and not based on small public interest groups that do not represent the wider community.
- (d) All Elected Members are to have equal access to relevant information and the opportunity to participate effectively throughout the decision making process.

### 5.5.3 Non-compliance

Non-compliance with quasi-judicial principles could result in Council decisions being invalidated. An Elected Member acting when biased and without disclosing an interest affecting impartiality, may breach regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007*.

### 5.5.4 Procedures for Elected Members

- (a) When acting in a quasi-judicial role, an Elected Member must not actively gather information independent of the official process by canvassing, liaising or initiating site visits with an applicant or affected person.
- (b) If contacted by an applicant or an affected person, an Elected Members will:



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- (i) listen and endeavour to understand the reason for the applicant or affected person making contact;
  - (ii) advise the applicant or affected person of the role and principles of an Elected Member in the role of quasi-judicial decision maker [refer to clauses 5.5.1 and 5.5.2 above];
  - (iii) encourage the applicant or affected person to make their views known through the relevant formal City and statutory processes, such as through a Council Meeting Statement, Question Time, Deputations, public submission periods, in writing or direct to the City's administration; and
  - (iv) ensure that they do not commit their vote, or give an impression that they have committed their vote, on the matter. Elected 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 decision.
- (c) An Elected Member will contact the CEO if they believe a site visit would be beneficial or if they have been requested by an applicant or an affected person to visit a site. Where appropriate and if circumstances permit, a site visit shall be arranged to facilitate the opportunity for all Elected Members to attend as well as at least one Employee. Elected Members visiting sites shall ensure they comply with clause 5.5.2.
- (d) Where an applicant or affected person provides information to an Elected Member which is substantive to the decision making process, the Elected Member must communicate that information to all other Elected Members and the CEO prior to the meeting where a decision is proposed on the matter.
- (e) If an Elected Member believes that additional information is required to make an informed decision, such information must be sought in a written request to the CEO or obtained by resolution of Council.

Where requested, the CEO will consider requests for additional information in light of its relevancy to the decision and determine whether or not the information should be provided.

## 5.6 Binding Caucus Votes

Elected Members and External Members must not participate in binding caucus votes in relation to matters to be considered at a Council or Committee meeting.

A binding caucus vote is a process whereby a group of members are compelled by a threat of disciplinary or other adverse action, or by the promise of a reward or benefit, to comply with a predetermined position on a matter before the Council or Committee irrespective of the personal views of individual members of the group on the merits of the matter before the Council or Committee.



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This clause does not prohibit members from discussing a matter before the Council or Committee prior to considering the matter in question at a Council or Committee meeting or from voluntarily holding a shared view with other members on the merits of a matter.

### 5.7 Compliance with local laws and policies

An Elected Member, External Member or Employees must comply with the adopted local laws and policies of the City, whether or not they agree with or approve of them.

### 5.8 Management Practices

An Elected Member, External Member or Employee must comply with the City's management practices and administrative procedures, whether or not they agree with or approve of them.

### 5.9 Communication and Public Relations

All aspects of communication by Employees (including verbal, written, electronic or personal), involving the City's activities must be accurate, polite and professional, and in accordance with the City's policies and procedures.

As a representative of the community, an Elected Member needs to be not only responsive to community views, but to adequately communicate the attitudes and decisions of the Council. In doing so an Elected Member must abide by the Media Policy. An Employee is not permitted to make any comment to the media about any Council or City matter unless prior approval has been granted by the CEO.

### 5.10 Views during Public Consultation Period

An Elected Member, External Member or Employees:

- (a) must refrain from making public comment expressing a personal opinion which is biased, or may be perceived as biased or prejudging a matter whilst the matter is being advertised for public comment and/or is yet to be considered and determined by the Council;
- (b) may encourage members of the public to make a formal submission to the City.

The Lord Mayor and/or the CEO will take appropriate action (including issuing a statement to the media) correcting any misinformation or erroneous information which is in the public arena.



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### 5.11 Relationships between Elected Members and Employees

An effective Elected Member will work as part of the City's team with the CEO and other Elected Members, Members and Employees. That teamwork will occur only if Elected Members, Members and Employees have mutual respect for, and co-operate with, each other to achieve the City's corporate goals and implement the City's strategies. To achieve that position all parties need to understand each other's roles as specified in the Act and any relevant agreements.

To achieve this effectiveness in teamwork, all Elected Members must:

- (a) accept that their role is one of leadership, and not a management or administrative role;
- (b) refrain from criticising an Employee in a way that casts aspersions on their professional competence or credibility, except where that criticism is directed to the CEO in a confidential manner;
- (c) ensure that no restriction or undue influence is placed on the ability of an Employee to give professional advice to the Council;
- (d) undertake their day-to-day communications with the City directly through the CEO or relevant Director, unless the CEO has established a protocol for communications on particular matters to occur directly with specified Employees;
- (e) not direct or instruct an Employee other than that related to the administrative support roles when undertaking duties in support of the role as Elected Member; and
- (f) not undertake a task that contributes to the administration of the local government, unless the task is undertaken in relation to a meeting or the express authority of the Council or the CEO has been obtained prior to undertaking the task.

At the same time, Employees recognise that an Elected Members' views and opinions often reflect valid community viewpoints that should be considered in conjunction with professional opinion. Employees must therefore make every effort to assist Elected Members in the performance of their role, and to achieve the satisfactory resolution of issues that may arise in the performance of their role.

All Elected Members, External Members and Employees must acknowledge that the City of Perth is a safe workplace where everyone has a duty of care to ensure that bullying and other hazards to wellbeing do not occur. This duty of care should inform the behaviour and relations between all Elected Members, Members and Employees.

Regulations 9 and 10 of the *Local Government (Rules of Conduct) Regulations 2007* prohibit an Elected Member from:



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- (a) undertaking a task that contributes to the administration of the local government, unless authorised by the Council or by the CEO to undertake that task;
- (b) directing or attempting to direct a local government employee;
- (c) attempting to influence, by means of a threat or the promise of a reward, the conduct of a local government employee;
- (d) making a statement that a local government employee is incompetent or dishonest; or
- (e) using offensive or objectionable expressions in reference to a local government employee.

### 5.12 Appointments to External Organisations

An Elected Member, External Member or Employee representing the City on an external organisation is to ensure that they:

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

### 5.13 Defamation

Comments by an Elected Members or Employee at a meeting of the Council or Committee may be covered by qualified privilege against defamation. Qualified privilege does not apply where a comment is made maliciously, or without due regard for whether they represent the truth.

An Elected Member or Employee is able to rely on the defence of qualified privilege only while exercising the proper discharge of his or her duties, and doing so in the public interest.

An Elected Member, External Member or Employee may also be protected by the provisions of section 9.56(2) of the *Local Government Act 1995* in relation to all tort actions (including defamation). The provision applies to anything a person has, in good faith, done in the performance or purported performance of a function under the *Local Government Act 1995* or any other written law.

### 5.14 Dress Standards

The appearance and dress of Elected Members, External Members and Employees, whilst conducting City business, should be in accordance with the standards appropriate to their duties and the people with whom they are dealing.



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An Elected Member, External Member, or Employee is required to behave in a way that upholds the good reputation of the City, and as such they are required to dress professionally, reflecting pride in the City and respect for those that they deal with, particularly the public.

In some circumstances, Elected Members, External Members and Employees may be required to adopt a particular dress standard, which may include wearing a uniform, safety clothing or formal attire. Where such standards are required, they must be complied with.

Employees should refer to Organisational Policy OP8

### 5.15 Official Information

An Employee must:

- (a) maintain accurate and trustworthy records; and
- (b) ensure information is recorded accurately and in accordance with the City's recordkeeping policies and legislative requirements.

## PART 6 - Bullying and inappropriate behaviour

### 6.1 Bullying

Bullying is repeated unreasonable, inappropriate or aggressive behaviour that is directed towards an individual or group and creates a risk to health or safety. The City is committed to providing a safe work environment that is free from bullying and encourages the reporting of any evidence of bullying.

Bullying behaviour breaches this Code and is also prohibited by the *Occupational Safety and Health Act 1984* (in relation to conduct within a workplace or during the course of employment) and other legislation. Bullying includes both direct and indirect actions and both are in breach of this Code. An Elected Member, External Member or Employee must not engage in bullying.

It is important to note that bullying does not normally include management of an Employee (such as allocating tasks or providing performance feedback). Exceptions may apply to unreasonable management practices.

**Direct bullying** refers to obvious public acts. Examples include:

- o Physical or sexual assault;
- o Name calling or other abusive, offensive, frightening, or degrading language;
- o Beginning or spreading rumours; and
- o Teasing someone in an offensive manner or subjecting them to regular practical jokes.



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**Indirect bullying** refers to subtle, behaviour that undermines, treats less favourably or disempowers others. Examples include:

- o Ignoring or excluding a person;
- o Denying access to information or resources;
- o Preventing a person from expressing their opinion or ridiculing their contribution;
- o Setting tasks that are beyond or below a person's skill level.

Employees can refer to the following City of Perth procedures for further information and guidance in the resolution of bullying:

**PR0441** – Prevention and Management of Workplace Bullying Administrative Policy;

**PR0442** – Workplace Grievance Management and Resolution Procedure

**PR0020** – Employee Assistance Program (EAP) Procedure

## 6.2 Single Instances

To be considered bullying, repeated behaviour is required. However, while behaviour may not be considered bullying where it violates legislation, City Policies or Procedures, or other provisions in this Code it will still be considered a breach of the Code and will be treated accordingly.

## 6.3 Discrimination

Discrimination is dealt with by the *Equal Opportunity Act 1984* (and other legislation) and means treating someone less favourably than another, in circumstances that are the same (or are not materially different), on the basis of a ground such as race, sex, impairment, age, religious or political conviction, family status, pregnancy or gender history.

An Elected Member, External Member or Employee must not discriminate against or harass any person due to a discriminatory ground.

## PART 7 - DEALING WITH THE CITY'S PROPERTY

### 7.1 Use of Resources

An Elected Member, External Member or Employee must:

- (a) be honest in their use of the City's resources and must not misuse them or permit their misuse by any other person or body;



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- (b) use City's resources entrusted to them effectively and efficiently in the course of their duties;
- (c) ensure the City's resources are to be utilised only for a proper purpose. The City's resources must not be used in a manner that improperly causes direct or indirect personal gain or detriment to another;
- (d) not make unauthorised use of information and other intellectual property, produced or registered by Employees or external contractors for the City. The title to intellectual property in all official duties must be assigned to the City on its creation;
- (e) take due care when using resources to avoid any potential damage;
- (f) report immediately to management any damage to, or loss of, City property or equipment; and
- (g) ensure that the use and commitment of City resources and expenditure is in accordance with the City's policies and complies with applicable legislation.

Regulation 8 of the *Local Government (Rules of Conduct) Regulations 2007* prohibits an Elected Member from using the resources of a local government for electoral purposes, or for any other purpose, unless authorised under the *Local Government Act 1995* or by the Council or the CEO.

## 7.2 Reimbursement of Expenses

An Elected Member, External Member or Employee may claim for reimbursement of expenses only in accordance with the relevant policy.

## PART 8 - BREACHES AND MISCONDUCT

### 8.1 Reporting Breaches

A person may internally report a breach, or suspected breach, of this Code:

- (a) by an Elected Member, External Member or an Employee (other than the CEO) – to the CEO; or
- (b) by the CEO – to the Lord Mayor.

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



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As indicated earlier (at clause 1.3), the Rules of Conduct have their own enforcement regime. A breach by an Elected Member of a Rule of Conduct may be reported to the CEO. If so, it will be dealt with under Part 5, Division 9 of the *Local Government Act 1995*.

It is important to note that an alleged breach, or suspected breach, of this Code of Conduct by an Elected Member can be the subject of a complaint to the Standards Panel.

### 8.2 Internal Referral to Mediation

The CEO, may, in appropriate cases, refer an alleged breach of this Code relating to values or conduct (other than an alleged breach of any law) by an Elected Member to an independent mediator who will attempt to resolve the matter via a mediation process. For example, this may occur where mediation may assist in resolving an alleged case of rudeness.

If a matter is referred for mediation each party is to engage in the process in good faith.

### 8.3 Internally Reporting Misconduct

When an Elected Member, External Member or Employee believes or suspects that misconduct may occur, is occurring, or has occurred, he or she should report the matter to the CEO.

Alternatively, if the matter falls within the ambit of the *Public Interest Disclosure Act 2003*, the internal or external process for making a public interest disclosure may be followed.

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

The City:

- (a) does not tolerate corrupt or other improper conduct, including mismanagement of public resources, in the exercise of the public functions of the City, by its Elected Members, External Members, or Employees;
- (b) is committed to the aims and objectives of the *Public Interest Disclosure Act 2003*;
- (c) strongly supports disclosures being made by an Elected Member, External Member or Employee as to corrupt or other improper conduct;
- (d) will take all reasonable steps to provide protection for an Elected Member, External Member or Employee who makes a public interest disclosure from any detrimental action in reprisal for the making of a the disclosure; and



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- (e) does not tolerate any of its Elected Members, External Members, Employees or contractors engaging in acts of victimisation or reprisal against a person who makes a public interest disclosures.

Elected Members, External Members and Employees are encouraged to contact one of the City's nominated Public Interest Disclosure Officers to seek guidance on reporting misconduct, their disclosure, and to lodge completed Public Interest Disclosure forms.

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

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

## 8.4 Externally Reporting Misconduct

All persons have the option to report a matter of misconduct directly to the Corruption and Crime Commission (CCC) or the Public Sector Commissioner (PSC) under the *Corruption and Crime, and Misconduct Act 2003*.

- (a) Any person may report to the CCC any matter which that person suspects, on reasonable grounds, concerns or may concern serious misconduct that:
  - (i) has or may have occurred; or
  - (ii) is or may be occurring; or
  - (iii) is or may be about to occur; or
  - (iv) is likely to occur.
- (b) Any person may report to the PSC any matter which that person suspects, on reasonable grounds, concerns or may concern minor misconduct that:
  - (i) has or may have occurred; or
  - (ii) is or may be occurring; or
  - (iii) is or may be about to occur; or



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- (iv) is likely to occur

A report directly to the CCC or the PSC may be made in several ways.

- (a) If you wish to personally report serious misconduct direct to the Corruption and Crime Commission, you can:
  - (i) submit an online report on the CCC website ([www.ccc.wa.gov.au](http://www.ccc.wa.gov.au)); or
  - (ii) email [info@ccc.wa.gov.au](mailto:info@ccc.wa.gov.au); or
  - (iii) call 1800 803 186.
- (b) If you wish to personally report minor misconduct direct to the PSC, you can:
  - (i) submit an online report on the PSC website ([publicsector.wa.gov.au](http://publicsector.wa.gov.au)); or
  - (ii) email [minormisconduct@psc.wa.gov.au](mailto:minormisconduct@psc.wa.gov.au); or
  - (iii) send a letter to Locked Bag 3002, WEST PERTH WA 6872; or
  - (iv) refer to the PSC website ([publicsector.wa.gov.au/conduct-integrity/minor-misconduct/reporting-minor-misconduct-psc](http://publicsector.wa.gov.au/conduct-integrity/minor-misconduct/reporting-minor-misconduct-psc)) for more options.

To get more information on serious misconduct reporting and processes, please refer to the CCC website ([www.ccc.wa.gov.au](http://www.ccc.wa.gov.au)) or call the CCC on: **(08) 9215 4888 or 1800 803 186**.

To get more information on minor misconduct reporting and processes, please refer to the PSC website ([publicsector.wa.gov.au/conduct-integrity/minor-misconduct](http://publicsector.wa.gov.au/conduct-integrity/minor-misconduct)) or call the PSC on: **(08) 6552 8888**.

## 8.5 CEO Obligation to Report Misconduct

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

- (a) any allegation of serious misconduct; or
- (b) any situation that otherwise comes to his or her attention involving serious misconduct,

where the CEO considers on reasonable grounds that serious misconduct may have occurred.

The CEO has a statutory obligation to report to the Public Sector Commissioner:

- (c) any allegation of minor misconduct; or
- (d) any situation that otherwise comes to his or her attention involving minor misconduct,



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but not minor misconduct by an Elected Member.

*Note: For these purposes, 'misconduct,' 'minor misconduct', and 'serious misconduct' are defined in section 4, and the definitions section, of the Corruption, Crime and Misconduct Act 2003.*

### *Corruption, Crime and Misconduct Act 2003 – section 4*

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 —
- (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).



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**minor misconduct means:** misconduct of a kind described in section 4(d) that is not any of the following —

- (a) police misconduct;
- (b) conduct engaged in by a member of a House of Parliament or the Clerk of a House of Parliament;
- (c) conduct engaged in by —
  - (i) a member of a local government or council of a local government; or
  - (ii) a member of a council of a regional local government;

**serious misconduct means:**

- (a) misconduct of a kind described in section 4(a), (b) or (c) by a public officer; or
- (b) police misconduct;

### Document Control Box

#### Document Responsibilities:

<b>Custodian:</b>	Manager Governance	<b>Custodian Unit:</b>	Governance
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<b>Decision Maker:</b>	Council
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#### Compliance Requirements:

<b>Legislation:</b>	<i>Local Government Act 1995</i> Part 5, Division 6, Division 7 and Division 9 <i>Local Government (Administration) Regulations 1996</i> <i>Local Government (Rules of Conduct) Regulations 2007</i> <i>Corruption, Crime, and Misconduct Act 2003</i> <i>Public Interest Disclosure Act 2003</i>
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<b>Industry:</b>	Department of Local Government & Regional Development Guideline No. 12 Elected Member Relationship with Developers WA Local Government Association – Model Code of Conduct Public Sector Commission – Developing a Code of Conduct
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<b>Organisational:</b>	Gift Declaration Process and Forms Disclosure of Interest Forms
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#### Document Management:

<b>Risk Rating:</b>	Medium	<b>Review Frequency:</b>	Two years	<b>Next Due:</b>	2019	<b>TRIM Ref:</b>	75522/04
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Version #	Decision Reference:	Synopsis:
1.	Council 15/10/90	Previous Policy No. CS29
2.	Council 10/06/97	
3.	Council 23/10/01	
4.	Council 11/02/03	
5.	Council 11/05/04	
6.	Council 19/02/08	
7.	Council 27/01/10	
8.	Council 06/06/17	
9.	Administrative Amendment 03/09/18	Reference to Procedure PR0934 Financial Interests in Returns – Primary and Annual Return included in 3.5