

Western Australia

Local Government (Official Conduct) Amendment Bill 2005

CONTENTS

1.	Short title	2
2.	Commencement	2
3.	The Act amended	2
4.	Section 2.19 amended	2
5.	Section 2.32 amended	2
6.	Section 5.53 amended	3
7.	Section 5.94 amended	3
8.	Heading to Part 5 Division 9 replaced	4
	Division 9 — Conduct of certain officials	
9.	Section 5.102A inserted	4
	5.102A. Terms used in this Division	4
10.	Section 5.103 amended	5
11.	Sections 5.104 to 5.126 inserted	5
	5.104. Other regulations about conduct of council members	5
	5.105. Breaches by council members	6
	5.106. Deciding whether breach occurred	7
	5.107. Complaining to complaints officer of minor breach	7
	5.108. Executive Director may send complaint of minor breach to complaints officer	8
	5.109. Complaint initiated by complaints officer	9
	5.110. Dealing with complaint of minor breach	10
	5.111. Dealing with a recurrent breach	11
	5.112. Allegation of recurrent breach	12
	5.113. Punishment for recurrent breach	12
	5.114. Making complaint of serious breach	13
	5.115. Complaints officer to send complaint of serious breach to Executive Director	13
	5.116. Allegation by Executive Director of serious breach	14
	5.117. Punishment for serious breach	15
	5.118. Carrying out orders	17

 Contents

	5.119.	State Administrative Tribunal's enforcement powers	17	
	5.120.	Complaints officer	17	
	5.121.	Register of certain complaints of minor breaches	18	
	5.122.	Standards panels	18	
	5.123.	Confidentiality	18	
	5.124.	Giving false or misleading information	19	
	5.125.	Review of certain decisions	20	
12.		Section 9.69A inserted		20
	9.69A.	Notification under <i>Corruption and Crime Commission Act 2003</i>	20	
13.		Schedule 5.1 inserted		20
		Schedule 5.1 — Provisions about standards panels		
	1.	Terms used in this Schedule	20	
	2.	Membership of standards panel	21	
	3.	Deputies	21	
	4.	Submission of lists	21	
	5.	Term of office	22	
	6.	Vacation of office	22	
	7.	Dissolution of standards panel	22	
	8.	Meetings	23	
	9.	Remuneration and allowances	23	
	10.	Protection	24	
	11.	Annual report	24	

Western Australia

LEGISLATIVE ASSEMBLY

(As amended in consideration in detail)

**Local Government (Official Conduct)
Amendment Bill 2005**

A Bill for

An Act to amend the *Local Government Act 1995*.

The Parliament of Western Australia enacts as follows:

s. 1

1. **Short title**

This is the *Local Government (Official Conduct) Amendment Act 2005*.

2. **Commencement**

5 This Act comes into operation on a day fixed by proclamation.

3. **The Act amended**

The amendments in this Act are to the *Local Government Act 1995**.

[* Reprint 3 as at 5 August 2005.]

10 4. **Section 2.19 amended**

Section 2.19(1) is amended as follows:

- (a) by deleting “and” after paragraph (c);
- (b) by deleting the full stop at the end of paragraph (d) and inserting instead —

15

“

; and

- (e) is not disqualified by an order under section 5.113, 5.117 or 5.119 from holding office as a member of a council.

20

”

5. **Section 2.32 amended**

Section 2.32 is amended by inserting after paragraph (d) the following paragraph —

“

25

- (da) is disqualified by an order under section 5.113, 5.117 or 5.119 from holding office as a member of a council;

”

6. **Section 5.53 amended**

Section 5.53(2) is amended by deleting “and” after paragraph (ha) and inserting instead —

“

- 5 (hb) details of entries made under section 5.121 during the financial year in the register of complaints, including —
- (i) the number of complaints recorded in the register of complaints;
- 10 (ii) how the recorded complaints were dealt with; and
- (iii) any other details that the regulations may require;
- and

15

”

7. **Section 5.94 amended**

Section 5.94 is amended as follows:

- (a) by deleting all of the section before paragraph (a) and inserting instead —

20

“

25

A person can attend the office of a local government during office hours and, unless it would be contrary to section 5.95, inspect, free of charge, in the form or medium in which it is held by the local government and whether or not it is current at the time of inspection —

”

30

- (b) in each of paragraphs (a) to (k) and (m) to (t), by inserting at the beginning of the paragraph —
- “ any ”;
- (c) by deleting all of the section after “prescribed” in paragraph (u)(ii) and inserting instead a full stop;

s. 8

(d) by inserting after paragraph (a) the following paragraphs —

“

(aa) any regulations prescribing rules of conduct of council members referred to in section 5.104;

(ab) any register of complaints referred to in section 5.121;

”

8. **Heading to Part 5 Division 9 replaced**

The heading to Part 5 Division 9 is deleted and the following heading is inserted instead —

“

Division 9 — Conduct of certain officials

”

9. **Section 5.102A inserted**

Before section 5.103 the following section is inserted in Part 5 Division 9 —

“

5.102A. Terms used in this Division

In this Division —

“**breach**” means a minor breach or a serious breach;

“**complaints officer**” means the person who is the complaints officer under section 5.120 for the local government concerned;

“**minor breach**” has the meaning given in section 5.105(1), and it includes a recurrent breach;

“**party**”, when used in connection with a complaint, means —

(a) the person who made the complaint; or

(b) the person against whom the complaint was made;

“**recurrent breach**” has the meaning given in section 5.105(2);

“**rules of conduct**” means rules of conduct for council members referred to in section 5.104(1);

5 “**serious breach**” has the meaning given in section 5.105(3);

“**standards panel**” means a standards panel established under section 5.122(1) or (2);

10 “**primary standards panel**” means the standards panel established under section 5.122(1).

”

10. **Section 5.103 amended**

Section 5.103(2) is repealed.

11. **Sections 5.104 to 5.126 inserted**

15 At the end of Part 5 Division 9 the following sections are inserted —

“

20 **5.104. Other regulations about conduct of council members**

- 20 (1) Regulations may prescribe rules, to be known as the rules of conduct for council members, that council members are required to observe.
- 25 (2) The rules of conduct for council members apply, to the extent stated in the regulations, to a council member when acting as a committee member.
- (3) The rules of conduct may contain provisions dealing with any aspect of the conduct of council members whether or not it is otherwise dealt with in this Act.

- 5
- (4) Regulations cannot prescribe a rule of conduct if contravention of the rule would, in addition to being a minor breach under section 5.105(1)(a), also be a serious breach under section 5.105(3).
- (5) Regulations cannot specify that contravention of a local law under this Act is a minor breach if contravention of the local law would, in addition to being a minor breach under section 5.105(1)(b), also be a serious breach under section 5.105(3).
- 10
- (6) The rules of conduct do not limit what a code of conduct under section 5.103 may contain.
- (7) The regulations may, in addition to rules of conduct, prescribe general principles to guide the behaviour of council members.
- 15
- 5.105. Breaches by council members**
- (1) A council member commits a minor breach if he or she contravenes —
- 20
- (a) a rule of conduct under section 5.104(1); or
- (b) a local law under this Act, contravention of which the regulations specify to be a minor breach.
- (2) A minor breach is a recurrent breach if it occurs after the council member has been found under this Division to have committed 2 or more other minor breaches.
- 25
- (3) A council member who commits any offence under a written law, other than a local law made under this Act, of which it is an element that the offender is a council member or is a person of a description that specifically includes a council member commits a serious breach.

5.106. Deciding whether breach occurred

A finding that a breach has occurred is to be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.

5

5.107. Complaining to complaints officer of minor breach

(1) A person who has reason to believe that a council member has committed a minor breach may complain of the breach by sending to the complaints officer a complaint in accordance with subsection (2).

10

(2) The complaint has to be made in writing, in a form approved by the Minister, giving details of —

- (a) who is making the complaint;
- (b) who is alleged to have committed the breach;
- (c) the contravention that is alleged to have resulted in the breach; and
- (d) any other information that the regulations may require.

15

(3) Within 14 days after the day on which the complaints officer receives the complaint, the complaints officer is required to —

20

- (a) give to the person making the complaint an acknowledgment in writing that the complaint has been received;
- (b) give to the council member about whom the complaint is made a copy of the complaint; and
- (c) send —
 - (i) the complaint; and

25

- 5
- (ii) anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more minor breaches that the council member has previously been found to have committed,
- to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).
- 10 (4) A person can make a complaint under this section within 2 years after the breach alleged in the complaint occurred, but not later.

5.108. Executive Director may send complaint of minor breach to complaints officer

- 15 (1) If it appears to the Executive Director that a complaint a person seeks to make under section 5.114 discloses a minor breach, the Executive Director may send the complaint to the complaints officer of the local government concerned.
- 20 (2) Within 14 days after the day on which the complaints officer receives the complaint, the complaints officer is required to —
- (a) give to the person who sent the complaint to the Executive Director written notice that the
- 25 complaint is to be dealt with as a complaint of a minor breach;
- (b) give to the council member about whom the complaint is made a copy of the complaint; and
- (c) send —
- 30 (i) the complaint; and
- (ii) anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more

minor breaches that the council member
has previously been found to have
committed,

to the member of the primary standards panel
who is appointed under Schedule 5.1
clause 2(a).

- (3) The Executive Director can send a complaint to a
complaints officer under this section within 2 years
after the breach alleged in the complaint occurred, but
not later.

5.109. Complaint initiated by complaints officer

- (1) A person who is a complaints officer may make a
complaint of a minor breach by —
- (a) preparing the complaint in the form required
under section 5.107(2);
 - (b) giving the council member about whom the
complaint is made a copy of the complaint; and
 - (c) sending —
 - (i) the complaint; and
 - (ii) anything the complaints officer has that
is relevant to the complaint including,
where relevant, details of any 2 or more
minor breaches that the council member
has previously been found to have
committed,

to the member of the primary standards panel
who is appointed under Schedule 5.1
clause 2(a).

- (2) A complaints officer can make a complaint under this
section within 2 years after the breach alleged in the
complaint occurred, but not later.

5.110. Dealing with complaint of minor breach

- 5 (1) The member of the primary standards panel who receives a complaint from a complaints officer under section 5.107(3)(c), 5.108(2)(c) or 5.109(1)(c) is to —
- (a) allocate that complaint to a standards panel; and
- (b) send the complaint and anything received from the complaints officer to the member of that standards panel who is appointed under Schedule 5.1 clause 2(a).
- 10 (2) After receiving a complaint allocated to it under subsection (1), a standards panel is required to —
- (a) make a finding as to whether the breach alleged in the complaint occurred; or
- 15 (b) send the complaint to the Executive Director under section 5.111.
- (3) For the purpose of helping it to deal with a complaint, a standards panel may request the complaints officer to provide anything further that the standards panel requires, and the complaints officer is required to
- 20 comply with the request so far as it is practicable to do so.
- (4) A standards panel is required to give each party written notice of the reasons for any finding it makes under subsection (2).
- 25 (5) If a standards panel finds that a council member has committed a minor breach, the standards panel is required to give the council member an opportunity to make submissions about how the breach should be dealt with under subsection (6).
- 30 (6) The breach is to be dealt with by —
- (a) dismissing the complaint;

- 5
- 10
- 15
- (b) ordering that —
 - (i) the person against whom the complaint was made be publicly censured as specified in the order;
 - (ii) the person against whom the complaint was made apologise publicly as specified in the order; or
 - (iii) the person against whom the complaint was made undertake training as specified in the order;
 - or
 - (c) ordering 2 or more of the sanctions described in paragraph (b).
- (7) A standards panel is required to give to each party and the complaints officer notice of how it deals with the matter under subsection (6).

5.111. Dealing with a recurrent breach

- 20
- 25
- (1) If a standards panel is allocated a complaint as described in section 5.110(1) and the breach alleged, if it were found to have been committed, would be a recurrent breach, the standards panel may send the complaint to the Executive Director or proceed under section 5.110 to make a finding and deal with the complaint.
 - (2) If a standards panel sends the complaint to the Executive Director under subsection (1), the standards panel is required to notify —
 - (a) each of the parties; and
 - (b) the complaints officer.

5.112. Allegation of recurrent breach

- 5 (1) If a standards panel sends to the Executive Director, under section 5.111, a complaint of a minor breach that, if it were found to have been committed, would be a recurrent breach, the Executive Director has to decide whether to make an allegation under subsection (2).
- 10 (2) If the Executive Director considers it appropriate to do so, the Executive Director may make an allegation to the State Administrative Tribunal that the council member committed the breach.
- (3) The Executive Director is required to give the complaints officer and each of the parties notice in writing of the decision.
- 15 (4) If the Executive Director decides not to make an allegation to the State Administrative Tribunal —
- (a) the Executive Director is required to send the complaint to the standards panel that sent the complaint to the Executive Director;
- 20 (b) the standards panel is required to notify each of the parties and the complaints officer that the complaint will be dealt with by the standards panel; and
- (c) the standards panel is required to deal with the complaint under section 5.110.
- 25 (5) The fact that the person who made the complaint does not want an allegation to be made to the State Administrative Tribunal does not prevent the Executive Director from making the allegation.

5.113. Punishment for recurrent breach

30 If, on an allegation under section 5.112, the State Administrative Tribunal finds that a person committed

a recurrent breach, it may make any of the orders described in section 5.117.

5.114. Making complaint of serious breach

- 5 (1) A person who has reason to believe that a council member has committed a serious breach may complain to the Executive Director as described in subsection (2).
- 10 (2) The complaint has to be made in writing in a form approved by the Minister, giving details of —
- (a) who is making the complaint;
 - (b) who is alleged to have committed the breach;
 - (c) the offence that is alleged to have resulted in the breach; and
 - 15 (d) any other information that the regulations may require,

and sent to the Executive Director.

- 20 (3) If there is a limit on the time within which proceedings may be commenced for the offence to which a complaint of a serious breach relates, the complaint cannot be made after that time has elapsed.

5.115. Complaints officer to send complaint of serious breach to Executive Director

- 25 (1) If it appears to a complaints officer that a complaint a person seeks to make under section 5.107 discloses a serious breach, the complaints officer is required to send the complaint to the Executive Director.
- (2) If the complaints officer sends the complaint to the Executive Director, the complaints officer is required to notify each of the parties.

5.116. Allegation by Executive Director of serious breach

(1) If—

- (a) a person sends to the Executive Director a complaint under section 5.114(1) that a council member has committed a serious breach; or
- (b) a complaints officer sends to the Executive Director, under section 5.115(1), a complaint that appears to disclose a serious breach,

the Executive Director has to decide whether to make an allegation under subsection (2).

(2) If the Executive Director considers it appropriate to do so, the Executive Director may, whether or not a complaint has been sent to the Executive Director, make an allegation to the State Administrative Tribunal that the council member committed a serious breach.

(3) In deciding whether it would be appropriate to make an allegation to the State Administrative Tribunal, the Executive Director has to consider whether it would be more appropriate for the matter to be dealt with in another way.

(4) The Executive Director cannot make an allegation under subsection (2) if the council member has already been tried by a court for the offence the commission of which is the serious breach.

(5) Within 14 days after the day on which the Executive Director receives a complaint that is sent to the Executive Director under section 5.114 or 5.115, the Executive Director is required to give each party notice in writing —

- (a) acknowledging that the complaint is in accordance with the Act; and

(b) stating that the Executive Director will decide whether to make an allegation under subsection (2).

5 (6) The fact that a person who made a complaint does not want an allegation arising from the complaint to be made to the State Administrative Tribunal does not prevent the Executive Director from making the allegation.

10 **5.117. Punishment for serious breach**

(1) If, on an allegation under section 5.116(2), the State Administrative Tribunal finds that a person committed a serious breach, it may —

(a) order that —

- 15 (i) the person against whom the allegation was made be publicly censured as specified in the order;
- (ii) the person against whom the allegation was made apologise publicly as specified in the order;
- 20 (iii) the person against whom the allegation was made undertake training as specified in the order;
- (iv) the person against whom the allegation was made is suspended for a period of not more than 6 months specified in the order; or
- 25 (v) the person against whom the allegation was made is, for a period of not more than 5 years specified in the order, disqualified from holding office as a member of a council;
- 30

or

s. 11

- (b) order 2 or more of the sanctions described in paragraph (a).
- (2) An order described in subsection (1)(a)(iv) or (v) may be expressed in such a way that the order —
- 5 (a) only takes effect if, on finding that the person subject to the order has not complied with a condition specified in the order, the State Administrative Tribunal directs under subsection (7) that the order take effect; and
- 10 (b) lapses if it has not taken effect within a period specified in the order,
- and an order so expressed is called a **“suspended order”**.
- (3) The period referred to in subsection (2)(b) cannot exceed 2 years.
- (4) The Executive Director may make an allegation to the State Administrative Tribunal that a person subject to a suspended order has failed to comply with a condition specified in the order.
- 20 (5) The Executive Director must give a person notice in writing of a decision to make an allegation about the person under subsection (4).
- (6) If the State Administrative Tribunal receives an allegation under subsection (4), it must make a finding as to whether the alleged failure occurred.
- 25 (7) If the State Administrative Tribunal finds that a person failed to comply with a condition of a suspended order, it may if it considers it appropriate to do so direct that the suspended order take effect.
- 30 (8) When a council member is suspended under subsection (1)(a)(iv), section 8.29 applies to the member as if the council had been suspended.

5.118. Carrying out orders

- 5
- (1) The CEO of the local government concerned is required to arrange the publication of any censure ordered under section 5.110(6) by a standards panel and is to refer to the State Administrative Tribunal any failure to comply with any other order made under that subsection.
- 10
- (2) The Executive Director is required to arrange the publication of any censure ordered under section 5.113 or 5.117 by the State Administrative Tribunal and is to refer to the State Administrative Tribunal any failure to comply with any other order made under either of those sections.

15

5.119. State Administrative Tribunal's enforcement powers

- 20
- (1) If, under section 5.118, the CEO of a local government or the Executive Director refers to the State Administrative Tribunal a failure of a person to comply with an order of a standards panel or the State Administrative Tribunal, the State Administrative Tribunal may, if satisfied that the person failed to comply with the order, make an order described in section 5.117(1)(a)(iv) or (v).
- 25
- (2) Section 5.117(2) extends to an order made under subsection (1).

5.120. Complaints officer

- 30
- (1) Each local government is to designate a senior employee, as defined under section 5.37, to be its complaints officer.
- (2) If a local government does not have any other person as its complaints officer, the person holding office as, or acting as, its CEO is its complaints officer.

s. 11

5.121. Register of certain complaints of minor breaches

- 5 (1) The complaints officer for each local government is required to maintain a register of complaints which records all complaints that result in action under section 5.110(6)(b) or (c).
- (2) The register of complaints is to include, for each recorded complaint —
- 10 (a) the name of the council member about whom the complaint is made;
- (b) the name of the person who makes the complaint;
- (c) a description of the minor breach that the standards panel finds has occurred; and
- 15 (d) details of the action taken under section 5.110(6)(b) or (c).

5.122. Standards panels

- (1) The Minister is to establish a standards panel (the “primary standards panel”).
- (2) The Minister may establish other standards panels.
- 20 (3) Schedule 5.1 applies to a standards panel.

5.123. Confidentiality

- (1) A person who —
- 25 (a) makes a complaint during a campaign period;
- (b) performs a function under this Act in respect of a complaint made during a campaign period; or
- (c) as a result of anything done under this Division, becomes aware of any detail of a complaint made during a campaign period knowing it to be relevant to the complaint,
- 30 and during the campaign period discloses information that the complaint has been made, or discloses

information of any detail of the complaint, commits an offence.

(2) It is not an offence against subsection (1) to disclose information if —

- 5 (a) the disclosure is made for the purposes of investigating or dealing with the complaint;
- (b) the disclosure is required under a written law;
- 10 (c) the complaint to which the information relates is a complaint of a minor breach and a standards panel has dealt with the breach under section 5.110(6)(b) or (c); or
- 15 (d) the complaint to which the information relates is a complaint of a serious breach and the State Administrative Tribunal has made an order under section 5.117(1).

(3) In this section —

20 **“campaign period”** means the period beginning on the first day of the period referred to in section 4.49(a) and ending on election day as that term is defined in section 4.1.

5.124. Giving false or misleading information

- 25 (1) A person commits an offence if the person gives information, in any of the circumstances described in subsection (2), knowing the information to be false or misleading in a material particular.
- (2) The circumstances in which subsection (1) applies are —
 - 30 (a) when the information is given in a complaint under section 5.107 or 5.114;
 - (b) when the information is given to a person for the purposes of an investigation of whether or not a breach has been committed; or

s. 12

- (c) when the information is given to a standards panel.

5.125 Review of certain decisions

- 5 (1) A party may apply to the State Administrative Tribunal for a review of a decision of a standards panel.
- (2) In subsection (1) —
“**decision**” means a decision to dismiss a complaint or to make an order.

10 **12. Section 9.69A inserted**

After section 9.69 the following section is inserted —

“
9.69A. Notification under *Corruption and Crime Commission Act 2003*

15 Nothing in Part 5 or Part 8 affects the duty of the Executive Director to notify as required by section 28 of the *Corruption and Crime Commission Act 2003*.

13. Schedule 5.1 inserted

20 After Schedule 4.2 the following Schedule is inserted —

“
Schedule 5.1 — Provisions about standards panels

[Section 5.122]

1. Terms used in this Schedule

25 In this Schedule, unless the contrary intention appears —
“**member**” means a member of a standards panel.

2. **Membership of standards panel**

A standards panel consists of 3 members appointed by the Minister of whom —

- 5 (a) one person is to be an officer of the Department;
- (b) one person is to be a person who has experience as a member of a council; and
- (c) one person is to be a person having relevant legal knowledge.

3. **Deputies**

- 10 (1) The Minister may appoint a deputy for any member.
 - (2) A person is not eligible to be appointed as the deputy for a member unless that person is eligible to be appointed to the office of that member.
 - 15 (3) The deputy for a member is —
 - (a) in the absence of the member from a meeting of the standards panel, entitled to attend the meeting in place of the member;
 - 20 (b) where the member is disqualified from acting as a member on a matter arising at a meeting of a standards panel, entitled to act in the place of the member; and
 - (c) if the member vacates office before the term of office expires, entitled to attend meetings and otherwise act in place of the member,
- 25 and a deputy attending a meeting or acting in place of a member under this subclause has all the functions and protection of a member.

4. **Submission of lists**

- 30 (1) Before a person is appointed as, or as the deputy for, a member under clause 2(b) the Minister is to invite WALGA to submit, within 28 days of the invitation, a list of 9 persons eligible for appointment.

s. 13.

- 5 (2) The person appointed is to be one of the persons named on the list submitted under subclause (1) but if a list is not submitted in writing in accordance with the invitation of the Minister, the Minister may appoint any person who would have been eligible for inclusion on the list.

5. **Term of office**

- (1) The term of office of a member is the period specified in the instrument of appointment and is not to exceed 4 years.
- 10 (2) Subclause (1) does not prevent a person who has held office as a member of a standards panel from being appointed for a subsequent term to the same or a different standards panel.

6. **Vacation of office**

- (1) The office of a member becomes vacant if the term for which the member is appointed expires or the member —
- 15 (a) dies;
- (b) by notice in writing to the Minister, resigns; or
- (c) is removed from office under subclause (2).
- (2) The Minister may remove a person from office as a member on the grounds of —
- 20 (a) incapacity to carry out satisfactorily the duties of the office;
- (b) neglect of duty;
- (c) misconduct;
- 25 (d) in the case of a person appointed under clause 2(a), the person ceasing to be an officer of the Department; or
- (e) any other cause for which it appears to the Minister that the person should be removed from office.

7. **Dissolution of standards panel**

- 30 The Minister may dissolve a standards panel established under section 5.122(2) if that standards panel has finally dealt with all complaints allocated to it.

8. Meetings

- 5 (1) The member appointed under clause 2(a) is to preside at all meetings of the standards panel at which the member is present.
- (2) If the member appointed under clause 2(a) is not present at a meeting the member appointed under clause 2(c) is to preside at the meeting.
- (3) The quorum at a meeting is 3.
- 10 (4) Subject to subclause (7), each member present at a meeting of a standards panel is entitled to one vote.
- (5) A question arising at a meeting is to be decided by a majority of the votes.
- (6) Each member is to have regard to the general interests of local government in the State.
- 15 (7) Subject to any order under subclause (8), a member is disqualified from acting where the matter being considered or inquired into by a standards panel is a matter relating to a local government of which the member was or is a council member, a committee member or an employee.
- 20 (8) The Minister may, by order, declare that subclause (7) does not apply in relation to a matter or class of matters specified in the order, and that order has effect according to its terms.
- (9) An order is not to be made under subclause (8) unless the Minister considers the order to be necessary to enable a standards panel to properly function.
- 25 (10) To the extent that it is not prescribed by regulations a standards panel may determine its own meeting procedure, and other procedure and practice.

9. Remuneration and allowances

- 30 (1) Members are entitled to any remuneration and allowances that the Minister from time to time determines on the recommendation of the Minister for Public Sector Management.

s. 13.

- 5
- (2) Subclause (1) does not apply to a member who is an officer of the Public Service.
- (3) To the extent that a member's remuneration and allowances relate to a particular complaint, they are to be paid by the local government of the council member who is the subject of that complaint.
- 10
- (4) If the remuneration and allowances for members of a standards panel relate to 2 or more complaints dealt with by that standards panel on the same occasion, liability for payment is to be apportioned between the relevant local governments as the standards panel determines.

10. **Protection**

15

No liability attaches to a member for any act or omission by the member or on the member's part by a standards panel that occurred in good faith and in the performance of the member's or the panel's functions under this Act.

11. **Annual report**

- 20
- (1) By 31 August in each year, the primary standards panel is to prepare and provide to the Minister a report on the complaints dealt with by all standards panels during the previous financial year.
- 25
- (2) The annual report must not include information that identifies or enables the identification of a council member against whom a complaint was made if the complaint was not dealt with under section 5.110(6)(b) or (c).
- (3) The primary standards panel may apply to the Minister before 31 August for an extension of time in which to lodge the annual report and the Minister may grant an extension on such terms as the Minister thinks fit.
- 30
- (4) As soon as practicable after receiving the annual report, the Minister is to cause a copy of it to be laid before each House of Parliament.

Second Reading

MR J.J.M. BOWLER (Murchison-Eyre - Minister for Local Government and Regional Development)
[12.31 pm]: I move -

That the bill be now read a second time.

The bill represents a new and welcome initiative for the local government sector. To date, when a local government has encountered operational problems that have been caused by an individual elected member or a small group of elected members, the state government's only recourse has been to use provisions in the Local Government Act 1995 that affect all council members. This bill provides for a new complaints system whereby the conduct of individual council members can be reviewed specifically. It means that if an individual elected member or a small group of elected members act inappropriately, their behaviour can be addressed specifically. Further, any punishment deemed necessary will impinge only on the member or members identified as causing the problem.

The bill establishes a statewide standards panel to deal with complaints about minor breaches. These are to be contraventions of a new code, or rules, of conduct. If the standards panel determines that there has been a contravention of the new code, it can impose penalties, including public censure, public apology or an order to undertake training. The bill also enables allegations of serious breaches - that is, a contravention of an act or regulations - to be referred to the Director General of the Department of Local Government and Regional Development. The director general will then determine whether to refer the matter to the State Administrative Tribunal, refer the matter to another enforcement agency or take direct prosecution action. SAT will be able to impose the same penalties as a standards panel on individual elected members. However, in addition, it will be able to suspend a council member for a period of not more than six months or disqualify a council member for a period of not more than five years. The bill also enables SAT to deal with elected members who repeatedly breach the rules of conduct.

The original principles for the draft legislation were developed through a reference group chaired by the Department of Local Government and Regional Development, with representatives from the Western Australian Local Government Association, Local Government Managers Australia, the state Ombudsman's office, the then Anti-Corruption Commission and the Law Society of WA.

There has been close consultation with local government through the development of this legislation and, in particular, with the Western Australian Local Government Association. Consequently, the key principles in this bill have the general support of the local government sector. I commend the bill to the house.

Debate adjourned, on motion by **Dr G.G. Jacobs**.

CLOSING DAYS OF SESSION

Standing Orders Suspension - Motion

MR J.C. KOBELKE (Balcatta - Leader of the House) [12.34 pm]: I move -

That for the remainder of 2005, standing order 146 in relation to grievances be suspended and so much of standing orders be suspended as is necessary to -

- (a) enable private members' business to have priority on Wednesdays from 4.00 pm to 6.00 pm; and
- (b) enable bills to be introduced without notice and to proceed through all stages in one day and to enable messages from the Legislative Council to be taken into consideration on the day on which they are received.

This motion is similar to motions that are traditionally moved towards the end of the parliamentary year. The first part of the motion suspends grievance debates for the last two sitting weeks of the year, which has been the practice in this house for many years. In fact, last year we suspended private members' business totally in the last week, but we did it for only one week. In 2003 and 2002, there was a reduction in the time for private members' business and the suspension of grievances for the last two weeks. In 2001, it was for three weeks. If we go back, it was two or three weeks nearly all the time. In 1995, it was for the last four weeks, as it was in 1994, and in 1993 it was for the last five weeks. This motion is in keeping with what has traditionally been done to make sure we can get through a fair bit of business in the last few weeks of Parliament. It is proposed that we do it now for the last two weeks.

Paragraph (a) of the motion reduces private members' business time from three hours to two hours for today and next Wednesday. It is envisaged that the house will then be able to sit on Wednesday evenings, if that is required. Clearly, I suggest that it is required today. I remind members, however, that the 90-second members' statements each Thursday will continue under the standing orders.

Paragraph (b) of the motion will enable bills to be introduced without notice and to proceed through all stages in one day, and enable messages from the Legislative Council to be dealt with on the day on which they are received. It will also mean that if a bill were amended, we would be able to move on the same day to deal with the third reading. However, I give an assurance to the house that no urgent bill will be brought in and rushed through within a couple of days. There is no intention to do that. However, it means that we can proceed with the normal business in an expedited

LOCAL GOVERNMENT (OFFICIAL CONDUCT) AMENDMENT BILL 2005 EXPLANATORY MEMORANDUM

OVERVIEW OF BILL

The development of the Local Government (Official Conduct) Amendment Bill 2005 is a new initiative for both local government and the general Western Australian community.

The purpose of the Bill is to amend the *Local Government Act 1995* to provide a disciplinary framework to deal with individual misconduct by local government council members. At present, apart from prosecution, the only avenue for action in response to inappropriate behaviour is against the whole council.

The key principles in this Bill have general support from local government.

The Bill provides a mechanism to take action against individual council members where they do not comply with a code of conduct (rules) or they contravene particular laws applying to them in Acts and Regulations.

The key matters in the Bill are:

- (i) the establishment of a statewide standards panel to deal with complaints about minor breaches which are to be contraventions of a new code (rules) of conduct with penalties including public censure, public apology or an order to undertake training, and;
- (ii) for complaints about serious breaches to be made to the Department of Local Government and Regional Development for possible referral to the State Administrative Tribunal (SAT) for determination including similar penalties as above and stronger penalties of up to six month suspension or up to five years disqualification.

The Bill contains detailed provisions enabling regulations to be made prescribing the uniform rules of conduct for council members.

The rules are to cover the following key areas:

- a) standards of general behaviour;
- b) use of information;
- c) securing unauthorised advantages or disadvantages;
- d) disclosing certain interests (not financial); and
- e) restriction on receiving, and disclosure of, certain gifts.

The Bill provides that contraventions of the rules are a minor breach and complaints are to be referred to the local government standards panel. Additional panels may be appointed should that be needed.

STANDARDS PANEL

Complaints of minor breaches will initially be received by the relevant local government's complaints officer.

Each council shall appoint a complaints officer who is to be a senior local government employee or the CEO where applicable. Complaints referred to the local government must be in writing and it shall be an offence to give false or misleading information. The standards panel will deal with minor breaches and details of any decisions against a person will need to be included in a public register and are to be entered into the local government's annual report.

The panel shall consist of three persons, a chairperson from the Department of Local Government and Regional Development, a nominee from WALGA with experience in local government and a person having relevant legal knowledge.

Complaints referred to the standards panel are to be kept confidential if received during the period prior to an election.

The Bill provides for new types of penalties where the standards panel finds that a person has committed a breach. These include the panel making an order that publicly censures the council member, requires the council member to apologise publicly or requires the member to undertake training. A person not agreeing with these determinations will have a right of appeal to the State Administrative Tribunal (SAT).

TRIBUNAL

Allegations of repeated minor breaches, or serious contraventions of the legislation, such as financial interest contraventions or the misuse of information for personal gain, are to be referred to the Director General of the Department of Local Government and Regional Development.

The Director General may then direct those matters to the SAT for assessment and the imposition of particular penalties where it appears that there is a case to answer. This will be an alternative to undertaking prosecution and other types of enforcement action.

The Director General may refer the matter to another enforcement agency if that agency is the more appropriate authority to deal with the matter. Allegations of criminal or corrupt behaviour would continue to be referred to the police or other appropriate authorities.

For serious breaches referred to the SAT by the Director General, the tribunal will have the penalties available to the standards panels at its disposal, as well as being able to suspend the council member for a period of not more than six months, or disqualify the council member for a period of not more than five years, from holding office as a member of a council.

The serious breaches to be dealt with by SAT are those matters for which there is an offence in an Act or Regulation and the offence is particular to the actions of council members. The most common will include non declarations of financial interest, the improper use of information to gain advantage or cause detriment and the failure to complete annual financial returns.

CLAUSE NOTES

Outlined below is a brief description of each clause of the Local Government (Official Conduct) Amendment Bill 2005.

Clause 1: Short title

Clause 1 cites the short title of the Act.

Clause 2: Commencement

This clause sets out a commencement provision which provides for the Act to come into operation on such day as is fixed by proclamation.

Clause 3: Act amended

This clause provides that the amendments in the Act are to the Local Government Act 1995.

Clause 4: Section 2.19 amended

This clause amends section 2.19 dealing with the qualification for election to council by inserting reference to new sections 5.113, 5.117 and 5.119 created by this Bill and provides that a person is qualified to be elected so long as he or she has not been disqualified by an order issued under those sections.

Clause 5: Section 2.32 amended

This clause amends section 2.32 which deals with how extraordinary vacancies occur in the office of an elected member. The amendment provides for a vacancy to be created when a member is disqualified by the State Administrative Tribunal under sections 5.113, 5.117, and 5.119.

Clause 6: Section 5.53 amended

This clause amends section 5.53(2) by requiring the local government annual report to contain details which are included in a Register of Complaints where there are findings against a council member.

Clause 7: Section 5.94 amended

This clause amends section 5.94 which allows a person as of right to inspect the local government information specified in that section.

The amendment inserts into section 5.94 a person's right to inspect any regulations prescribing rules of conduct for elected members and a register of complaints for breaches of those rules. Also, minor drafting improvements are made to section 5.94.

Clause 8: Heading to Part 5 Division 9 replaced

Clause 8 is a technical drafting matter inserting a new heading – Division 9 Conduct of Certain Officials.

Clause 9: Section 5.102A inserted

A new section 5.102A is inserted to include definitions of terms used in the new Division 9.

Clause 10: Section 5.103 amended

Section 5.103(2) is repealed. The requirement for a local government to review its code of conduct after each ordinary election is removed as the code will now be set in regulations.

Clause 11: Sections 5.104 to 5.127 inserted

Section 5.104 Regulations may prescribe rules of conduct

This section provides for regulations to be made prescribing rules of conduct that are to be complied with by elected members. These rules are not to limit what a Code of Conduct made under section 103 may contain.

Section 5.105 Breaches by council members

This section describes what are minor breaches and what are serious breaches.

Where an elected member does not comply with the rules of conduct he or she commits a minor breach.

Should the member have previously been found to have committed two or more minor breaches, then the current minor breach becomes a recurrent breach which may be treated as a serious breach.

If an elected member commits an offence under a written law applying specifically to council members, other than a local law, then the member commits a serious breach.

Section 5.106 Deciding whether breach occurred

This section provides that a finding that a breach has occurred shall be based on evidence of the probability of the offence occurring.

Section 5.107 Complaining to complaints officer of minor breach

This section provides that a complaint that a member has committed a minor breach may be made to the person who is the local government's complaints officer. The complaint is to be made in writing on the required form providing details of:

- the name of the complainant;
- who the alleged offender is; and
- what contravention is alleged to have occurred.

Within 14 days of receiving the complaint, the complaints officer is to send the complaint to the standards panel and also advise the complainant and the alleged offender of receipt of the complaint.

Section 5.124 makes it an offence for a person to give false or misleading information.

Section 5.108 Executive Director may send complaint of minor breach to complaints officer

This section enables the Executive Director (Director General) of the Department of Local Government and Regional Development, who receives a complaint under section 5.114 of a serious breach but considers it to be a minor breach, to send it to the complaints officer of the local government concerned for it to be dealt with under section 5.110.

Section 5.109 Complaint initiated by complaints officer

This section enables a complaints officer to also lodge a complaint in situations where that may be necessary.

Section 5.110 Dealing with complaint of minor breach

This section provides for the standards panel to consider a complaint. It also enables the standards panel allocated the complaint to send the complaint to the Director General if it becomes a recurrent breach. It is then to be treated as a serious breach.

The section requires a standards panel to advise in writing each party of the reasons for its findings and, later, of any orders made. The member against whom the complaint was made is to be given the opportunity to make a submission on the findings. Following this, the panel is to dismiss the complaint or order one of the following:

- that the member be publicly censured;
- apologise publicly; or
- undertake training.

Two or more of these sanctions may be ordered.

Section 5.111 Dealing with a recurrent breach

This section enables the standards panel to refer a recurrent breach to the Director General or to deal with the matter itself. The parties are to be notified of a referral to the Director General.

Section 5.112 Allegation of recurrent breach

This section establishes the mechanism through which the Director General is to deal with a minor breach, which is taken to be a recurrent breach, and enables the Director General to refer it to the State Administrative Tribunal (SAT) as a serious matter. The parties must be advised of the decision to refer the matter to SAT. In the event the matter is not referred to SAT, the Director General is required to send the complaint to the complaints officer to be dealt with by the standards panel which referred the complaint to the Director General.

Section 5.113 Punishment for recurrent breach

This section enables SAT, having made a finding on a recurrent breach, to make various orders under section 5.117.

Section 5.114 Making complaint of serious breach

This section empowers a person to make a complaint to the Director General that a council member has committed a serious breach. The complaint is to be made in writing on the required form providing particular details. A complaint can only be made within the time period for which proceedings can be commenced for the particular offence.

Section 5.115 Complaints officer to send complaint of serious breach to Executive Director

This section provides that a complaints officer may send a complaint of a serious breach to the Director General and to advise all parties of that action. This will apply where a serious complaint is incorrectly sent to a local government complaints officer rather than the Director General.

Section 5.116 Allegation by Executive Director of serious breach

This section provides that if a complaint is received from a person or a local government's complaints officer, the Director General may send it to SAT or decide that it can be dealt with in another way. This may involve other action by the Director General or other enforcement agencies. This action cannot be taken against the alleged offender if a court has previously prosecuted the matter.

The Director General is to advise all parties within 14 days of receipt of the complaint that the matter has been received and that the Director General will proceed to making a decision on the matter of whether or not to refer the matter to SAT.

Section 5.117 Punishment for serious breach

This section provides the various actions that SAT may order to be taken if it finds that a council member has committed a serious breach. These are public censure, public apology, training, suspension as a member for not more than six months, or disqualification for not more than five years, from being an elected member of a council. Combinations of these sanctions may be ordered. Also, SAT may make a suspended order for the suspension or disqualification orders. A suspended order may operate for a period of up to 2 years.

The Director General may make an allegation to SAT that a person has failed to comply with a condition relating to a suspended order. SAT may consider the matter and direct that the suspended order should apply.

Section 5.118 Carrying out orders

This section requires the chief executive officer (CEO) of a local government to publicise any censure ordered by a standards panel or SAT for a minor breach and report on any failure of a member to comply with an order. The section also requires the Director General to advise SAT of any failure of a member to comply with an order for a recurrent or serious breach.

Section 5.119 State Administrative Tribunal's enforcement powers

This section provides that where a member fails to comply with an order of a standards panel or SAT, SAT may then take further action to suspend or disqualify the member.

Section 5.120 Complaints officer

This section requires each local government to designate a senior employee as a complaints officer for the purposes of receiving

complaints to be dealt with by standards panels. If it does not, then the CEO is the complaints officer.

Section 5.121 Register of certain complaints

This section requires the complaints officer to keep and record in a register details of each complaint for which there has been a finding against the person. The register is to include details of the names of the parties to the complaint, a description of the minor breach and the order against the person.

Section 5.122 Standards panel

This section requires the Minister to establish a standards panel and such other panels as may be required. Schedule 5.1 applies to a standards panel.

Section 5.123 Confidentiality

This section provides for all complaints that are made within a campaign period (from nominations until election day) to be treated in confidence until the panel finally deals with the matter or the campaign period ceases. This applies to a person who is party to a complaint, performs a function relating to complaints, or is anyone who becomes aware of information about the complaint. It is an offence for a person to break that confidentiality with a maximum penalty of \$5,000.

It is not an offence if the disclosure of the information is made for the purpose of investigating the matter, or the disclosure is required by law.

Section 5.124 Giving false or misleading information

This section provides that it is an offence for a person to give false or misleading information in a complaint or when giving information. The penalty is a maximum fine of \$5,000.

Section 5.125 Review of certain decisions

This section provides for a right of appeal to SAT by a party to a complaint in respect to a standards panel decision.

Clause 12: Section 9.69A inserted

Section 9.69A is added to clarify that the Director General is required to comply with the *Corruption and Crime Commission Act 2003* in notifying the Commission.

Clause 13: Schedule 5.1 inserted

Schedule 5.1 Provisions about standards panels

1. Terms used in this schedule

The term "member" is defined.

2. Membership of standards panel

This provides for 3 members appointed by the Minister. One is to be an officer of the Department, one is to be a person with experience as a council member and one is to be a person having relevant legal knowledge.

3. Deputies

This provides for deputies to be appointed and when they may attend meetings.

4. Submission of lists

This deals with WALGA forwarding a list of persons eligible for appointment to the Minister. The Minister shall appoint one of those persons as a member.

5. Term of office

The term of appointment to a panel shall be for a maximum period of 4 years, however, a person is eligible for appointment for subsequent terms.

6. Vacation of office

This specifies the circumstances where a member's office becomes vacant and the situation where the Minister may remove a person from the position of member.

7. Dissolution of standards panel

The Minister may dissolve a panel where it has dealt with all complaints allocated to it.

8. Meetings

This clause deals with the meeting procedures of the panel. It also provides for the Departmental member to be the presiding member, all members to attend to achieve a quorum and circumstances where a member is disqualified from acting.

9. Remuneration and Allowances

This provides for the panel members, except for state public servants, to be paid remuneration and allowances as determined by the Minister on the recommendation of the Minister for Public Sector Management. Local governments are to be responsible for making these payments to the panel members in relation to complaints relating to their particular council members. These payments shall be apportioned between different local governments as the standards panel determines if two or more complaints are dealt with on the same occasion.

10. Protection

This clause provides protection to a panel member when acting in good faith.

11. Annual Report

The standards panel shall prepare an annual report for the Minister which shall be laid before each House of Parliament.

POLICY 4-1 – CODE OF CONDUCT

STATUS: **Council Policy** - *A strategic policy that sets governing principles and guides the direction of the organisation to align with community values and aspirations.*

Council policies are developed by the Policy Committee for approval by Council.

RESPONSIBLE DIRECTORATE: *Office of the CEO*

OBJECTIVE:
To provide guidance to Elected Members and Staff in relation to:
➤ The duties and responsibilities that apply to each; and
➤ The minimum standard of conduct that the City expects from Elected Members and Staff.

INDEX

PART 1 - INTRODUCTION..... 3

PART 2 - GUIDING PRINCIPLES 4

 Guiding Principles of Elected Members, Committee Members and Council Employees
 Community Focused
 Sustainability
 Best Value
 Leadership through Partnerships and Networks
 Flexibility in Service Delivery
 Interaction Between Elected Members Committee Members and Council Employees

PART 3 - VALUES AND ETHICAL STANDARDS 5

 Living our Values
 Customer Service Excellence
 Leadership
 Participation
 People
 Ethical Standards
 Respect for Persons
 Justice

Beneficence	
PART 4 - IMPLEMENTATION, REVIEW AND COMPLIANCE	6
Implementation and Review	
Enforcement of the Code	
PART 5 - CONFLICT AND DISCLOSURE OF INTEREST	7
5.1	Conflict of Interest
5.2	Disclosure of Interest
PART 6 - CONDUCT OF ELECTED MEMBERS, COMMITTEE MEMBERS AND EMPLOYEES	8
Use of Confidential Information	
Improper or Undue Influence	
Gifts and Acts of Hospitality	
Disclosure of election campaign contributions	
Personal Behaviour	
Civic Leadership	
Respect for Title of Office	
Honesty and Integrity	
Performance of Duties	
Compliance with Lawful Orders	
Administrative and Management Practices	
Relationships Between Elected Members, Committee Members and Employees	
Appointments to Committees (External)	
Defamation	
PART 7 - DEALING WITH COUNCIL PROPERTY	15
Use of Council Facilities, Funds, Employees, Equipment and Intellectual Property	
Travelling, Sustenance and Expenses	
PART 8 - CORPORATE OBLIGATIONS	16
Communication with the Community	
Communication and Public Relations	
Health, Well Being and Safety	
Entrepreneurial Activities	
PART 9 - WHISTLEBLOWER PROTECTION	17
Protection of Employees Reporting Unacceptable or Illegal Behaviour	
Reporting of Unacceptable or Illegal Behaviour	
Corruption and Crime Commission Act 2003	
CODE OF CONDUCT DECLARATION	19

PART 1 - INTRODUCTION

The Council of the City of Joondalup is the elected body responsible for the administration of the City in the best interests of its residents. The Council is committed to providing open, responsive and accountable government. It must do that in accordance with the applicable legislation.

The Local Government Act confers considerable powers on the Council. Because of this, Elected Members, Committee Members and Employees must seek actively to achieve and retain public trust if they are to deserve the responsibilities entrusted to them.

The Code of Conduct provides a framework for behaviour that must be observed in the wide range of interactions and scenarios experienced in the conduct of Council activities. The Code of Conduct does not establish a rule for every situation, but provides guidance and a basis of expectations for good public administration by Elected Members, Committee Members and Employees of the City.

The local community and the public in general is entitled to expect that:

- The business of the Local Government will be conducted with efficiency, impartiality and integrity;
- Elected Members, Committee Members and Employees will obey the spirit and the letter of the law and, in particular, the provisions of all relevant statutes, ordinances, regulations and instruments; and
- Duty to the public will always be given absolute priority over the private interests of Elected Members, Committee Members and Employees.

A Code of Conduct is an important instrument of the Council, necessary due to the particular relationships and responsibilities that arise from being a public institution. To ensure the effective and efficient administration of the City of Joondalup, a set of standards is essential to clearly outline these responsibilities and the behaviours that need to be observed to retain the good faith and trust of all parties involved.

All Elected Members must adhere to the Code of Conduct and refrain from vilifying fellow Elected Members, employees and Members of the Public.

The Code of Conduct does not override or affect the legislation applicable to local government. It is not intended to be read as a set of rules where each word is scrutinised for its legal meaning. The Code of Conduct is intended to convey in plain words the obligations placed on, and the behaviour expected of all of the Council.

This Code of Conduct applies to every individual Elected Member, Committee Member and Employee of the City of Joondalup.

PART 2 - GUIDING PRINCIPLES

Guiding Principles of Elected Members, Committee Members and Council Employees

The City of Joondalup's Strategic Plan 2000-2005 outlines the Guiding Principles of Elected Members, Committee Members and Council Employees based on a commitment to:

Community Focused

- We will develop a sense of belonging/ownership.
- We will understand community diversity and harmony, meeting changing customer needs.

Sustainability

- We will promote an integrated environmental, social and economic approach to all our activities.
- We will focus on improving quality of life for current and future residents and ratepayers.

Best Value

- We will provide value for money with our quality services.
- We will use the most efficient and effective processes continuously improving our delivery.

Leadership through Partnerships and Networks

- We will develop partnerships and networks.
- We will gain support from key stakeholders.

Flexibility in Service Delivery

- We will be flexible in our planning to accommodate changing circumstances.
- We will be flexible in our delivery of a range of services and programs.

Interaction Between Elected Members, Committee Members and Council Employees

The role of Elected Members and Committee Members compared to the role of Council employees is quite different. In essence, the Council decides policy objectives and the results it wishes to achieve and, subject to any specific directions from the Council, the CEO (and employees) has responsibility to put those policy decisions into practical effect.

A prime responsibility of council employees and delegates is to assist Elected Members and Committee Members in their decision-making role. Employees should always provide frank and professional advice.

The Council or individual Elected Members or Committee Members may request or direct the provision of advice on any topic but shall not under any circumstance direct or request the advice to contain any predetermined content or recommendation.

The CEO is responsible to the Council for performance and direction of all employees and delegates in the day-to-day management of Council. It is appropriate that all requests by

Elected Members or Committee Members for information be directed to the CEO, Directors or Business Unit Managers as appropriate.

Therefore, just as there are different obligations under the Local Government Act for Elected Members and Committee Members in comparison to Employees, there is a distinction between the way the Code of Conduct applies to those parties.

PART 3 – VALUES AND ETHICAL STANDARDS

A Code of Conduct is determined by the values and ethical standards on which it is based. The Council of the City of Joondalup believes that acting ethically is central to its public accountability, the successful achievement of its vision and performance of its role.

Values

The City of Joondalup's Code of Conduct is governed by five key values.

- **Living our values**

As a progressive local government intent on 'creating the future', we have a special responsibility to the people of Joondalup. We show this by practicing our values in the work we do.

- **Customer Service Excellence**

We take pride in delivering excellent customer service in a professional, timely and courteous manner.

- **Leadership**

We encourage leadership and innovative thinking at all levels of the organisation.

- **Participation**

Throughout the ongoing process of change, we encourage participation and good communication. We encourage an active local democracy.

- **People**

We value our people by recognising their creativity, experience, commitment and potential. We welcome and encourage new ideas.

Ethical Standards

The Code of Conduct is also governed by three ethical standards:

Respect for Persons

This standard requires that we treat other people as individuals with rights to be honoured and defended, and empower people to claim their rights if they are unable to do it for themselves. We encourage honest relationships by being truthful and sincere when dealing with others.

- It is our respect for the rights of others that qualifies us as members of a community, not simply as individuals with rights, but also with duties and responsibilities to others.

Justice

This standard requires that we treat people fairly, without discrimination, and with rules that apply equally to all. We ensure that opportunities and social benefits are shared equally among individuals, with equitable outcomes for disadvantaged people. We uphold the laws of the Council of the City of Joondalup and comply with relevant State and Federal legislation.

Beneficence

This standard requires that we do for others what we would like done for ourselves – that we do good, and not harm, to others. We must be aware that the strong have a duty of care to the weak, dependent and vulnerable and uphold the rights of those who are unable to do so. We shall contribute to the well-being of individuals and society by exercising due diligence and duty of care to others.

PART 4 – IMPLEMENTATION, REVIEW AND COMPLIANCE

Implementation and Review

The original Code of Conduct for the City of Joondalup was first adopted on 23 April 1997 with immediate effect.

There is a requirement to review the Code within 12 months of every ordinary election of Council Members for the City. The review is designed to address any problems experienced within the preceding 12 months in regard to its application or interpretation, and recommend any amendments that may be appropriate. Amendments to the Code must be subsequently communicated to Elected Members, Committee Members, Employees and the community.

Enforcement of the Code

Any Council employees, Elected Members or Committee Members having concerns with regard to an actual, perceived, potential, intended or unintended breach of either the specific provisions or the spirit of the Code of Conduct, or any provisions of the Local Government Act or such regulations or local laws created thereunder, should discuss those concerns with the **CEO where such matters relate to Elected Members or employees, or the Mayor in the case of matters involving the CEO.**

Matters the subject of such reports shall be treated in the strictest confidence until such time as an appropriate investigation has been undertaken.

Any actions taken as a result of a breach will be made in accordance with the provisions of any applicable legislative requirement and the Council's responsibilities as an employer. It should be noted that the Corruption and Crime Commission Act 2003, requires the reporting to the Commission of certain matters relating to alleged 'corrupt conduct', 'criminal conduct' and 'serious improper conduct'. Definitions of these terms are provided in the Act and appear as annexure 1 to this Code.

PART 5 - CONFLICT AND DISCLOSURE OF INTEREST

5.1 Conflict of Interest

Elected Members, Committee Members and Employees should ensure that there is no actual or perceived conflict or incompatibility between the impartial fulfilment of their public or professional duties and either their personal interests, or those of their immediate family members, business partners or close associates. Specifically;

- (a) All employees have a duty of fidelity and good faith towards the City.

An employee must make written disclosure and receive written permission from the CEO before acting in or taking up an interest (direct or indirect) in any capacity in any trade, business or occupation whatsoever, other than the business of the City, that may interfere with or compromise the employee's performance.

Employees shall comply with the Local Government (Functions and General) Regulations 1996, in any instance where they are involved in any manner with tendering for a Council contract.

In this respect, it does not matter whether advantage is in fact obtained, as any appearance that private dealings could conflict with performance of public duties must be scrupulously avoided.

- (b) Employees must notify the CEO in writing prior to undertaking a dealing in land in the area of the Council (other than purchasing the principal place of residence, or site for such purpose.)
- (c) Employees who exercise a regulatory, inspectorial or other discretionary function must make disclosure before dealing with relatives or close friends and, whenever possible, or in doubt, should disqualify themselves from dealing with those persons. This disclosure must be made to their Director.

The mere fact that a person has both a public or professional duty and a private or personal interest in relation to a particular matter does not mean that the two must be in conflict. A conflict of interest arises if it is likely that the person with the private or personal interest could be prejudicially influenced in the performance of his/her public or professional duties by that interest, or that a reasonable person would believe that the person could be so influenced.

5.2 Disclosure of Interest

- (a) Elected Members, Committee Members and Employees will adopt the principles of disclosure of interest as contained within the Local Government Act 1995 and the Financial Interests Manual as prepared by the Department of Local Government.
- (b) Whenever disclosure is required by (a) above, or otherwise seems appropriate, it will be made promptly, fully, and in writing to the CEO prior to the Meeting.
- (c) Elected Members, Committee Members or Employees are required to disclose any interest, where they believe that the public may have a perception that their impartiality may come into question. The disclosure must occur when the matter is to be discussed

at a Council or committee meeting where the person who has the interest will be in attendance and/or has given, or will give, advice.

- (d) The disclosing of an interest as detailed in (b) and (c) above is to be made immediately before the matter is discussed or at the time the advice is given, and shall be recorded in the minutes of the Meeting.
- (e) The disclosure of an interest in (c) above does not affect the ability of the Elected Member, Committee Member or Employee to discuss or vote on the matter.

PART 6 – CONDUCT OF ELECTED MEMBERS, COMMITTEE MEMBERS AND EMPLOYEES

Use of Confidential Information

Elected Members, Committee Members and Employees shall not use confidential information to gain improper advantage for themselves or another person or body in ways which are inconsistent with their obligation to act impartially in the public interest; or to improperly cause harm, detriment or impairment to any person, body, or the Council.

Due discretion shall be exercised by all those who have access to confidential or sensitive information.

Improper or Undue Influence

Elected 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.

Persons aggrieved by what they perceive as improper or under influence shall report such conduct, in confidence, to the CEO or Mayor. Notwithstanding this, aggrieved persons also have the right to report such conduct to the appropriate external authorities. In making reports of improper or undue influence, persons should not make unsubstantiated allegations and must present factual information, not based on rumour or suspicion, so as to avoid undue concern to others.

Gifts and Acts of Hospitality

Elected Members, Committee Members and Employees shall not seek or accept (directly or indirectly) from any person or body, any immediate or future gift, reward, donation, inducement or benefit for themselves or for any other person or body, relating to their status with the Council, or their performance of any duties or work which touches or concerns the Council.

The Mayor and/or CEO may accept acts of hospitality for local community related events. Where neither can attend, they may designate an appropriate person to attend in their place. The offering of these acts of hospitality must be promptly recorded in the relevant register kept by the Council, whether accepted or not.

Notwithstanding the preceding paragraph, Elected Members, Committee Members and Employees may accept token gifts and/or moderate acts of hospitality. The offering of all token gifts or acts of hospitality, must be promptly recorded in the relevant register kept by the City, whether accepted or not.

The term gift does not include:

- Items which are associated with the giving of gifts in accordance with social customs. These items include token gifts of appreciation or gifts of a symbolic nature such as ties, scarves, cuff links, pens or other small items.

Token gifts or moderate acts of hospitality are defined as where its estimation is less than **\$250** in value. In determining the acceptance of token gifts and/or moderate acts of hospitality, the following guidelines must be adhered to:

- The offering of any token gift and/or moderate act of hospitality must be promptly recorded in the relevant register, including the name and address of the offeror, description of the token gift/act of hospitality, its estimated value, the date of the receipt of the token gift, and whether it was accepted or declined;
- Where a partner is invited to attend a function that is related to the City of Joondalup with the Elected Member, Committee Member or Employee, the partner may accept token gifts or moderate acts of hospitality;
- The acceptance of token gifts and/or moderate acts of hospitality by a particular Elected Member, Committee Member or Employee from a person(s) or organisation on a frequent basis shall not be permitted.

No company or individual with a proprietary or beneficial interest may pay or contribute to any expenses associated with the inspection, evaluation or trial of any goods or services which the Council may or may not wish to acquire, provided however that the Council may require the payment of those expenses as a standard condition applicable to all parties with an interest in providing the required goods or services to the Council.

In determining the acceptance of token gifts/benefits and moderate acts of hospitality, the following guidelines must be adhered to at all times by Elected Members, Committee Members or Employees.

All gifts not of a token kind and all offers of immoderate acts of hospitality must be:

- (a) promptly returned (except in the case of acceptances by the Mayor or CEO referred to above) or, at the CEO's or designated appropriate person's discretion, donated to charity and in either case, a letter of explanation must be sent to the donor; and
- (b) promptly recorded in the relevant register kept by Council. Elected Members, Committee Members and the CEO (or Employees to whom any power or duty has been delegated under Part 5, Division 4 of the Local Government Act) must disclose in a primary or annual return:
 - (i) the description of any gift received by them at any time during the return period;
 - (ii) the name and address of the person who made each gift to which paragraph (a) applies unless the amount of the gift does not exceed \$500.00 or was received from a relative.

The following notations are made in relation to accepting gifts (token or non-token) or acts of hospitality:

- gifts may be accepted where they become the property of the City of Joondalup;
- the register of disclosure shall be made available for access to the public at all times with the register being retained within the office of the CEO;
- the amount of a gift comprising property, other than money, or the conferral of a financial benefit is to be treated as an amount equal to the value of the property or the financial benefit at the time the gift was made;
- variations to these conditions are permitted where prior written approval is granted by the Mayor or CEO and recorded in the register of delegations.

Disclosure of election campaign contributions

In the interests of uncompromised decision making, the City of Joondalup requires all electoral candidates to comply with the Local Government Act 1995 and its associated regulations in disclosing electoral donations. A candidate is to disclose information about any electoral related gift with a value of \$200 or more that may be received within the six (6) month period prior to the relevant election day.

- (a) A "gift" includes a gift of money, a gift which is non-monetary but of value, a gift in kind or an inadequate financial consideration or the receipt of a discount (where the difference or the discount is more than \$200 worth), financial or other contribution to travel, the provision of a service for no consideration or for inadequate consideration, and a firm promise or agreement to give a gift at some future time.

A gift does not include a gift by will; a gift by a relative; a gift that the candidate would have received notwithstanding his or her candidature; or the provision of volunteer labour.

- (b) The disclosure of a gift is to be made to the CEO of the local government in the manner prescribed and in doing so identify specified information (see c).
- (c) Details about each gift are to be disclosed on the prescribed form and submitted within three days of receiving the gift. Information to be supplied includes the name of the candidate, the name and address of the donor, the date the gift was promised or received, the value of the gift and a description of the gift.
- (d) The disclosure period commences six months prior to the relevant election and finishes three days after the election day for unsuccessful candidates and on the start day for financial interest returns for successful candidates.
- (e) The CEO is to establish and maintain an electoral gift register. Disclosure forms are to be placed in the electoral gift register upon receipt by the CEO in a manner that clearly identifies and distinguishes the candidates. The electoral gift register is to be kept available for public inspection.

- (f) In accordance with the Local Government (Elections) Regulations, 1999, a maximum penalty of \$5,000 may be imposed on a candidate who fails to comply with the disclosure requirements.

Personal Behaviour

Elected Members, Committee Members and Employees shall:

- (a) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code of Conduct in particular:
 - (i) *The Equal Opportunity Act 1984 (WA) and subsequent amendments made it unlawful to discriminate against people on the grounds of sex, marital status, pregnancy, race, racial harassment, religious status, family responsibility or age.*

The City will ensure compliance with the principles and provisions of the Equal Opportunity Act 1984 (WA), this commitment extends to ensuring that recruitment and selection, promotion and advancement will be solely on the basis of equity and fairness and that appointment will be based on merit;
 - (ii) *All people have a right to work in an environment that is free from sexual harassment. Sexual harassment will not be tolerated in the City of Joondalup. Any Elected Member, Committee Member or Employee found to be committing sexual harassment will be subject to discipline and/or termination proceedings.*
- (b) perform their duties impartially to the best of their ability and in the best interests of the community, uninfluenced by fear or favour;
- (c) deal with all sections of the community in an open, honest and forthright manner;
- (d) act in good faith (ie honestly, for the proper purpose and without exceeding their powers) in the interests of Council and the community; and shall be particularly mindful to avoid interference in commercial relationships between developers and objectors or between developers competing for the right to develop;
- (e) 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 or is likely to cause any reasonable person unwarranted offence or embarrassment;
- (f) always act in accordance with their obligations of fidelity to the Council and not publicly reflect adversely upon any decision of the Council or the Executive Management Group; and
- (g) where practicable, be available for discussion with members of the public following Council and Committee meetings.

Elected Members should represent and promote the interest of their community as a whole, while recognising their particular duty to their own constituents, in accordance with their role as defined by the Local Government Act 1995.

At the same time, Elected Members, Committee Members and Employees should be mindful of the interests of ward members when dealing with issues relevant to a specific ward, and should use their best endeavours to inform Elected Members of such matters.

Civic Leadership

As the appointed leader of the community of Joondalup, the Mayor shall demonstrate the highest level of civic conscience, impartiality and personal conduct.

Respect for Title of Office

Elected Members, Committee Members and Employees shall respect the title of elected office, referring to the Mayor and Councillors by their formal title whilst in the public arena, and thereafter as circumstances dictate. The Mayor is to be addressed as either Mr/Madam Mayor or His/Her Worship the Mayor.

Honesty and Integrity

Elected Members, Committee Members and Employees shall:

- (a) observe the highest standards of honesty and integrity;
- (b) be frank and honest in their official dealings with each other; and
- (c) bring to the notice of the Mayor or CEO, any dishonesty on the part of any other Member, Committee Member or Employee;
- (d) endeavour to resolve serious conflict through initial discussion facilitated by either the Mayor, or the CEO.

Performance of Duties

While on duty, Employees shall give their whole time and attention to the Council business and ensure that their work is carried out efficiently, economically and effectively in accordance with their directions, duties, Council policies and corporate objectives.

In particular, Employees shall ensure that file notes are drafted and placed on record immediately following discussions on issues of substance with persons other than Employees, Elected Members or Committee Members. Such issues shall include matters before the Council, matters impacting on the Council or the organisation of the City of Joondalup, and matters affecting the public interest.

Employees shall at all times ensure that their standard of work and manner reflects favourably both on them and the Council, and is in accordance with the intent of the Council's Customer Service Charter.

In the conduct of their duties, employees are encouraged to develop networks within the local government industry, to encourage and assist their peers, and promote goodwill between local governments.

Compliance with Lawful Orders

- (a) Employees shall obey any lawful order given by any person having authority to make or give such an order, with any doubts as to the propriety of any such order being taken up with the superior of the person who gave the order and, if resolution cannot be achieved, with the CEO;
- (b) Employees should give effect to and uphold the lawful policies of the Council, whether or not they agree with or approve of them.

Administrative and Management Practices

Elected Members, Committee Members and Employees shall ensure compliance with proper and reasonable administrative practices and conduct, and professional and responsible management practices.

Unless confidentiality is essential, administrative and management practices shall be open and accessible.

Elected Members, Committee Members and Employees shall at all times be mindful of their responsibility to maintain full and accurate records in the performance of their duties.

Relationships Between Elected Members, Committee Members and Employees

An effective Elected Member or Committee Member will work as part of the City of Joondalup team with the CEO and other Members and employees. That teamwork will only occur if Elected Members, Committee Members and Employees have mutual respect and co-operate with each other in order to achieve the City's corporate goals and implement the City's strategies. To achieve these outcomes, 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 and Committee Members will:

- Accept that their role is one of Council leadership, and not a management or administration role;
- 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;
- Ensure that no restrictions or undue influence is placed on the ability of employees to give professional advice to the Council.

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

Appointments to Committees (External)

Elected Members and Employees representing the Council on external organisations are to ensure that they:

- (a) Clearly understand the basis of their appointment;
- (b) Provide regular reports on the activities of the organisation in accordance with the confidentiality requirements of that organisation;
- (c) Represent the Council's interests on all matters relating to that organisation, whilst maintaining the confidentiality requirements of the City of Joondalup.

Defamation

Comments by Elected Members at meetings of the Council and/or Committees of the Council are covered only by qualified privilege against defamation and this qualified privilege may not extend to comments by employees.

An Elected Member can only rely on the defence of qualified privilege whilst exercising the proper discharge of his or her duties, and doing so in the public interest;

In order to maintain qualified privilege, an Elected Member should ensure that comments made are pertinent to the business of local government and, they are not made maliciously, or without due regard to whether they represent the truth.

PART 7 – DEALING WITH COUNCIL PROPERTY

Use of Council Facilities, Funds, Employees, Equipment and Intellectual Property

Elected Members, Committee Members and Employees shall:

- (a) be scrupulously honest in the use of Council facilities, funds, employees, materials and equipment and shall not misuse them or permit their misuse, or the appearance of misuse by any other person or body;
- (b) use Council resources entrusted to them effectively, economically and lawfully in the course of their duties, and not otherwise;
- (c) not use Council resources (including the services of Council employees) for private purposes, (other than when supplied as part of the contract of employment) unless properly authorised to do so;
- (d) not make unauthorised use of information and other intellectual property produced or registered by employees or external contractors for the Council. The ownership to Intellectual Property that is produced as a result of

employment in official duties shall be assigned to the City of Joondalup upon its creation; and

- (e) promote the concept of pride in public property, fostering an awareness of the community's ownership of the City's natural and built environment.

Travelling, Sustenance and Expenses

Elected Members, Council representatives and delegates, and Employees shall only claim or accept travelling and sustenance expenses arising out of travel related to matters which have a direct bearing on the conduct of their duties, services or business of the Council.

Elected Members shall be diligent in ensuring that those other expenses claimed in accordance with Council policy relate strictly to their function as an Elected Member and are appropriately acquitted.

PART 8 – CORPORATE OBLIGATIONS

Communication with the Community

Elected Members, Committee Members and Employees should ensure that the Council effectively communicates with, and promotes participation by, all sections of their communities, in order to achieve proper accountability. At all times, Elected Members, Committee Members and Employees shall focus on the customer of the City's services as being of paramount importance.

Communication and Public Relations

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

As a representative of the community, Elected Members need to be not only responsive to community views, but to adequately communicate the attitudes and decisions of the Council. In doing so, Elected Members must acknowledge that:

- (a) membership of the Council or its Committees, entails respect for the decision making processes of the Council, which are based on a decision of the majority of the Council or Committee;
- (b) information of a confidential nature must not be communicated until it is no longer treated by the City as confidential;
- (c) information relating to decisions of the Council must only be communicated in an official capacity by the Mayor or his/her representative, or a designated officer of the City of Joondalup;
- (d) information concerning adopted policies, procedures and decisions of the City of Joondalup must be conveyed accurately.

Health, Well Being and Safety

Elected Members, Committee Members and Employees should ensure that the Council's premises and places of work (including vehicles) are adequate to ensure the health, safety and well being of Employees and members of the public. Potential risks or hazards to employees or public are to be reported according to existing procedures.

Entrepreneurial Activities

Elected Members, Committee Members and Employees shall ensure that the Council impartially and properly assesses its own proposals for entrepreneurial activities, consistent with the scope and standard of the normal assessment applied to outside parties requiring Council approval (including subdivisions, development, buildings and tenders).

PART 9 – WHISTLEBLOWER PROTECTION

Protection of Employees Reporting Unacceptable or Illegal Behaviour

The CEO is to ensure that Employees who report unacceptable or illegal behaviour of Elected Members or Employees (that is, whistleblowers) are not in any way disadvantaged or victimised because of their actions.

Reporting of Unacceptable or Illegal Behaviour

Employees are encouraged to, in the first instance, report unacceptable or illegal behaviour to the relevant Supervisor or Manager. Behaviour of a serious nature must be reported directly to the CEO.

Corruption and Crime Commission Act 2003

Elected Members and Employees must be aware of the Corruption and Crime Commission Act 2003 which provides for the voluntary reporting of possible corrupt conduct to the Commission. Penalties will prevail if a person who makes a complaint: -

- (a) Has his or her safety or career prejudiced, or threatened to be prejudiced;
- (b) Is intimidated or harassed; or
- (c) Has an act done to his or her detriment because of having assisted the Commission, or furnished information to the Commission.



CODE OF CONDUCT DECLARATION

Declaration:

I _____

have read and understand the conditions of the City of Joondalup Code of Conduct and hereby agree to abide by the requirements of this document.

DATE: _____

SIGNED: _____

Note: Please sign and date the above declaration and return to HR with your new starter forms.

Amendments: CJ206-10/05

Related Documentation:

Issued: October 2005

Attachment 5

CPI INCREASES

YEAR	AMOUNT	CPI
1997	\$200.00	
1998	\$201.40	0.70%
1999	\$203.62	1.10%
2000	\$210.13	3.20%
2001	\$222.74	6.00%
2002	\$228.98	2.80%
2003	\$235.16	2.70%
2004	\$241.04	2.50%
2005	\$247.06	2.50%
2006	\$256.95	4.00%