



Department of  
Local Government, Sport  
and Cultural Industries



APPENDIX 8  
ATTACHMENT 1  
*Local Government  
Act 1995 Review*  
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LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

# Standards and Guidelines For Local Government CEO Recruitment and Selection, Performance Review and Termination

## Draft for Consultation

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# Preface

As part of the McGowan Government's commitment to transforming local government in WA, the *Local Government Legislation Amendment Act 2019* includes a requirement for model standards covering the recruitment and selection, performance review and early termination of local government Chief Executive Officers (CEOs). These reforms are intended to ensure best practice and greater consistency in these processes among local governments.

This document outlines proposed mandatory minimum standards, shown in boxes. These standards will inform the drafting of regulations.

The accompanying guidelines outline the recommended practice for local governments in undertaking these processes. The guidelines will assist local governments in meeting the proposed standards and will not form part of the legislative framework.

The standards and guidelines have been developed by the Department of Local Government, Sport and Cultural Industries (Department) in consultation with representatives from the Public Sector Commission, the Ombudsman, the Western Australian Local Government Association (WALGA) and Local Government Professionals WA (LGPro). The Department gratefully acknowledges the participation and contribution of these representatives.

The Department notes that the content of these does not necessarily reflect the views or policies of the organisations or individuals that have been consulted.

Feedback is sought on the proposed standards and guidelines. A survey is available at [www.dlgsc.wa.gov.au/lgareview](http://www.dlgsc.wa.gov.au/lgareview) or you can provide your feedback to [actreview@dlgsc.wa.gov.au](mailto:actreview@dlgsc.wa.gov.au) by 8 November 2019.

# Part 1 – Recruitment and Selection

One of the fundamental roles of the council is the employment of the local government's CEO. The CEO is responsible for implementing the council's strategic vision and leading the local government administration.

## Principles

A local government must select a CEO in accordance with the principles of merit, equity and transparency. A local government must not exercise nepotism, bias or patronage in exercising its powers. Additionally, a local government must not unlawfully discriminate against applicants. Section 5.40 of the *Local Government Act 1995* (Act) lists a number of general principles of employment that apply to local governments.

### Recruitment and Selection Standard

The minimum standard for recruitment and selection will be met if:

- S1.1** The council has identified and agreed to the qualifications and selection criteria necessary to effectively undertake the role and duties of the CEO within that particular local government context.
- S1.2** The council has approved, by absolute majority, the Job Description Form which clearly outlines the qualifications, selection criteria and responsibilities of the position, and which is made available to all applicants.
- S1.3** The local government has established a selection panel to conduct the recruitment and selection process. The panel must include at least one independent person who is not a current elected member or staff member of the local government.
- S1.4** The local government attracts applicants through a transparent, open and competitive process (this is not necessary for vacancies of less than one year).
- S1.5** The local government has assessed the knowledge, experience, qualifications and skills of all applicants against the selection criteria.
- S1.6** The local government has thoroughly verified the recommended applicant's work history, qualifications, referees and claims made in his or her job application.
- S1.7** The appointment is merit-based, with the successful applicant assessed as clearly demonstrating how his or her knowledge, skills and experience meet the selection criteria.

## Recruitment and Selection Standard cont.

- S1.8** The appointment is made impartially and free from nepotism, bias or unlawful discrimination.
- S1.9** The council has endorsed by absolute majority the final appointment.
- S1.10** The council has approved the employment contract by absolute majority.
- S1.11** The local government must re-advertise the CEO position after each instance where a person has occupied the CEO position for ten (10) consecutive years.

## Guidelines

### Recruitment and selection process

Regulation 18C of the *Local Government (Administration) Regulations 1996* (Administration Regulations) requires a local government to approve a process to be used for the selection and appointment of a CEO for the local government before the position of CEO of the local government is advertised.

The council of the local government should act collectively throughout the recruitment and selection process. To uphold the integrity of the process, the council must resist any attempt to influence the outcome through canvassing or lobbying.

The local government should carefully consider the role of the CEO. This includes the CEO's legislated powers and functions and their role as the head of the administrative arm of the local government. In determining the selection criteria for the position of CEO, it will be important for a local government to consider the needs of the district and the specific skills and experience that will be required of the CEO in that particular local government. The competencies the council looks for in its CEO should reflect the council's strategic community plan.

Once the essential skills and experience which form the selection criteria for the position have been identified, the local government must set out the selection criteria (essential and desirable) and the responsibilities of the position in a Job Description Form (JDF). If emphasis is placed on certain selection criteria, this should be highlighted in the JDF so that applicants are aware of this. For example, some level of project management experience will usually be an important criterion, but if the local government is undertaking a major development such as a new recreation centre, added emphasis may need to be given to this criterion.

The JDF must be approved by an absolute majority of the council.

## Advertising

The local government should ensure that applicants are clearly informed about the application process, such as the application requirements, the closing date for applications and how applications are to be submitted. It is essential that this process is transparent and that each step in the process is documented and the records kept in a manner consistent with the *State Records Act 2000 (WA)*.

In order to attract the best possible pool of applicants for the CEO position, it is recommended that local governments use a diverse range of advertising methods, mediums and platforms (in addition to the advertising requirement under section 5.36(4) of the Act). For example:

- advertising on the local government's website;
- posting on online jobs boards (e.g. SEEK);
- sharing the advertisement via professional networks; and
- undertaking an executive search (also known as headhunting).

A local government must publicly advertise the CEO position if one person has remained in the job for 10 consecutive years. This does not prevent the incumbent individual from being employed as CEO for another term, provided they are selected following a transparent selection and recruitment process.

## Selection panel and independent person

Local governments are to appoint a selection panel to conduct and facilitate the recruitment and selection process. The selection panel should be made up of elected members (the number to be determined by the council) and must include at least one independent person. The independent person cannot be a current elected member or staff member of the local government. Examples of who the independent person could be include:

- former elected members or staff members of the local government;
- former or current elected members (such as a Mayor or Shire President) or staff members of *another* local government;
- a prominent or highly regarded member of the community; or
- a person with experience in the recruitment and selection of CEOs and senior executives.

The independent person would be on the committee on an unpaid basis (except for reasonable travel and accommodation costs which should be covered by the local government) to provide objectivity to the selection and recruitment process.

The independent person and elected members on the panel are responsible for assessing applicants and making a recommendation to council regarding the most suitable applicant.

## Independent human resources consultant

A local government should seek independent advice from a human resources consultant where the council lacks the capacity or expertise to facilitate the recruitment

and selection process (or any aspect of it). A member of the human resources team within a local government should not be involved in the recruitment of a new CEO because if the CEO is employed, he or she would be their employer.

The consultant should not be associated with the local government or any of its council members and can be an independent human resources professional, recruitment consultant, or recruitment agency.

An independent human resources consultant can provide advice to the selection panel on how to conduct the recruitment process or a local government may engage a consultant to support it in undertaking certain aspects of the recruitment process, such as one or more of the following:

- development or review of the JDF;
- development of selection criteria;
- sourcing and development of assessment methods in relation to the selection criteria;
- drafting of the advertisement;
- executive search;
- preliminary assessment of the applications;
- final shortlisting;
- drafting of the questions for interview;
- coordinating interviews;
- writing the selection report;
- arranging for an integrity check and/or police clearance; and
- assisting the council in preparing the employment contract.

The consultant is not to be directly involved in determining which applicant should be recommended for the position.

It is recommended that rigorous checks be conducted on any independent consultants before they are engaged to ensure they have the necessary skills and experience to effectively assist the council. Local government recruitment experience may be beneficial but is not necessary.

The independent human resources consultant must be able to validate their experience in senior executive recruitment and appointments. It is important to note that if the local government uses a consultant or agency to assist in finding applicants, that consultant or agency will require an employment agent licence under the *Employment Agents Act 1976 (WA)*.

A good independent human resources consultant will bring expertise, an objective perspective and additional human resources to what is a complex and time-consuming process. Given the time and effort involved in finding a competent CEO, and the cost of recruiting an unsuitable CEO, there can be a good business case for spending money on an independent consultant.

There is no requirement for local governments to engage an independent human resources consultant to assist with the recruitment of a CEO. If a decision is made to outsource the recruitment process, it is imperative that the council maintains a high



level of involvement in the process and enters into a formal agreement (contract) with the consultant. In order to manage the contract efficiently, and ensure an effective outcome, regular contact with the consultant is required during the recruitment process. As with any contractor engagement, the local government must ensure their procurement and tender processes comply with the Act and the procurement policy of the local government.

### Council's responsibilities

A human resources consultant cannot undertake the tasks for which the council is solely responsible. An independent consultant cannot and should not be asked to:

- Conduct interviews with short-listed applicants: This should be done by the council (this may involve the establishment of a committee consisting of only council members under section 5.8 of the Act). A council may decide that a human resources consultant undertakes the initial shortlisting of candidates, for example, conducting initial interviews and compiling a short-list of applicants for the council to review. Following shortlisting, a consultant can participate by sitting in on the interviews, providing advice on the recruitment and selection process and writing up the recommendations. The consultant may also arrange the written referee reports of applicants.
- Make the decision about who to recruit: Only the council can make this decision, drawing upon advice from the selection panel.
- Negotiate the terms and conditions of employment: The council should conduct the final negotiations (noting that the consultant should be able to provide advice on remuneration constraints and other terms and conditions).

### Creating Diversity

In order to ensure all applicants are given an equal opportunity for success, selection methods need to be consistent and objective. In a structured interview, each applicant should have the opportunity to answer the same primary questions with follow-up questions used to illicit further detail or clarification. Behavioural-based interview questions are objective and gauge the applicants' hard and soft skills, reducing biases in assessment (see examples below).

Basing a selection decision on the results of a number of selection methods can help to reduce procedural shortcomings and ensure the best applicant is chosen. Psychometric, ability and aptitude testing are considered to be valid, reliable and objective. While applicants with extensive experience and reputable education may appear to be more qualified, an objective assessment of each person's ability and personal traits can provide a clearer picture of the applicant.

Where possible, it is recommended that local governments ensure diversity on the selection panel. This may be achieved by ensuring gender, ethnic, age and experiential diversity on the panel. Diversity is also a consideration when selecting an independent person for the selection panel, particularly where there is a lack of diversity on the council. A diverse selection panel will aid in making quality decisions regarding suitable applicants.

Individuals are often unaware of biases they may have. For this reason, it is helpful for the selection panel to undertake training about unconscious biases. Awareness of unconscious biases assists individuals in preventing those biases from interfering in their decision making. For example, if there are considerable discrepancies in the assessment scores between two panel members, discussion will be required to ensure bias has not influenced these scores. Allowing team members to acknowledge and recognise prejudices is essential to managing those biases. The following biases should be addressed:

- “Similar-to-me” effect - if interviewers share the same characteristics with the applicants or view those characteristics positively, they are more likely to score them highly;
- “Halo” effect – interviewers may let one quality (such as race, gender, looks, accent, experience, etc.) positively or negatively affect the assessment of the applicant’s other characteristics.

### Due Diligence

It is essential that the local government ensures that the necessary due diligence is undertaken to verify an applicant’s qualifications, experience and demonstrated performance. This includes:

- verifying an applicant’s qualifications such as university degrees and training courses;
- verifying the applicant’s claims (in relation to the applicant’s character, details of work experience, skills and performance) by contacting the applicant’s referees. Referee reports should be in writing in the form of a written report or recorded and verified by the referee;
- requesting that an applicant obtains a national police clearance as part of the application process; and
- ensuring no conflicts of interests arise by looking to outside interests such as board membership and secondary employment.

A council may wish to contact a person who is not listed as an applicant’s referee, such as a previous employer. This may be useful in obtaining further information regarding an applicant’s character and work experience, and verifying related claims. The applicant should be advised of this and be able to provide written comments to the council.

A search of a media material and whether an applicant has an online presence may also assist in identifying potential issues. For example, an applicant may have expressed views which are in conflict with the local government’s values. This should be made clear in the application information.

To ensure the integrity of the recruitment process, a council must act collectively when performing due diligence.

## Selection

Once the application period closes, the council, selection panel or consultant assesses each application and identifies a shortlist of applicants to be interviewed.

In shortlisting applicants for the interview phase, the selection panel should consider the transferable skills of applicants and how these would be of value in the role of CEO. The selection panel should not overlook applicants who do not have experience working in the local government sector.

It is important that the assessment process is consistent for all applicants. For example, each applicant being asked the same interview questions which are related to the selection criteria and being provided with the same information and completing the same assessments.

Elected members should declare any previous association with an applicant or any potential conflict of interest at the time of shortlisting if they are part of the selection panel. Similarly, if the interviews involve the full council, the elected member should make an appropriate declaration before the interviews commence. If the potential conflict of interest is significant or a member's relationship with an applicant may result in claims of nepotism, patronage or bias, the council may need to consider whether to exclude the elected member from the process. The decision should be documented and recorded for future reference.

Selecting an applicant should be based on merit; that is, choosing an applicant that is best suited to the requirements of the position and the needs of the local government. This involves the consideration and assessment of applicants' skills, knowledge, qualifications and experience against the selection criteria required for the role. As part of the selection process, a council may consider it appropriate for each of the preferred candidates to do a presentation to council.

The appointment decision by the council should be based on the assessment of all measures used, including:

- assessment technique(s) used (e.g. interview performance);
- quality of application;
- referee reports;
- verification and sighting of formal qualifications and other claims provided by the applicant; and
- other vetting assessments used (e.g. police checks, integrity checks, etc.).

## Employment contract

In preparing the CEO's employment contract, the council must ensure the contract includes the necessary provisions required under section 5.39 of the Act and associated regulations, that it meets the requirements set out in relevant employment law and that it is legally binding and valid.

Section 5.39 of the Act provides that a CEO's employment contract must not be for a term exceeding five years. The term of a contract for an acting or temporary position cannot exceed one year.

Further, the employment contract is of no effect unless it contains:

- the expiry date of the contract;
- the performance review criteria; and
- as prescribed under regulation 18B of the Administration Regulations, the maximum amount of money (or a method of calculating such an amount) to which the CEO is to be entitled if the contract is terminated before the expiry date, which amount is not to exceed whichever is the lesser of:
  - the value of one year's remuneration under the contract; or
  - the value of the remuneration that the CEO would have been entitled to had the contract not been terminated.

It is recommended that the council seeks independent legal advice to ensure that the contract is lawful and able to be enforced. In particular, advice should be sought if there is any (even slight) doubt as to the meaning of the provisions of the contract.

Councils should be aware that CEO remuneration is determined by the Salaries and Allowances Tribunal and the remuneration package may not fall outside the band applicable to the particular local government.

The CEO's employment contract should clearly outline grounds for termination and the termination process (refer to the termination guidelines in this document for information on the process of termination). The notice periods outlined in the employment contract should be consistent with Australian employment law.

The council of the local government must approve, by absolute majority, the employment contract and the person they appoint as CEO.

## Appointment

Following the decision of council to approve an offer to appoint, with the contract negotiations finalised and the preferred applicant accepting the offer of appointment, council is required to make the formal and final appointment of the CEO. The council is required to endorse the appointment and approve the CEO's employment contract by absolute majority. The employment contract must be signed by both parties.

The council should notify both the successful individual and the remaining unsuccessful applicants as soon as possible before publicly announcing the CEO appointment.

The successful applicant should not commence duties with the local government as CEO until the employment contract has been signed.

The unsuccessful applicants (including those not interviewed) should be notified of the outcome of their application. It is recommended that the local government creates a template letter for unsuccessful applicants that can be easily personalised with the applicants' details and sent out quickly.

The council should keep a record of their assessment of the unsuccessful applicant(s) and provide the unsuccessful applicant(s) with the opportunity to receive feedback on their application, or interview performance if they were granted an interview. Should

an unsuccessful applicant request feedback, it is recommended that a member of the selection panel provides this. If a recruitment consultant is used, they may undertake this task.

### Confidentiality

The local government should ensure that all information produced or obtained during the recruitment and selection process is kept confidential. This includes applicants and their personal details, assessment, the selection report and outcome of the process. This ensures privacy requirements are met and maintains the integrity of the process.

### CEO induction

Local governments should ensure that they provide the CEO with all of the necessary information on the local government's processes, policies, procedures and systems at the commencement of the CEO's employment.

New CEOs are eligible to participate in the Local Government CEO Support Program which is a joint initiative of the Department and LGPro to provide mentoring and general support to those appointed to the position of CEO in a local government for the first time. The program runs for six to nine months from the time a CEO is appointed and involves the CEO being matched with a mentor that best meets the needs of the CEO.

The program provides the CEO with an opportunity (through meetings and on-going regular communications) to discuss a wide range of issues with their appointed mentor in the strictest confidence. The program is aimed at addressing the individual needs of the CEO. Examples of issues that may be covered include the following:

- Role of the CEO
- Governance
- Strategic and long-term planning
- Legislative framework
- Relationships and dealing with council members
- Risk management
- Resource management
- Managing the business of Council
- Family considerations

## Part 2 – Performance Review

### Principles

The standards regarding CEO performance review are based on the principles of fairness, integrity and impartiality.

#### Performance Review Standard

The minimum standard for performance review will be met if:

- S2.1** Key result areas are specific, relevant, measurable, achievable and time-based.
- S2.2** The key result areas and the performance process are recorded in a written document, negotiated with and agreed upon by the CEO and council.
- S2.3** The CEO is informed about how their performance will be managed and the results of their performance assessment.
- S2.4** The collection of evidence regarding key result areas is thorough and comprehensive.
- S2.5** Assessment is made free from bias and based on the CEO's achievement against key result areas and decisions and actions are impartial, transparent and capable of review.
- S2.6** The council has endorsed the performance review assessment by absolute majority.

### Guidelines

Section 5.38 of the Act provides that, for a CEO who is employed for a term of more than one year, the performance of a CEO is to be reviewed formally at least once in every year of their employment.

In addition to this minimum requirement, it is recommended that the council engages in regular discussions with the CEO regarding their performance about key result areas, progress and ways that the CEO can be supported. Any changes to the CEO's performance agreement such as changes to key result areas should also be discussed, and agreed to, between the council and the CEO, as the matter arises.

#### Employment contract and performance agreement

Section 5.39, of the Act requires the employment contract to specify the performance criteria for the purpose of reviewing the CEO's performance. This will include ongoing permanent performance criteria. A local government may wish to have a separate additional document called a "performance agreement" which includes the

performance review criteria in the employment contract, additional criteria (e.g. the performance indicators in relation to specific projects) and how the criteria will be assessed. The performance agreement should be negotiated and agreed upon by the CEO and the council. The performance agreement may also set out the CEO's professional development goals and outline a plan to achieve these goals.

Key result areas, performance indicators and goals

Setting the performance criteria is an important step. As one of the CEO's key responsibilities is to oversee the implementation of council's strategic direction, it is important to align the CEO's performance criteria to the goals contained in the council's Strategic Community Plan and Corporate Business Plan. Accordingly, as these plans are updated, the CEO's performance criteria should be updated to reflect the changes.

In leading the administrative arm of a local government, the CEO is responsible for undertaking core tasks, the achievement of which will contribute to the effectiveness of the council. These tasks are called key result areas. Key result areas should be set for each critical aspect of the CEO's role. It is important that each key result area is measurable and clearly defined. These could be in relation to:

- service delivery targets from the council's Strategic Community Plan;
- budget compliance;
- organisational capability;
- operational and project management;
- financial performance and asset management;
- timeliness and accuracy of information and advice to councillors;
- implementation of council resolutions;
- management of organisational risks;
- leadership (including conduct and behaviour) and human resource management; and
- stakeholder management and satisfaction.

Key result areas should focus on the priorities of the council and, if appropriate, could be assigned priority weighting in percentages. The council and CEO should set goals as to the target outcome for future achievement in the key result areas. Goals should be specific, measurable, achievable, relevant and time-based.

Following the determination of the key result areas and goals, the council will need to determine how to measure the outcomes in each key result area. Key performance indicators measure the achievement of the key result areas. It is important to relate performance indicators to the selection criteria used in selecting the CEO. For example, if the CEO has been selected due to their financial experience and ability to improve the local government's finances, indicators regarding improved revenue and reduced expenses are obvious starting points.

Considering the context within which the local government is operating is important. For example, if a significant financial event occurs, such a downturn in the economy, financial performance indicators will likely need to be adjusted. It is important that

such contextual factors are given weight and that goals are flexible to allow regular adjustment. Adjustments may be initiated by either the CEO or the council.

Councils need to be realistic in terms of their expectations of a CEO's performance and provide appropriate resources and support to facilitate the achievement of performance criteria.

#### Performance review panel

It is recommended that the council delegates the CEO performance review to a panel (e.g. comprising certain council members and an independent observer). The panel has a duty to gather as much evidence as possible upon which to base their assessments. The role of the review panel includes developing the performance agreement in the first instance, conducting the performance review and reporting on the findings and recommendations of the review to council.

#### Independent consultant

If a council lacks the resources and expertise to meet the expected standard of performance review, the council should engage an external facilitator to assist with the process of performance appraisal and the development of the performance agreement. The local government should ensure that the consultant has experience in performance management and, if possible, experience in local government or dealing with the performance management of senior executives. The consultant should not have any interest in, or relationship with, the council or the CEO.

With guidance from the performance review panel, a consultant can facilitate the following tasks:

- setting performance goals;
- setting key result areas;
- preparing the performance agreement;
- collecting performance evidence;
- writing the performance appraisal report;
- facilitating meetings between the performance review panel;
- assisting with the provision of feedback to the CEO;
- formulating plans to support improvement (if necessary); and
- providing an objective view regarding any performance management-related matters between the concerned parties.

#### Assessing performance

The process of assessing performance should be agreed to by both parties and documented in the employment contract or performance agreement.

It is essential that CEO performance is measured in an objective manner against the performance criteria alone. It is important that reviews are impartial and not skewed by personal relationships between the review panel and the CEO. Close personal relationships between the panel members and the CEO can be just as problematic as extremely poor relationships.



The council should consider any evidence of CEO performance from two perspectives, namely, current CEO performance and future performance if the CEO's current behaviours continue. Evidence of CEO performance may come from an array of sources, many of which the CEO themselves can and should provide to the council as part of regular reporting. These sources include:

- achievement of key business outcomes;
- interactions with the council and progress that has been made towards implementing the council's strategic vision;
- audit and risk committee reports;
- workforce metrics (e.g. the average time to fill vacancies, retention rate, information about why people leave the organisation and staff absence rate);
- incident reports (e.g. results of occupational health and safety assessments, the number and nature of occupational health and safety incident reports, and the number and nature of staff grievances);
- organisational survey results;
- relationships (e.g. with relevant organisations, stakeholder groups, professional networks and the relevant unions); and
- insights from key stakeholders (this could be done by way of a survey to obtain stakeholder input).

It is important that, in addition to looking at the achievement of KPIs, the council considers the following:

- How the CEO has achieved the outcomes. In particular, whether or not their methods are acceptable and sustainable.
- The extent to which current performance is contingent upon current circumstances. Has the CEO demonstrated skills and behaviours to address and manage changes in circumstances which have affected his or her performance?
- What the CEO has done to ensure the wellbeing of staff and to maintain trust in the local government.

The council should consider the attention the CEO has given to ensuring equal employment opportunity, occupational health and safety, privacy, managing potential conflicts of interest, and complying with procurement process requirements.

#### Addressing performance issues

Once the CEO's performance has been assessed, it is essential that any areas requiring attention or improvement are identified, discussed with the CEO and a plan is agreed and put in place to address these. The plan should outline the actions to be taken, who is responsible for the actions and an agreed timeframe.

The performance review panel must decide on an appropriate course of action that will address the performance issue. This may include professional development courses, training, counselling, mediation, mentoring or developing new work routines to ensure specific areas are not neglected. The performance review panel should then arrange for regular discussion and ongoing feedback on the identified performance issues, ensuring improvements are being made.

It is important to keep in mind that a local government falling short of its goals is not always attributable to the CEO. External factors may have resulted in initial performance expectations becoming unrealistic. Failure to meet key result areas does not necessarily mean the CEO has performed poorly and, for this reason, performance and outcome should be considered separately. Where ongoing issues have been identified, the council will need to take a constructive approach and seek to develop the CEO's competency in that area (for example, through an agreed improvement plan).

### Confidentiality

The council should ensure that accurate and comprehensive records of the performance management process are created. Any information produced should be kept confidential.

# Part 3 – Termination

## Principles

The standards for the termination of a local government CEO (other than for reasons such as voluntary resignation or retirement) are based on the principles of fairness and clarity. Procedural fairness is a principle of common law regarding the proper and fair procedure that should apply when a decision is made that may adversely impact upon a person's rights or interests.

### Termination Standard

The minimum standard for the early termination of a CEO's contract will be met if:

- S3.1** Decisions are based on the assessment of the local government's requirements (such as the documented key result areas) and the CEO's performance is measured against these.
- S3.2** Performance issues have been identified and the CEO informed. The council has given the CEO a reasonable opportunity to improve and implement a plan to remedy the performance issues, but the CEO has not subsequently remedied these issues.
- S3.3** Procedural fairness and the principles of natural justice are applied. The CEO is informed of their rights, entitlements and responsibilities in the termination process. This includes the CEO being provided with notice of any allegations against them, given a reasonable opportunity to respond to those allegations or decision affecting them, and their response is genuinely considered.
- S3.4** Decisions are impartial, transparent and capable of review.
- S3.5** The council of the local government has endorsed the termination by absolute majority.
- S3.6** The required notice of termination (which outlines the reason for termination) is provided in writing.

## Guidelines

### Reason for termination

The early termination of a CEO's employment may end due to:

- poor performance;
- misconduct; or
- non-performance or repudiation of contract terms.

There is a difference between poor performance and serious misconduct. Poor performance is defined as an employee not meeting the required performance criteria or demonstrating unacceptable conduct and behaviour at work. It includes:

- not carrying out their work to the required standard or not doing their job at all;
- not following workplace policies, rules or procedures;
- unacceptable conduct and behaviour at work, e.g. speaking to people in a disrespectful manner, not attending required work meetings and telling inappropriate jokes;
- disruptive or negative behaviour at work, e.g. constantly speaking negatively about the organisation;
- not meeting the performance criteria set in the employment contract and/or performance agreement unless these are outside the CEO's control;
- not complying with an agreed plan to address performance issues (a plan for improvement);
- failing to comply with the provisions of the *Local Government Act 1995* and other relevant legislation;
- failing to follow council endorsed policies.

Serious misconduct can include when an employee:

- causes serious and imminent risk to the health and safety of another person or to the reputation or revenue of the local government; or
- behaving unlawfully or corruptly; or
- deliberately behaves in a way that's inconsistent with continuing their employment.

Examples of serious misconduct can include:

- matters arising under section 4(a), (b) and (c) of the *Corruption, Crime and Misconduct Act 2003*;
- theft;
- fraud;
- assault;
- falsification of records;
- being under the influence of drugs or alcohol at work; or
- refusing to carry out appropriate and lawful resolutions of council.

Misconduct is also defined in section 4 of the *Corruption, Crime and Misconduct Act 2003* (WA). Under this Act, misconduct can be either serious or minor and the obligation to notify the Public Sector Commission or the Corruption and Crime Commission is paramount.

Termination on the basis of misconduct is covered by employment law. A local government should take all reasonable steps to consider misconduct allegations including ensuring procedural fairness is applied. It should also seek independent legal, employment or industrial relations advice prior to a termination. A council should seek independent advice generally during the termination process including the relevant employment legislation affecting CEO employment and the application of that legislation in the circumstances. This will ensure that a council complies with employment law during the entire termination process.

To meet the termination standard, the local government is required to endorse the decision to terminate the CEO's employment by way of an absolute majority resolution.

## Opportunity to improve and mediation

If a CEO is deemed to have been performing poorly, the council must be transparent and inform the CEO of this. It is important that the CEO is given an opportunity to remedy the issues within a reasonable timeframe as agreed between the CEO and the council. The council should clearly outline the areas in need of improvement, and with the CEO's input, determine a plan to help the CEO improve. If a plan for improvement is put in place and the CEO's performance remains poor, then termination may be necessary.

Where the concerns or issues relate to problematic working relationships or dysfunctional behaviour, it is recommended that a council engages an independent accredited mediator to conduct a mediation between the parties. A mediation session may be useful in assisting parties to understand and address issues before the situation escalates to a breakdown in the working relationship (which affects the ability of the CEO to effectively perform his or her duties) and the subsequent termination of the CEO's employment.

## Independent review of termination report

The council should prepare a termination report which outlines the reasons for termination, the opportunities and assistance provided to the CEO to remedy the issues, and an explanation of the CEO's failure to remedy the issues. It is recommended that the council arranges for the termination report to be reviewed by an independent person (e.g. a person with legal expertise, local government experience or a human resources consultant) to ensure the council has complied with procedural fairness, and provided adequate opportunities and support to the CEO to assist him or her in remedying the issues which form the basis of the termination. In the interests of fairness, the review should take place promptly and before the termination of the CEO's employment.

## Confidentiality

Local governments should ensure that the termination process is kept confidential. The CEO is to be informed of the grounds for termination and avenues for review of the decision. Notice of termination of employment is required to be given in writing. In addition, where possible, the news of termination of employment should be delivered in person. The CEO should be provided with a letter outlining the reasons for, and date of, the termination of the employment.

Before making any public announcements on the termination of the CEO, a council should ensure that the entire termination process is complete, including that the CEO has been informed in person of the termination.

## Disclaimer

It is outside the scope of these guidelines to provide legal advice, and local governments should seek their own legal advice where necessary. Guidance as to legal requirements and compliance in relation to the termination of employment is provided by the Fair Work Commission at [www.fwc.gov.au](http://www.fwc.gov.au), the Fair Work

Ombudsman at [www.fairwork.gov.au](http://www.fairwork.gov.au) and the Western Australian Industrial Relations Commission at [www.wairc.wa.gov.au](http://www.wairc.wa.gov.au).

## Part 4 – Monitoring and enforcement

To ensure that councils are complying with the standards and to address any alleged non-compliance, a process will need to be established to monitor and enforce the standards.

Feedback is sought on potential models and processes for monitoring and enforcement.

One potential model is for the establishment of an independent Local Government Commissioner. This position would provide a quality assurance role over CEO recruitment and selection, performance review and terminations by ensuring that the minimum standards were met.

In relation to performance review, either the CEO or council could approach the Local Government Commissioner who would have the power to order that a third party be involved in the performance management process if the Commissioner deemed it necessary.

## CEO standards consultation survey

As part of the McGowan Government's commitment to transforming local government in WA, the *Local Government Legislation Amendment Act 2019* introduces model standards covering the recruitment and selection, performance review and early termination of local government Chief Executive Officers (CEOs). These reforms are intended to ensure best practice and greater consistency in these processes among local governments.

It is intended that the standards will be mandatory and inform the drafting of regulations. These will be accompanied by guidelines outlining the recommended practice for local governments undertaking these processes.

This survey is intended to provide the Government with feedback regarding the proposed content of the standards and the guidelines.

Thank you for taking the time to complete this survey.

1. Who are you completing this survey on behalf of?
  - a. Yourself
  - b. An organisation, including a local government, peak body, community organisation or a business
2. What is the name of that organisation?
3. What is your name?
4. What best describes your relationship to local government?
  - a. Resident or ratepayer
  - b. Staff member
  - c. Council member (includes Mayor or President)
  - d. Survey responses are provided on behalf of a local government (council endorsed)
  - e. Peak body
  - f. State Government agency
  - g. Community body
  - h. Other (please specify)
5. What best describes your gender?
  - a. Male
  - b. Female
  - c. Other
  - d. Not applicable/the survey responses are provided on behalf of an organisation
6. What is your age?
  - a. Under 18
  - b. 18-24
  - c. 25-34
  - d. 35-44
  - e. 45-54



- f. 55-64
  - g. 65+
  - h. Not applicable/the survey responses are provided on behalf of an organisation
7. Which local government do you interact with most?
  8. Do you wish for your response to this survey to be confidential?
    - a. Yes
    - b. No
  9. What is your email address?
  10. Have you previously completed a survey or provided a submission regarding the review of the *Local Government Act 1995*?
    - a. Yes
    - b. No
    - c. Unsure
  11. If no, what were your reasons for not previously providing your views to inform the Local Government Act review?
    - a. I was not aware of the Local Government Act review
    - b. I was not interested in providing my views
    - c. I did not have time to provide my views
    - d. Other (please specify)

**Recruitment and selection**

12. How frequently should a council be required to re-advertise the CEO position?
  - a. At the conclusion of the term of the CEO's contract
  - b. Where a person has occupied the CEO position for two (2) consecutive terms
  - c. Where a person has occupied the CEO position for ten (10) consecutive years
  - d. When council determines
  - e. Unsure
  - f. Other (please specify)

13. To what extent do you support the following statement?

“A local government should be required to undertake ‘blind CV recruitment’ (i.e. redacting personal details and any diversity specific information from curriculum vitae) to avoid bias in the early stages of the recruitment process.”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

It is proposed that a council will be required to appoint a selection panel made up of council members to conduct and facilitate the CEO recruitment and selection process.

The selection panel would be responsible for assessing applicants and making a recommendation to council regarding the most suitable applicant.

14. To what extent do you support the following statement?

“The selection panel must include at least one person who is independent of the council to assist the council in selecting the CEO”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

15. If a council is required to have an independent person on the selection panel to assist them in selecting a CEO, who should the independent person be? (please choose one or more of the following options)

<input type="checkbox"/>	A recruitment/human resources consultant
<input type="checkbox"/>	A community member
<input type="checkbox"/>	A person with experience in local government
<input type="checkbox"/>	A person with experience in appointing senior executives
<input type="checkbox"/>	Unsure
<input type="checkbox"/>	Other (please specify)

16. To what extent do you support the following statement?

“If a council is required to have an independent person on the selection panel to assist them in selecting a CEO, the independent person must not be a current council member or staff member of any local government”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

17. Should there be any other restrictions on who the independent person on a selection panel should be?

- a. Yes
- b. No
- c. If yes, please specify

### Performance review

The *Local Government Act 1995* currently requires a council to review the performance of the CEO annually.

18. How frequently should a council review the performance of the CEO?

- a. Annually
- b. Twice annually

- c. Quarterly
- d. Every two years
- e. When council determines a performance review is required

19. To what extent do you support the following statement?

“A local government should be required to establish a performance review panel, which must include at least one person who is independent of the council, to assist the council in assessing the performance of a CEO”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

20. If a council is required to have an independent person assist them in assessing the performance of a CEO as part of a performance review panel, who should the independent person be? (please choose one or more of the following options)

<input type="checkbox"/>	A recruitment/human resources consultant
<input type="checkbox"/>	A community member
<input type="checkbox"/>	A person with experience in local government
<input type="checkbox"/>	A person with experience in appointing senior executives
<input type="checkbox"/>	Unsure
<input type="checkbox"/>	Other (please specify)

21. Should there be any restrictions on who the independent person should be?

- a. Yes
- b. No
- c. If yes, please specify

### Termination

22. To what extent do you support the following statement:

“The legislation should provide a minimum notice period that the council provides to the CEO if the council terminates the CEO’s employment before the expiry date of the employment contact”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

23. If the legislation required council to provide the CEO with a minimum notice period of the early termination of the CEO’s employment, what should the minimum notice period be?

- a. Two (2) weeks
- b. Four (4) weeks
- c. Other (please specify)

## Monitoring and enforcement

To ensure that councils are complying with the standards and to address any alleged non-compliance, a process will need to be established to monitor and enforce the standards.

Feedback is sought on potential models and processes for monitoring and enforcement.

24. Who should be responsible for monitoring and enforcing the CEO standards?

- a. Public Sector Commission or other integrity agency
- b. Department of Local Government, Sport and Cultural Industries
- c. Independent office of Local Government Commissioner
- d. Joint Panel consisting of nominees from the WA Local Government Association (WALGA) and the Local Government Professionals WA (LGPro WA)
- e. Local Government Standards Panel (expanded role)
- f. Other (please specify)

25. To what extent do you support the following statement?

“If a Local Government Commissioner were to be established, local governments should be required to pay a levy to fund its establishment and operation”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

26. What powers should the body responsible for monitoring and enforcing the standards have? (please choose one or more of the following options)

<input type="checkbox"/>	To order a local government to restart a process (recruitment, selection, performance review or termination) or remedy a defect
<input type="checkbox"/>	To order that a third party be involved in the performance review process
<input type="checkbox"/>	To order that a local government engages in mediation or arbitration to resolve a dispute (this could be disputes between council members or between council members and the CEO)
<input type="checkbox"/>	To arbitrate or make a ruling on a matter
<input type="checkbox"/>	To prepare a report on contract termination (for potential referral for industrial relations action)
<input type="checkbox"/>	To provide a report to the Minister for Local Government or the Director General of the Department of Local Government, Sport and Cultural Industries for consideration in relation to powers to suspend, dismiss or order remedial action whether in regards to the entire council or individual council members

<input type="checkbox"/>	To order that a local government seeks professional advice or assistance from an independent person
<input type="checkbox"/>	Unsure
<input type="checkbox"/>	Other (please specify)

27. To what extent do you support the following statement?

“If the body responsible for monitoring and enforcing the CEO standards directed a local government to undertake mediation or arbitration to resolve a dispute, the costs of the dispute resolution should be borne by the local government.”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

28. To what extent do you support the following statement?

“If a council has not complied with the standard for a particular process, they should be required to recommence the process”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

29. To what extent do you support the following statement?

“Local governments should be subject to penalties if they do not comply with the CEO standards”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

30. Do you have any additional comments in relation to the CEO standards?

### **Guidelines accompanying the CEO standards**

The mandatory CEO standards will be accompanied by guidelines outlining the recommended practice for local governments undertaking the processes of recruitment and selection, performance review and early termination of CEOs.

31. How useful are the proposed guidelines?

Extremely useful	Very useful	Moderately useful	Slightly useful	Not at all useful

Please specify why:

32. Do you have any suggestions regarding any changes that need to be made to the proposed guidelines or is there anything else you think should be included in the guidelines? (please specify)
33. Do you have any additional comments in relation to the guidelines?



**Standards and Guidelines for Local Government CEO Recruitment  
and  
Selection, Performance Review and Termination  
Submission**

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## Introduction

The City of Joondalup has been an active and cooperative participant in all legislative and reform reviews, surveys and analysis of the local government sector, including the WA Local Government Association *Systemic Sustainability Study* in 2006 and the Ministerial-initiated voluntary Local Government reform initiative in 2009, Metropolitan Local Government Reform Process 2011-2013; and current Local Government Act review.

In 2017 the State Government announced a review of the *Local Government Act 1995* (the Act) which is the first significant reform of local government conducted in more than two decades. The objective of the review, conducted in phases, is for Western Australia to have a new, modern Act that empowers local governments to better deliver for their communities. In November 2017 the Department of Local Government, Sport and Cultural Industries (the Department) released a discussion paper that is structured around Phase 1 of the review of the Act. Phase 1 focused on:

- making information available online
- meeting public expectations for accountability
- meeting public expectations of ethics, standards and performance
- building capacity through reducing red tape.

At its meeting held on 20 February 2018 (Item CJ012-02/18 refers) Council endorsed the City's submission to the Phase 1 consultation process. In August 2018 the Minister for Local Government, the Hon. David Templeman MLA announced the outcomes and positions of the Phase 1 review consultation process and identified various changes would proceed to the drafting of an Amendment Bill.

In September 2018 the Minister for Local Government further announced Phase 2 of the consultation process and called on Western Australians to help shape the future of local government in their community by having a say on the reform of the Act, which aims to empower local governments to better deliver quality governance and services to Western Australian communities now and into the future.

The Department prepared a series of discussion papers and online surveys for public comment. The discussion papers are focused on the State Government's vision for local governments to be agile, smart and inclusive. Phase 2 of the review was focused on the following key topic areas within three themes:

- Agile
  - Beneficial enterprises.
  - Financial management.
  - Rates, fees and charges.
- Smart
  - Administrative efficiencies / local laws.
  - Council meetings.
  - Interventions (Council Conduct and Governance).
- Inclusive
  - Community engagement.
  - Integrated planning and reporting.
  - Complaints management.
  - Local government elections.

At its meeting held on 19 March 2019 (Item CJ023-03/19 refers) Council endorsed the City's submission to the Phase 2 consultation process.

On 27 June 2019, the *Local Government Legislation Amendment Act 2019* was passed in Parliament which included some of the legislative change around the need for model standards covering the recruitment and selection, performance review and early termination of local government chief executive officers.

In view of this the Department of Local Government, Sport and Cultural Industries (the Department), in consultation with representatives from the Public Sector Commission, the WA Ombudsman, the Western Australian Local Government Association and Local Government Professionals have developed standards and guidelines that will be used to inform the drafting of the required regulations and other supporting documents.

The Department is seeking feedback on the draft standards and accompanying guidelines.

## City of Joondalup comment and position

Through the Phase 1 and Phase 2 consultation processes, the Minister and the Department have stated the review attempts to modernise the Act to empower local governments to better deliver for their communities, as well as to remove red tape and overly burdensome bureaucracy.

In the City's submission related to Phase 1 of the Act review (CJ012-02/18 refers) the following was provided:

*"The selection of the CEO is one of the most crucial decisions to be made by a council. The relationship between council and the CEO is fundamental to the performance of the local government in providing services to its community. Therefore, it is imperative that there is significant input and involvement of the governing body into the selection of the CEO.*

*As part of the City's 2013 response to the Metropolitan Local Government Review Final Report (JSC01-04/13 refers) it was stated that proposals related to State Government oversight for senior local government employee appointments, salary determinations and key performance indicator developments, are unnecessary. Assistance, guidance and support should be the new focus and role of the Department of Local Government, Sport and Cultural Industries, as well as other applicable agencies and commissions.*

*This supports the principle under the Act that the Council appoints and remunerates its CEO, as part of an appropriate corporate employer–employee relationship, who in turn determines and manages the appointment and remuneration of staff (including senior employees). Allowing an external party, within a separate tier of Government, to impose determinations on these activities is considered inappropriate.*

*The Metropolitan Local Government Review Final Report recognised that the State Government should not have direction or control over recruitment and management, but rather, there should be representation from the Public Sector Commission on CEO recruitment panels; in contract negotiations; and performance management. Councils may benefit from assistance with recruitment and selection, but that determination should be made by the individual local government. The support and assistance provided by the Commission may be by way of government documentation used to recruit SES appointments.*

*Improvements in the recruitment process could be undertaken by requiring Council to undertake the following:*

- 1 Agreement to the terms and conditions of the recruitment process.*
- 2 Determination of the key elements of any contract of employment.*
- 3 Determination of the key principles of the key performance indicators for the position.*

*The recruitment process could also be enhanced by the encouragement of Council to seek external professional consulting advice as part of the recruitment process. However, there should be no regulations in relation to the recruitment and selection process beyond what is currently within the legislation. In this way, the option is available to the individual local governments or Council to seek external support rather than being required to adhere to a regulated process.*

*It is considered that local governments already have access to advice and assistance through the WA Local Government Association's Workplace Solutions, which has significant experience and expertise in CEO appointments and performance management. It is suggested that any assistance provided by the Public Sector Commission in recruitment, contract negotiations and performance management be at the discretion of the local government, as is the services of the WA Local Government Association's Workplace Solutions.*

*The determination of competencies, attributes and qualifications will vary and depend upon the individual local government, its size, its location and maturity of its community. While academic qualifications can provide evidence of the capacity of an individual in terms of their intellect, formal qualifications alone are not adequate for someone to undertake the role of a CEO."*

Reference can be made to the City's position adopted as part of its Phase 1 response to the Local Government Act review (CJ012-02/18 refers) which provided the following:

*The City of Joondalup:*

- *SUPPORTS access to the Public Sector Commission providing advice and assistance to local governments in the appointment and performance management of local government Chief Executive Officers and Public Sector Commission representation on relevant selection panels and committees, solely at the discretion of the local government.*
- *SUPPORTS local government Councils improving their recruitment processes by:*
  - *agreeing to the terms and conditions of the recruitment process*
  - *determining the key elements of any contract of employment*
  - *determining the key principles of the key performance indicators of the position.*
- *SUPPORTS local governments having discretion in terms of the involvement of other third parties and experts in the recruitment process.*

Taking into account the above the City provides the following comments and recommendations within this submission in relation to the Department's released discussion paper regarding the *Standards and Guidelines for Local Government CEO Recruitment and Selection, Performance Review and Termination*.

## **PART 1 – RECRUITMENT AND SELECTION**

### **Principles**

The Department proposes that a local government must select a CEO in accordance with the principles of merit, equity and transparency. It must not exercise nepotism, bias or patronage in exercising its powers; nor unlawfully discriminate against applicants. Section 5.40 of the *Local Government Act 1995* (Act) lists a number of general principles of employment that apply to local governments.

Whilst the City supports CEO selection on the principles of merit and equity, it supports transparency only to the point where applicant's private and confidential information is not compromised other than what is lawfully appropriate. It would be appropriate for the Department to provide definitions of these terms in a contemporary work environment sense.

The Department proposes a number of minimum standards for recruitment and selection.

It is considered that minimum standard principles S1.1, S1.2, and S1.4 to S1.10 can be supported.

Principle S1.3 related to the inclusion of at least one independent person on the panel who is not a current elected member or staff member of the local government, not be supported as a mandatory requirement, and the engagement of other third/parties be at the discretion of the local government.

Principle S1.11 requiring that a local government must re-advertise the CEO position after each instance where a person has occupied the CEO position for ten (10) consecutive years, not be supported.

### ***Principle S1.3 – Selection Panel and Independent Person***

The inclusion of at least one independent person on the selection panel who is not a current elected member or staff member of the local government is not supported as a mandatory requirement, and such an appointment should be at the sole discretion of the Council, between whom the CEO and Council have an employer relationship.

Should it be mandated that an independent person(s) be appointed to a selection panel by the Council it is considered the Department needs to give further consideration to:

- the composition of the selection panel (that is the number of members), ensuring that the number of independent persons cannot unduly influence the selection process
- the process by which independent persons are nominated and appointed. An independent person by its very definition might require the Council to openly seek EOIs for the appointment and appoint by Council resolution
- whether the independent person can be appointed as the Presiding Member of the Selection Panel. The City would suggest this would not be appropriate
- how conflicts of interest of current Elected Members with regard to the appointment of independent persons are to be managed
- by what criteria would an independent person demonstrate competence and ability to participate in a recruitment and selection process. Criteria would need to include a demonstration of both training in contemporary recruitment and selection practices and as importantly experience in recruitment and selection at an appropriate level.

### **Principle S1.11 - Re-advertising the CEO Position After Ten Consecutive Years**

It is questioned why it is considered good practice that a local government must re-advertise the CEO position after each instance where a person has occupied the CEO position for ten (10) consecutive years.

In fact, the Department propose the principle but provide no context in the discussion paper for its reasoning and why this might be considered a suitable recruitment practice.

One assumption made by the Department is that the length of separate contracts is a number of which 10 is divisible by. What if for example a CEO was given three x 4 year contracts - meaning that at end of year 10 there was still two years left of a valid contract to run.

It is proposed that this Principle not be supported as:

- there already exists employment law and fixed-term employment contract provisions that would allow the Council and CEO to end both the contractual and employment relationship if lawful and reasonable reasons exist for such an outcome
- there is a risk that CEOs approaching the ten-year mark, who may be excellent performers, may simply apply for another position rather than face the ignominy of having to reapply for their role and perhaps not be appointed
- a recruitment exercise is costly, and if the Council is satisfied with the CEOs performance, regulation should not require this impost
- no other level of government requires this impost on Chief Executive Officers.

#### **Proposed City of Joondalup position:**

The City of Joondalup:

- SUPPORTS Recruitment and Selection minimum standard principles S1.1, S1.2, and S1.4 to S1.10
- Does NOT SUPPORT Recruitment and Selection minimum standard principle S1.3 – *Selection Panel and Independent Person*, as a mandatory requirement, and any independent person(s) appointment should be at the sole discretion of the Council
- ADVISES the Department that should it mandate that an independent person(s) be appointed to a selection panel further consideration needs to be given to:
  - the composition of the selection panel (ie number of members), ensuring that the number of independent persons cannot unduly influence the selection process
  - the process by which independent persons are nominated and appointed
  - Whether the independent person can be appointed as the Presiding Member of the Selection Panel
  - how conflicts of interest of current Elected Members with regard appointment of independent persons are to be managed
  - by what criteria would an independent person demonstrate competence and ability to participate in a recruitment and selection process
  - all persons on the selection panel possessing the required skills in interview and selection process techniques, to protect the Council's interests

- DOES NOT SUPPORT Recruitment and Selection minimum standard principle S1.11 - *Re-advertising the CEO Position After Ten Consecutive Years*
- REQUESTS the Department for Local Government, Sport and Cultural Industries to provide information to clarify and support its position in relation to Recruitment and Selection minimum standard principle S1.11 - *Re-advertising the CEO Position After Ten Consecutive Years*.

## **Guidelines**

The following comments are made in relation to the Guidelines as presented in the discussion paper:

### **General Comment**

It is suggested that:

- definitions of the range of terms used throughout the guidelines is developed to avoid ambiguity
- clarity be provided with regard use of the terms 'local government' and 'Council' and whether they mean the same thing, or refer to the administration or elected body
- if the Department suggests "a member of the human resources team within a local government should not be involved in the recruitment" then who within the local government facilitates/undertakes the employment process, including but not limited to the following:
  - Development of a JDF.
  - Development of selection criteria.
  - Maintaining records in accordance with the State Records Act 2000.
  - Appointing a human resource consultant.
  - Ensuring the management of the recruitment process meets requirements of employment law.
  - Management of conflicts of interest.
  - Reporting to the Council on all CEO employment matters.

### **Recruitment and Selection Process**

It is suggested that the Department clarify what it means by the statement "*To uphold the integrity of the process, the council must resist any attempt to influence the outcome through canvassing or lobbying.*"

The commentary refers to skills and experience which is relevant and suggests that knowledge is added as one of the three acceptable requirements from which selection criteria would evolve from. In addition, in a modern work environment consideration should also be given to the following in the determination of selection process and criteria:

- Capabilities.
- Motivational fit.
- Values and behaviours fit.

It is unclear on how the emphasis on certain selection criteria where that emphasis is time-bound (such as the example used of the development of a recreation centre) is practical, given the tenure of a CEO would most likely extend well beyond the life of a project. Emphasising short term priority has the potential to weight the selection process to a short term need when the employment requirements extend beyond that need. Even emphasising short term criteria as desirable could lead to a similar effect.

### ***Advertising***

The concept of Executive Search as part of attracting the best pool of applicants is supported, however explanation as to how this does not potentially conflict (with emphasis on a perception of conflict) with the principles of merit, equity, nepotism and patronage would be beneficial to be included in the guideline.

### ***Independent Human Resources Consultant***

The following matters are raised in relation to the independent human resources consultant:

- The requirement for an independent human resources consultant to not be associated with a local government requires explanation in terms of does a previous professional engagement of an independent human resources consultant for recruitment services create an association or not.
- The selection criterion for an independent human resources consultant should include that they will undertake due diligence on behalf of the Council.
- It is not considered appropriate that the independent human resources consultant assist the Council in the preparation of the employment contract. In fact, this is somewhat in contradiction of the advice under the section 'Council's Responsibilities' which provides the consultant cannot and should not negotiate the terms and conditions of employment. Legal advice should be sought in relation to the contract.

### ***Creating Diversity***

It is proposed by the Department that the selection panel undertake training about unconscious bias. This is but one element of an effective recruitment and selection process and it would be more beneficial to provide that all persons on the selection panel possessing the required skills in interview and selection process techniques, to protect the Council's interests.

### ***Due Diligence***

It is proposed by the Department that all referee reports be in writing. Best practice would suggest that verbal referee checks are encouraged because:

- the assessor can ask questions that are specific to the candidate and the role requirements (e.g. verify claims made by the candidate in their interview)
- the assessor can follow-up with probing questions to get the information you are looking for
- the impost created on referees having to complete written reports may reduce the ability for applicants to have referees or indeed the willingness of a referee to be forced to



participate in an administratively cumbersome process may well be affected. There is no added benefit or advantage in terms of quality to referee reports being completed in writing.

Any written record should only be the notes of the discussion with the referee, which can be shared with the other assessors and for the recruitment record.

### ***Employment Contract***

The WA Local Government Association and Local Government Professionals developed an agreed joint model contract for Local Government Chief Executive Officers. With this CEO Joint Model Contract, both elected members and local government professionals can know what are the standard conditions and obligations for a local government Chief Executive Officer, as recommended by LG Professionals WA and WALGA. The model contract should be referenced within the Guidelines.

### ***Appointment***

It appears from the Guidelines that the Council is required to approve an offer to appoint and then also endorse the appointment. This is considered to be impractical and bureaucratic to have the Council consider the matter twice.

It is suggested that the Council should be able to approve or resolve to appoint the preferred candidate in accordance with an offer, which may or may not have some endorsed flexibility for negotiation, once only. It would be assumed that as per any employment process there would be some negotiation on acceptable terms and conditions with the preferred applicant prior to Council resolution.

### ***CEO Induction***

It is suggested the Department provide clarity with regard who undertakes the induction process.

#### **Proposed City of Joondalup position:**

The City of Joondalup SUPPORTS the Guidelines in relation to the Recruitment and Selection process in principle, noting the City's comments and queries above.

## **PART 2 – PERFORMANCE REVIEW**

Reference can be made to the City's position adopted as part of its Phase 1 response to the Local Government Act review which provided the following:

*The City of Joondalup:*

- *SUPPORTS access to the Public Sector Commission providing advice and assistance to local governments in the performance management of local government CEOs.*
- *SUPPORTS local government councils developing criteria it considers appropriate in assessing the Chief Executive Officer's performance in his / her role.*
- *SUPPORTS the retention of the current legislative provisions that a Chief Executive Officer's performance be reviewed at least once annually.*
- *SUPPORTS Option 1 - Approved third-party to be involved in the performance review of Chief Executive Officers, noting the City of Joondalup currently utilises the services of a third party in its performance review of its CEO.*

### **Principles**

The Department proposes that the standards regarding CEO performance review are based on the principles of fairness, integrity and impartiality.

The Department proposes a number of minimum standards for performance review. It is considered that minimum standard principles can be supported. It may be beneficial for the Guideline to detail that all performance review processes should be consistent with the terms included in the employment contract.

### **Guidelines**

#### **Key Result Area**

It is suggested that:

- It may be beneficial for the Department to provide clarity with regard whether it is the role CEO Performance Review Committee to collect and review evidence regarding key result areas (being thorough and comprehensive) or is it the role of the CEO and/or independent consultant.
- It is not appropriate to assign priority weightings in percentages for key result areas as it adds complexity to performance management without necessarily adding value or practical impact on results.
- It is only appropriate to relate performance indicators to the selection criteria used in the selection of the CEO for the first twelve months. The selection criteria may not be relevant to the Council's objectives years after recruitment.

### ***Performance Review Panel***

It is suggested that the Department provide clarity regarding the 'independent observer'. Is this an independent person or the independent consultant? If the former an explanation of the purpose of the independent person is required and the process and qualifications for appointment.

It is considered that the Guidelines related to Performance Reviews can be supported.

#### **Proposed City of Joondalup position:**

The City of Joondalup SUPPORTS the Principles and Guidelines in relation to the Performance Review process in principle, noting the City's comments and queries above.

## **PART 3 – TERMINATION**

### **Principles**

The Department proposes that the standards for the termination of a local government CEO (other than for reasons such as voluntary resignation or retirement) be based on the principles of fairness and clarity.

The Department proposes a number of minimum standards for early termination of a CEO's contract. It is considered that minimum standard principles can be supported, however, it is questioned in relation to Principle 3.5 who prepares the termination report, and if it is the Council, why does it endorse its own report, rather than resolve to terminate employment.

### **Guidelines**

#### ***Reason for Termination***

The Department provide a range of examples that may demonstrate unacceptable conduct and behaviour at work, including:

- speaking to people in a disrespectful manner, not attending required work meetings and telling inappropriate jokes;
- constantly speaking negatively about the organisation.

It is considered that these examples are very subjective in nature and should be removed as a reference for those undertaking performance reviews.

#### ***Opportunity to Improve and Mediation***

The Department suggests that where the concerns or issues relate to problematic working relationships or dysfunctional behaviour, it is recommended that a Council engages an independent accredited mediator.

It is considered that use of the term 'recommended' is too strong a term and perhaps the Department consider something like 'mediation might be considered' is more appropriate.

#### **Proposed City of Joondalup position:**

The City of Joondalup SUPPORTS the Principles and Guidelines in relation to the Termination of a Local Government CEO in principle, noting the City's comments and queries above.

## PART 4 – MONITORING AND ENFORCEMENT

To ensure that local governments are complying with the standards and to address any alleged non-compliance, the Department advises that a process will need to be established to monitor and enforce the standards.

Feedback is sought on potential models and processes for monitoring and enforcement.

As per the City's response to the Phase 1 review and as part of the City's 2013 response to the Metropolitan Local Government Review Final Report (JSC01-04/13 refers) proposals related to State Government oversight for senior local government employee appointments, salary determinations and key performance indicator developments, are unnecessary. Assistance, guidance and support should be the new focus and role of the Department of Local Government, Sport and Cultural Industries, and not a compliance based approach which undermines the intent of having guidelines to assist local governments.

The City supports the WALGA comment which acknowledges that the CEO recruitment process needs to be undertaken properly, and legally, and it is for these reasons that the sector advocate for a capacity building approach, with Councils encouraged to engage professional services and advice to ensure the process is undertaken properly.

One potential model proposed by the Department is for the establishment of an independent Local Government Commissioner. This position would provide a quality assurance role over CEO recruitment and selection, performance review and terminations by ensuring that the minimum standards were met. In relation to performance review, either the CEO or Council could approach the Local Government Commissioner who would have the power to order that a third party be involved in the performance management process if the Commissioner deemed it necessary.

Recommendation 29 of the Metropolitan Local Government Reform Panel's Final Report (July 2012) as that a Local Government Commission be established as an independent body to administer and implement the structural and governance reforms recommended by the Panel, and facilitate the ongoing relationship between State and local government. The Panel proposed at the time that a Local Government Commission, combining State and local government representatives reporting to the Premier could help manage the critical relationship between State and local government. While local government is essentially a 'creature of the state', the Commission would go some way towards equalising the power in the relationship. The Commission could negotiate and oversee future changes in the role of local government. It could also oversee the implementation of the Panel's recommendations, including the boundary change process. The Local Government Commission would need an independent chair and members with significant experience in State and local government.

The City, as a result of the final reform report supported a full review of State and local government functions being undertaken by the proposed Local Government Commission as a second stage in the reform process, however this did not eventuate.

It is therefore questioned of the Department what the intended role of a Local Government Commissioner is, given the significant elapse of time since this matter was previously discussed. As such it is suggested that the Department engage with the local government sector to explore the requirement for a Commissioner, or otherwise, and what that role might be.

**Proposed City of Joondalup position:**

The City of Joondalup does NOT SUPPORT the proposal for a Local Government Commissioner until such time as the Department of Local Government, Sport and Cultural Industries engages with the local government sector to explore the requirement for a Commissioner, or otherwise, and what that role might be.



# Draft Submission

## Standards and Guidelines for CEO Recruitment and Selection, Performance Review and Termination

**October 2019**

## About WALGA

The WA Local Government Association (WALGA) is working for Local Government in Western Australia. As the peak industry body, WALGA advocates on behalf of 138 Western Australian Local Governments. As the united voice of Local Government in Western Australia, WALGA is an independent, membership-based organisation representing and supporting the work and interests of Local Governments in Western Australia. WALGA provides an essential voice for 1,222 Elected Members, approximately 22,000 Local Government employees (16,500 Full Time Equivalent's) as well as over 2.5 million constituents of Local Governments in Western Australia.

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## Background

The *Local Government Legislation Amendment Act 2019* will introduce new requirements in relation to CEO recruitment, performance and termination (Sections 5.39A and 5.39B).

The Department of Local Government, Sport and Cultural Industries have released a draft document – *Standards and Guidelines for Local Government CEO Recruitment and Selection, Performance Review and Termination* – for consultation.

While WALGA and other invited parties participated in a working group to develop the document, the draft was released without WALGA's endorsement and there are a number of concerns with the draft that will be expanded upon in this submission. WALGA appreciates the opportunity afforded to participate in the working group process and to make a submission on the draft document.

The Department of Local Government, Sport and Cultural Industries is seeking feedback on the draft document by 6 December 2019. It is important that Local Governments also make submissions to the Department on this draft document to ensure the sector's views are received.

WALGA is seeking feedback on this draft submission by 25 October 2019. WALGA's submission, which will be updated following sector feedback, will then be included in the December State Council Agenda for consideration at November Zone meetings, before being considered at the 4 December meeting of State Council.

## General Comments – Philosophical Approach

WALGA's fundamental guiding principle is that democratically elected Councils are competent, and should be empowered to undertake their role of governing the Local Government's affairs. This is articulated in WALGA's Strategic Plan, which outlines the vision for Local Government as follows:

*Local Governments will be built on good governance, autonomy, local leadership, democracy, community engagement and diversity.*

WALGA's perspective is that Councils should be empowered to do the job they've been entrusted by the community in democratic elections to do. This includes responsibility for employment of a Chief Executive Officer. Further, WALGA believes that the correct approach is to build the capacity of Councils to undertake this function through the provision of professional services, advice and support, and training.

This is not to downplay the challenges associated with employing and managing a Chief Executive Officer. It is fully acknowledged that this one of Council's most challenging tasks.

Given Council has only one employee – the Chief Executive Officer – it is crucial that the Council makes an informed decision when employing a CEO, and has the processes in place to effectively manage the performance of the CEO. As Councillors are often community representatives, who may not be experienced or qualified in contemporary human resource management practices, employment, management and performance appraisal of the CEO may be one of the Council's most significant challenges.

The *Local Government Act 1995* requires that performance criteria for the purpose of reviewing the CEO's performance are established. Similarly, development of these performance criteria are crucial for the Council to get right.

For these reasons, WALGA offers an Elected Member training course on CEO Performance Appraisals, and provides Elected Members with significant advice and assistance through the CEO recruitment and performance appraisal cycle.

WALGA also recommends that Councils engage a specialised recruitment consultant to assist Councils manage the recruitment process.

The development of guidelines to assist Councils through the Chief Executive Officer employment cycle is supported in principle. However, WALGA believes the approach should be based on capacity building, guidance and support, and help where necessary; not based on the development of rules that create a compliance regime which may create uncertainty, unnecessary administration and risk for Local Governments and Chief Executive Officers.

## Specific Feedback

WALGA has concerns relating to some specific aspects of the draft document. These concerns are outlined below.

### Re-advertising the Position after 10 Years

It is unclear why there is a need for the position of Chief Executive Officer to be advertised after 10 years as a matter of course.

If the Council and the Chief Executive Officer are satisfied with the employment relationship, then forcing the position to be advertised will be disruptive, time-consuming, expensive, and counter-productive for the Local Government. Further, it will create uncertainty for the CEO who may be forced to look for alternative employment 'just in case'.

In addition, if the performance management process is undertaken correctly and thoroughly, there should not be any need for the position to be advertised after a timeframe specified in regulations.

Lastly, as Chief Executive Officers are on fixed term contracts, Councils already have the opportunity to consider whether to renew the incumbent's contract.

WALGA's view is that this requirement should be removed from the guidelines, and not included in regulations.

### Selection Panel – Independent Person

It is unclear why an independent person should be included on the selection panel that makes recommendations to Council about the employment of a Chief Executive Officer.

Employment of the Chief Executive Officer is a fundamental role of Council. Including others on the selection panel risks creating uncertainty and ambiguity about the employment relationship.

The requirement to have an independent person on the selection panel is also impractical and may cause processes and decisions to become protracted. There is no guarantee that the independent person will have knowledge or experience in recruitment, Local Government processes, or Local Government Act requirements. This requirement could also add an unnecessary and unreasonable cost to the recruitment process, particularly for Councils in remote locations.

WALGA fully supports and encourages Councils to utilise a qualified recruitment consultant to guide Councils through the process of recruiting a CEO, but this person would not be a decision-making member of the selection panel.

## Creating Diversity Section

WALGA contends that this section should be renamed “Sound Decision Making”, as this is what this section is primarily about.

It is acknowledged that unconscious biases can be a factor in decision making and building awareness of these biases in the guidelines is supported.

## Independent Review of Termination Report

WALGA acknowledges that decisions and rationale relating to termination need to be documented. The principle that Councils should seek advice from an employee relations or legal advisor when terminating the CEO is acknowledged and supported.

It is not clear that requiring independent review of a termination report adds value. Rather, it will add unnecessary administrative time and risk into the decision making process.

## Feedback on Consultation Questions

WALGA provides the following feedback in response to the consultation survey questions.

### Recruitment and Selection

*Question 12 – How frequently should a council be required to re-advertise the CEO position?*

Council, as the employer, should determine when the position of CEO is advertised.

*Question 13 – To what extent do you support that Local Governments should be required to undertake ‘blind CV recruitment’?*

It is acknowledged that ‘blind CV recruitment’ could be a useful tool in some circumstances, but it should not be a requirement. In addition, in the Western Australian Local Government sector, blind CV recruitment would be almost practically impossible because the applicant’s previous employment experience would mean that they would be identifiable. That is, if an applicant listed “CEO at the Shire of \_\_\_\_\_”, their identity could be determined with a very quick internet search.

*Questions 14-17 – Independent Selection Panel Members*

The requirement to have an independent member on the selection panel is not supported.

## Performance Review

*Question 18 – How frequently should a Council review the performance of the CEO?*

There is no rationale for why the current annual requirement is unsatisfactory. Clearly, a Council may have reasons to formally review the CEO's performance more frequently than the minimum annual requirement, and as such, the Council should have the discretion to do so.

*Questions 19-21 – Independent Person on Performance Review Panel*

It is unclear how an independent person on a performance review panel would add any value to the process, given an independent person may have limited knowledge about the CEO's recent performance.

In fact, having a person not involved in the employment relationship involved in the performance review process seems to be contrary to a fair and proper performance review process.

WALGA fully supports Councils utilising an experienced and qualified consultant to facilitate the performance review process, but not to contribute to the substance of the performance review.

## Termination

*Questions 22 and 23 – Termination Notice Periods*

It is noted that notice periods must comply with the National Employment Standards. There needs to be compliance with employment law at a minimum and, as the role of CEO is a senior position, a greater notice period (in the order of three months) is appropriate.

## Monitoring and Enforcement

*Questions 24-30 – Monitoring and Enforcement*

As outlined in the general comments section above, WALGA's preferred approach is one based on capacity building, advice and support, and training.

A compliance based approach undermines the intent of having guidelines to assist Local Governments in their decision making processes, and may lead to risks and unintended consequences.

The consultation questions seem to imply that costs that result from consequences stemming from breaching the standards would be borne by the Local Government: for example, if the

process needed to be redone or there was a dispute. Establishment of a compliance and enforcement framework of this nature seems to be unnecessarily putting public money at risk.

WALGA acknowledges that the CEO recruitment process needs to be undertaken properly, and legally, and it is for these reasons that WALGA is advocating for a capacity building approach, with Councils encouraged to engage professional services and advice to ensure the process is undertaken properly.

*Question 25 – To what extent do you support the statement: If a Local Government Commissioner were to be established, local governments should be required to pay a levy to fund its establishment and operation?*

This appears to be a new idea without any supporting information as to the powers, duties and role of a Local Government Commissioner, and is therefore not something that WALGA can support at this stage.

The idea that Local Governments should be levied to fund an apparatus of the State Government is not supported. This would represent a significant cost shift from the State Government to the Local Government sector, for what appears to be a core regulatory role of the Department of Local Government, Sport and Cultural Industries.

## **Guidelines**

*Questions 31-33 – Utility of the guidelines*

In general, there is useful information in the guidelines that will be of assistance to Councils embarking on a CEO recruitment process. As argued in this submission, WALGA's perspective is that the approach should be based on capacity building, support, advice, and training, and not based on a compliance driven approach.



Department of  
Local Government, Sport  
and Cultural Industries



ATTACHMENT 4  
*Local Government  
Act 1995 Review*  
agile • smart • inclusive



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

# Mandatory Code of Conduct for Council Members, Committee Members and Candidates

## Draft for Consultation



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# Preface

As part of the McGowan Government's commitment to transforming local government in WA, the *Local Government Legislation Amendment Act 2019* introduces a mandatory code of conduct for council members, committee members and candidates. These reforms are intended to ensure that standards of behaviour are consistent between local governments and address community expectations.

This document outlines the proposed Code which will inform the drafting of regulations. This is contained in the grey boxes. The accompanying guidelines provide clarification and guidance in relation to compliance and enforcement of the Code and would be available on the Department's website.

The proposed Code and guidelines have been developed by the Department of Local Government, Sport and Cultural Industries in consultation with representatives from the Public Sector Commission, the Ombudsman, the Western Australian Local Government Association (WALGA) and Local Government Professionals WA (LG Pro). The Department gratefully acknowledges the participation of these representatives.

The Department notes that the content of the Code does not necessarily reflect the views or policies of the organisations or individuals that have been consulted.

Feedback is sought on the proposed Code and guidelines and associated matters.

A survey is available at [www.dlgsc.wa.gov.au/lgareview](http://www.dlgsc.wa.gov.au/lgareview) or you can provide your feedback to [actreview@dlgsc.wa.gov.au](mailto:actreview@dlgsc.wa.gov.au) by **22 November 2019**.

# Mandatory Code of Conduct

## **Preamble**

The purpose of this Code of Conduct (Code) is to guide the decisions, actions and behaviours of council members, committee members and candidates running for election.

As an elected representative, council members govern the affairs and are responsible for the performance of their local government. To do this, council members must demonstrate professional and ethical behaviour to build and strengthen trust in their communities.

A person who has nominated to be a council member is also required to demonstrate professional and ethical behaviour during the election campaign.

In addition to carrying out the duties outlined in the *Local Government Act 1995*, council members and committee members must comply with the provisions in this Code of Conduct in carrying out their functions as public officials. It is the responsibility of council members, committee members and candidates to ensure that they are familiar with, and comply with, this Code at all times.

## Guidelines

The Local Government Act requires that local governments adopt the Code within three months of the amendments taking effect. Until the Code is adopted, the model Code applies.

While local governments are not able to amend Part A or Part C, additional behaviours can be included in Part B that are not inconsistent with the Code.

In considering additional behaviours, the council may give consideration to behaviours that are not currently represented in the Code that it considers are important. This may include introducing a dress standard for members or use of technology, for example.

To adopt the Code, a resolution passed by an absolute majority is required. Once the Code is adopted, it must be published on the local government's official website.

## Part A – Principles

Council members and candidates are expected to adhere to and promote and support the following principles by example. Adhering to these principles will ensure that council members and candidates can comply with the behaviours outlined in Part B or conduct as outlined in Part C. All behaviour should be considered against these principles, whether or not it is covered specifically in Part B or Part C.

### **Personal integrity**

- 1.1 Act with care and diligence and participate in decision making in an honest, fair, impartial and timely manner, considering all relevant information.
- 1.2 Act with honesty, integrity and uphold the concept of natural justice.

- 1.3 Identify, declare and appropriately manage any conflicts of interest in the public interest and the interests of the Council including not accepting gifts that may give the appearance of a conflict of interest or an attempt to corruptly influence behaviour.
- 1.4 Uphold the law, and, on all occasions, act in accordance with the trust placed in council members.
- 1.5 Avoid damage to the reputation of the local government.
- 1.6 Not be impaired by mind affecting substances while performing official duties.

### **Relationships with others**

- 1.7 Treat others with respect, courtesy and fairness.
- 1.8 Maintain and contribute to a harmonious, safe and productive work environment for all.
- 1.9 Respect and value diversity in the workplace and in the community.

### **Accountability**

- 1.10 Base decisions on relevant and factually correct information and make decisions on merit and in accordance with statutory obligations and good governance.
- 1.11 Be open and accountable to the public, represent all constituents and make decisions in the public interest.

## **Guidelines**

The principles outlined in Part A are overarching behaviours that council members, committee members and candidates must take into consideration in their role as public representatives, or potential public representatives.

All council members, committee members and candidates must familiarise themselves with the Code and Guidelines and any relevant policies the local governments have in place.

Council members are generally very active in their communities which may lead to conflicts of interests. To comply with this Code, those conflicts, or perceived conflicts, need to be managed appropriately. While a member may be confident of the integrity of their actions, how the relationship and actions may appear to others must be thought through.

There are many situations that council members, committee members and candidates might find themselves in that could lead to a breach of the Code. Members should seek further guidance and advice on specific situations whenever necessary.

## Part B – Behaviour

Part B sets out the standards of behaviour which enable and empower council members to meet the principles outlined in Part A. Behaviour is expected to be managed at the local level by the local government, so Part B also deals with how complaints are to be managed.

Failure to comply with this Part may give rise to a complaint against a council member's conduct, followed by a subsequent investigation and possible corrective action by the local government. The emphasis should be on an educative role to establish sound working relationships and avoid repeated breaches, rather than punishment.

### **Personal integrity**

- 2.1** Act in line with the principles outlined in this Code when performing official duties.
- 2.2** Attend and participate constructively in council meetings, briefings, relevant workshops and training opportunities.
- 2.3** Respect and comply with all council policies, procedures and resolutions.
- 2.4** Ensure professional behaviour is not compromised by the use of alcohol or drugs.
- 2.5** Use all forms of media, including social media, in a way that complies with this Code.

### **Relationships with others**

- 2.6** Treat other council members, council employees and members of the public with courtesy, respect, honesty and fairness.
- 2.7** Do not bully or harass council staff, other council members or members of the public in any form, including social media.
- 2.8** Deal with the media in a positive, informative and appropriate manner in accordance with the Local Government Act 1995 and relevant local government policies.
- 2.9** While acting as a council member, do not:
  - i. use offensive or pejorative language in reference to another council member, council employee or member of the public; or
  - ii. disparage the character of any council member or employee, or impute dishonest or unethical motives to them in the performance of their duties.
- 2.10** When attending a council or committee meeting, do not:
  - i. behave in an abusive or threatening manner towards another council member or other person attending the meeting;
  - ii. make statements that the person knows, or could be reasonably expected to know, that are false or misleading; or
  - iii. repeatedly disrupt the meeting.
- 2.11** When attending a council or committee meeting:
  - i. comply with the local law that relates to conduct of people at council or committee meetings;

- ii. promptly comply with any direction given by the presiding member at that meeting; and
- iii. immediately cease any conduct that has been ruled out of order by the presiding member in accordance with the local government's local law.

**2.12** Direct all requests for work or actions by council staff to the CEO or the CEO's nominated delegate.

### **Accountability**

**2.13** Make decisions honestly and impartially, considering all available information, legislation, policies and procedures.

**2.14** Take responsibility for decisions and actions.

**2.15** Abide by the decisions of council and publicly support the decisions even if of an alternative view.

**2.16** Adhere to the principles in the:

- i. Occupational Safety and Health Act 1984 (WA);
- ii. Equal Opportunity Act 1984 (WA);
- iii. Racial Discrimination Act 1975 (Cth); and
- iv. Sex Discrimination Act 1984 (Cth).

### **Complaint management**

**2.17** Any person may make a complaint about a council member under this Part within three months of the alleged breach occurring.

**2.18** A breach of this part does not include a matter:

- i. that is resolved by the Presiding Member during a meeting, or
- ii. where a council member complies with a request for remedial action in accordance with the relevant local law.

**2.19** Complaints about an alleged breach should be made to the Mayor or President or the CEO of the local government or nominated delegate.

**2.20** Complaints about an alleged breach by the Mayor or President should be made to the Deputy Mayor or President or a nominated delegate.

**2.21** A complaint may be handled or managed in any manner that council deems appropriate for handling an alleged breach of this section. This includes investigation or dismissal of the complaint. This must be laid out in a council endorsed policy.

**2.22** A complaint may be dismissed as trivial, vexatious or frivolous and accordingly not investigated.

### **Findings**

**2.23** Following an investigation in accordance with rule 2.21, the Council may, by resolution, make a finding of breach or no breach.

**2.24** In accordance with rule 2.23, if a breach is found, the Council may, by resolution:

- i. take no action, or
- ii. prepare an action plan, developed in conjunction with the council member, to address future behaviour.

<b>2.25</b>	An action plan may include the requirement for the council member to undertake training, mediation or counselling or any other actions deemed appropriate by the Council.
<b>2.26</b>	The Council to which the member is elected, may decide, via resolution, to make an allegation of a rule of conduct breach under Part C: <ul style="list-style-type: none"> <li>i. after the third finding of a breach of this Part by the same council member, or</li> <li>ii. where the council member fails to comply with the action plan in accordance with sub-rule 2.24(ii).</li> </ul>
<b>2.27</b>	A matter under sub-rule 2.26(i) cannot be alleged as a Part C breach unless an action plan has been developed in accordance with sub-rule 2.24(ii) for the previous two breaches.
<b>2.28</b>	Written notification of the outcome of an alleged breach under this section must be given to the council member and complainant.
<b>2.29</b>	A written record must be kept of all complaints made under this Part and how they were dealt with.

## Guidelines

Local governments are responsible for taking action against alleged breaches under Part B.

Local governments are to have a policy on how complaints are going to be handled or managed.

Australian/New Zealand Standards for complaints resolution AS/NZs 10002:2018 provides a tool and framework to assist local governments with developing a policy.

Whether or not local governments choose to adopt the Standard is optional, however, the policy must provide a clear outline of the steps that will be taken once a complaint is submitted. The complaint process must also uphold the principles of natural justice.

There are a number of resources for effective complaints handling available on the Ombudsman WA's website [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au)

In developing a policy, the following key matters should be considered.

### **The complaints process**

- The role of the council in the process.
- The extent to which independent persons are involved and their role in the process (complaint lodgement, investigation, findings). Local governments may decide to establish a regional or shared committee to deal with these complaints, for example.
- What types of remedial action are appropriate.
- The form of the action plan.

### **Process for making a complaint**

- The process for a person to make a complaint needs to be clearly outlined in the policy, including whether complaints are required to be in a specific form.
- Complaints should be submitted in writing, with consideration given to a variety of methods, including email, letter or fax.
- The policy should also outline how the complaint is lodged, whether this is via a specific code of conduct complaint email address or a letter addressed to the Mayor or President (or alternative).
- The process should be simple and not act as a barrier to the raising of concerns about elected member behaviour.

### **Acknowledgement of the complaint**

- The policy should include that complaints will be acknowledged and the timeframe for this.
- Complaints should be acknowledged in a timely manner. As part of the acknowledgement process, consideration may be given to providing information on how the complaint will be progressed. This may include providing the complainant with a copy of the complaint handling policy.

### **Responsiveness**

- The policy should outline whether complaints are going to be addressed based on seriousness or impact of the allegation or on order of submission.
- Inclusion of an expected timeframe for the matter to be reviewed is also encouraged.

### **Action**

- Complaints must be dealt with in an equitable, objective, timely and unbiased manner. The principle of natural justice should be applied.
- The policy needs to outline who will make the initial assessment of the complaint. This includes who will make the determination that the complaint is trivial, vexatious or frivolous or worthy of further investigation.
- The policy also needs to address the process for the investigation including:
  - giving adequate opportunity for a right of reply from both parties
  - if a breach is found, what are the actions that could be imposed by council.
- Attachment 1 provides further guidance on possible actions for breaches found against Part B.

### **Action plans**

- Action plans are designed to provide council members with the opportunity to remedy their behaviour.
- The measures to stop the behaviour from continuing are not intended to be a punishment, rather a mechanism to prevent the behaviour from reoccurring.
- The Code requires that the action plan is prepared in conjunction with the relevant council member. This is designed to provide the council member with



the opportunity to be involved in matters such as the timing of meetings or training.

- While Council is required to give the council members the opportunity, not all council members will actively participate in the process.

### **What happens if agreement cannot be reached**

- Circumstances may arise when a Council cannot agree on the outcome of an investigation, or whether an investigation is required to an alleged breach.
- In these situations, Council may decide to engage an independent person to:
  - review the complaint
  - investigate the complaint, or
  - make recommendations on appropriate actions
- The policy should address who will be engaged as an independent person. Local governments may consider sharing the services of an independent person.

## Attachment 1 – possible actions for Part B breaches

<b>Personal integrity</b>		<b>Possible actions</b>
<b>2.1</b>	Act in line with the principles outlined in this Code when performing official duties.	Training
<b>2.2</b>	Attend and participate constructively in council meetings, briefings, relevant workshops and training opportunities.	Training Mediation
<b>2.3</b>	Respect and comply with all council policies, procedures and resolutions.	Training
<b>2.4</b>	Ensure professional behaviour is not compromised by the use of alcohol or drugs.	Counselling
<b>2.5</b>	Use all forms of media, including social media, in a way that complies with this Code.	Training
<b>Relationships with others</b>		
<b>2.6</b>	Treat other council members, council employees and members of the public with courtesy, respect, honesty and fairness.	Training Mediation Apology
<b>2.7</b>	Do not bully or harass council staff, other council members or members of the public in any form, including social media	Training Mediation Apology
<b>2.8</b>	Deal with the media in a positive, informative and appropriate manner in accordance with the <i>Local Government Act 1995</i> and relevant local government policies.	Training
<b>2.9</b>	While acting as a council member, do not: <ul style="list-style-type: none"> <li>i. use offensive or pejorative language in reference to another council member, council employee or member of the public; or</li> <li>ii. disparage the character of any council member or impute dishonest or unethical motives to them in the performance of their duties.</li> </ul>	Training Mediation Counselling Apology
<b>2.10</b>	When attending a council or committee meeting, do not: <ul style="list-style-type: none"> <li>i. behave in an abusive or threatening manner towards another council member or other person attending the meeting;</li> <li>ii. make statements that the person knows, or could be reasonably expected to know, that are false or misleading; or</li> </ul>	Training Mediation Counselling Apology

	iii. repeatedly disrupt the meeting.	
<b>2.11</b>	When attending a council or committee meeting: i. comply with the local law that relates to conduct of people at council or committee meetings; ii. promptly comply with any direction given by the presiding member at that meeting; and iii. immediately cease any conduct that has been ruled out of order by the presiding member in accordance with the local government's local law.	Training Mediation Counselling
<b>2.12</b>	Direct all requests for work or actions by council staff to the CEO or the CEO's nominated delegate.	Training
<b>Accountability</b>		
<b>2.13</b>	Make decisions honestly and impartially, considering all available information, legislation, policies and procedures.	Training
<b>2.14</b>	Take responsibility for decisions and actions.	Training Counselling
<b>2.15</b>	Abide by the decisions of council and publicly support the decisions even if of an alternative view.	Training
<b>2.16</b>	Adhere to the principles in the: i. <i>Occupational Safety and Health Act 1984 (WA)</i> ; ii. <i>Equal Opportunity Act 1984 (WA)</i> ; iii. <i>Racial Discrimination Act 1975 (Cth)</i> ; and iv. <i>Sex Discrimination Act 1984 (Cth)</i> .	Training Mediation

## Part C – Rules of Conduct

Rules of conduct breaches are matters that:

- negatively affect the honest or impartial performance of a council member;
- involve a breach of trust placed in the council member; or
- involve the misuse of information or material.

Alleged breaches of this part can be referred to the Local Government Standards Panel (Standards Panel) in accordance with the *Local Government Act 1995* (the Act). A breach of this Part is a “minor breach”. In the event the Standards Panel makes a finding of breach against a council member, sanctions will be imposed in accordance with the Part 5 Division 9 of the Act.

Nothing in this part removes the obligations placed upon council members and employees (including the CEO) of the local government under the *Corruption, Crime and Misconduct Act 2003*.

### Guidelines

A breach of Part C is considered by the Standards Panel in accordance with the Act. The Standards Panel, which was established in 2007, has the authority to make binding decisions to resolve allegations of minor misconduct. The Standards Panel is independent of the Minister for Local Government and the department.

The process for complaints under Part C is outlined in the Act. Complaints in the first instance are directed to the complaints officer at the local government. The Act provides that the complaints officer is the CEO or another officer with delegated responsibility.

As the Panel does not have investigative powers, findings and decisions are made on the basis of the information it receives. To assist with understanding each Part C rule of conduct, the elements are outlined alongside each. For a finding of breach, the Standards Panel needs to be satisfied that it is more likely than not, (on the balance of probabilities) that a breach of each element has occurred.

## Personal Integrity

<i>Misuse of local government resources</i>	Elements of Rule of Conduct
<p>a. <b>resource</b> is defined to mean tangible and intangible assets, services or other means of supporting the functions of local government, which are owned or paid for by the local government from public money.</p> <p>b. A person who is a council member must not either directly or indirectly use the resources of a local government —</p> <p>i. for the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the <i>Electoral Act 1907</i> or the <i>Commonwealth Electoral Act 1918</i>; or</p> <p>ii. for any purpose other than fulfilling the legal obligations and duties of the council member's office,</p> <p>unless authorised under the Act, by the council or the CEO to use the resources for that purpose.</p>	<p>(a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;</p> <p>(b) the council member directly or indirectly used;</p> <p>(c) resources that belonged to the local government;</p> <p>(d) for the identified electoral purpose or any other purpose other than in their legal role as a council member;</p> <p>(e) without such purpose being authorised under the Act, by the council or the local government's CEO.</p>

<i>Securing personal advantage or disadvantaging others</i>	Elements of Rule of Conduct
<p>c. A person who is a council member must not make improper use of the person's office as a council member —</p> <p>i. to gain directly or indirectly an advantage for the person or any other person; or</p>	<p>(a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;</p> <p>(b) by engaging in the conduct, the person the subject of the complaint made use of the office of a council member (in</p>

<p>ii. to cause detriment to the local government or any other person.</p> <p>d. Rule 3.3 does not apply to conduct that contravenes section 5.93 of the Act or <i>The Criminal Code</i> section 83.</p>	<p>the sense that he or she acted in their capacity as a council member, rather than in some other capacity);</p> <p>(c) when viewed objectively, such use was an improper use of the person's office as council member in that it:</p> <ul style="list-style-type: none"> <li>i. involved a breach of the standards of conduct that would be expected of a person in the position of a council member by reasonable persons with knowledge of the duties, powers and authority of the councillor and the circumstances of the case (by for example, an abuse of power or the doing of an act which the councillor knows or ought to have known that he or she had no authority to do); and</li> <li>ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and</li> </ul> <p>(d) the person engaged in the conduct in the belief that:</p> <ul style="list-style-type: none"> <li>i. <i>[in the case of rule 3.3(i)]</i> an advantage (pecuniary or otherwise) would be gained directly or indirectly for the person or any other person; <u>or</u></li> <li>ii. <i>[in the case of rule 3.3(ii)]</i> detriment (pecuniary or otherwise) would be suffered by the local government or another person;</li> </ul> <p>(e) It is irrelevant whether advantage was actually gained or detriment suffered;</p> <p>(f) The conduct does not fall under section 5.93 of the Act: improper use of information (which would be a serious breach), or section 83 of the Criminal Code (which would be a crime).</p>
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<b><i>Repeated breaches of Part B</i></b>	<b>Elements of Rule of Conduct</b>
<p>e. A breach of Part B of the Code of Conduct is a minor breach if:</p> <ul style="list-style-type: none"> <li>i. it occurs after the council member has been found to have committed 3 or more other breaches of Part B; or</li> <li>ii. the council member fails to comply with the action plan developed after a finding of inappropriate behaviour under Part B;</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>iii. the Council to which the member is elected, decides, via resolution, to make an allegation of a rule of conduct breach under this Part.</li> </ul>	<ul style="list-style-type: none"> <li>(a) the person the subject of the complaint was a council member or candidate both at the time of the conduct and the time when the Standards Panel makes its determination;</li> <li>(b) the council has passed a resolution referring the matter to the Standards Panel;</li> <li>(c) in the case of (i) – <ul style="list-style-type: none"> <li>i. the person has been found to have breached Part B of the code of conduct on at least three occasions;</li> <li>ii. the behaviour the subject of this complaint occurred after a finding of inappropriate behaviour;</li> <li>iii. the person has engaged in behaviour that is a breach of Part B of the code of conduct;</li> <li>iv. an action plan is in place; or</li> </ul> </li> <li>(d) In the case of (ii) – <ul style="list-style-type: none"> <li>i. there was an action plan in place;</li> <li>ii. the action plan resulted from a previous finding of a breach of Part B;</li> <li>iii. the person has not complied with the action plan.</li> </ul> </li> </ul>

## Relationships with employees

<b><i>Prohibition against involvement in administration</i></b>	<b>Elements of Rule of Conduct</b>
<p>3.7 A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the CEO to undertake that task.</p>	<ul style="list-style-type: none"> <li>(a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;</li> <li>(b) the council member took on or was involved or participated in the performance, attempted performance, or part-performance, of a function or responsibility which under the</li> </ul>

<p>3.8 Rule 3.7 does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.</p>	<p>Act or by delegation it is for the local government's CEO to perform or direct; and</p> <p>(c) such taking on, involvement or participation:</p> <ul style="list-style-type: none"> <li>i. contributed (for example, played a part in achieving) something; and</li> <li>ii. did not occur as anything the council member did as part of the deliberations at a council or committee meeting (which may include something the member did as part of their preparation for any such deliberation); and</li> </ul> <p>(d) the local government's CEO did not authorise such taking on, involvement or participation.</p>
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<b>Relations with local government employees</b>	<b>Elements of Rule of Conduct</b>
<p>3.9 In this rule —</p> <p><b>employee</b> means a person as defined in section 5.36 of the Act and any person contracted to provide a service to the local government.</p> <p>3.10 A person who is a council member or candidate must not —</p> <ul style="list-style-type: none"> <li>i. direct or attempt to direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee; or</li> <li>ii. attempt to influence, by means of a threat or the promise of a reward, the conduct of a person who is a local government employee in the person's capacity as a local government employee; or</li> </ul>	<p><b>Rule 3.10(i)</b></p> <ul style="list-style-type: none"> <li>(a) the person the subject of the complaint was a council member or candidate both at the time of the conduct and the time when the Panel makes its determination;</li> <li>(b) the council member or candidate gave or tried or made an effort to give a direction or an order or command;</li> <li>(c) to another person, who is an employee of the relevant local government;</li> <li>(d) to do or not to do something in the other person's capacity as a local government employee; and</li> <li>(e) the direction or attempted direction was not part of anything that the person did as part of the deliberations at a council or committee meeting (which may include something he or she did as part of their preparation for any such deliberation).</li> </ul>



<p>iii. behave in an abusive or threatening manner towards any local government employee.</p> <p>3.11 Rule 3.10(i) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.</p> <p>3.12 If a person, in their capacity as a council member, is attending a council meeting, committee meeting or other organised event, other than at a meeting or part of a meeting that is closed to the public, the person must not, either orally, in writing or by any other means —</p> <ul style="list-style-type: none"> <li>i. make a statement that a local government employee is incompetent or dishonest; or</li> <li>ii. use offensive or objectionable expressions in reference to a local government employee.</li> </ul> <p>3.13 Rule 3.12(i) does not apply to conduct that is unlawful under <i>The Criminal Code</i> Chapter XXXV.</p>	<p><b>Rule 3.10(ii)</b></p> <ul style="list-style-type: none"> <li>(a) the person the subject of the complaint was a council member or candidate both at the time of the conduct and the time when the Panel makes its determination;</li> <li>(b) a council member or candidate tried or made an effort to affect, sway or produce an effect on;</li> <li>(c) the conduct of another person, who is an employee of the relevant local government, in that person's capacity as a local government employee; and</li> <li>(d) the council member or candidate's effort to affect, sway or produce an effect was carried out by means of — <ul style="list-style-type: none"> <li>(i) a threat by the person (for example, the council member's declaration of an intention to inflict punishment, pain or loss on, or to take any action detrimental or unpleasant to, the employee — or on someone, or to something, that the employee cares about — in retaliation for, or conditionally upon, some action or course), or</li> <li>(ii) a promise or undertaking by the person to give the employee something having a value, or to do or not do something where the act or omission concerned has some value or advantage for or to the employee.</li> </ul> </li> </ul> <p><b>Rule 3.10(iii)</b></p> <ul style="list-style-type: none"> <li>(a) the person the subject of the complaint was a council member or candidate both at the time of the conduct and the time when the Panel makes its determination;</li> <li>(b) the person behaved in a manner which was: <ul style="list-style-type: none"> <li>(i) abusive (for example, the council member uses insulting, disparaging belittling or derogatory language about or to the employee); or</li> </ul> </li> </ul>
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	<p>(ii) threatening (for example, the council member's declaration of an intention to inflict punishment, pain or loss on, or to take any action detrimental or unpleasant to, the employee — or on someone, or to something, that the employee cares about — in retaliation for, or conditionally upon, some action or course);</p> <p>(c) the behaviour is directed towards a local government employee.</p> <p><b>Rule 3.12(i)</b></p> <p>(a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;</p> <p>(b) the council member attended a council meeting, committee meeting or other organised event in their capacity as a council member;</p> <p>(c) the council member either verbally, in writing or by some other means, made a statement (for example, a communication or declaration in speech or writing setting forth facts, particulars; etc.); and</p> <p>(d) viewed objectively, the council member's statement (or a sufficiently clear inference from the words used) was that an employee of the council member's local government was incompetent or dishonest.</p> <p>(e) Chapter XXXV of <i>The Criminal Code</i> does not apply.</p> <p><b>Rule 3.12(ii)</b></p> <p>(a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;</p>
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	<ul style="list-style-type: none"> <li>(b) the council member attended a council meeting, committee meeting or other organised event in their capacity as a council member;</li> <li>(b) the council member either verbally, in writing or by some other means, used an expression (for example, any word, phrase or form of speech) which it is more likely than not that a member or members of the public present heard or otherwise became aware of;</li> <li>(c) the expression was an offensive or objectionable expression (for example, an expression that is likely to cause offence or displeasure and is insulting); and</li> <li>(d) the expression was an offensive or objectionable expression in reference to an identified employee of the council member's local government.</li> </ul>
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## Accountability

<i>Unauthorised disclosure of information</i>	Elements of Rule of Conduct
<p>3.14 In this rule —</p> <p><b>closed meeting</b> means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;</p> <p><b>confidential document</b> means a document, or that part of a document, marked by the CEO or a nominated delegate to clearly show that the information is not to be disclosed;</p>	<p><b>Rule 3.15(i)</b></p> <ul style="list-style-type: none"> <li>(a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;</li> <li>(b) the council member disclosed information to someone who at the time was not also a council member of the same local government; and</li> <li>(c) the disclosed information was information the disclosing council member derived from a document that was marked by the relevant local government's CEO, or at the CEO's direction, to clearly show that the information in the document was not to be disclosed; and</li> </ul>

<p><b><i>non-confidential document</i></b> means a document that is not a confidential document or is not marked confidential.</p> <p>3.15 A person who is a council member must not disclose —</p> <ul style="list-style-type: none"> <li>i. information that the council member derived from a confidential document; or</li> <li>ii. information that the council member acquired at a closed meeting other than information derived from a non-confidential document; or</li> <li>iii. personal information as defined in the <i>Freedom of Information Act 1992</i>.</li> </ul> <p>3.16 Sub-rule (3.15) does not prevent a person who is a council member from disclosing information —</p> <ul style="list-style-type: none"> <li>i. at a closed meeting; or</li> <li>ii. to the extent specified by the council and subject to such other conditions as the council determines; or</li> <li>iii. that is already in the public domain; or</li> <li>iv. to an officer of the Department; or</li> <li>v. to the Minister; or</li> <li>vi. to a legal practitioner for the purpose of obtaining legal advice; or</li> <li>vii. if the disclosure is required or permitted by law.</li> </ul>	<ul style="list-style-type: none"> <li>(d) the disclosed information was not information already in the public domain (for example, it was not generally available to all persons) at the time of the disclosure by the disclosing council member, and the disclosure did not occur in any of the ways identified in rule 3.16.</li> </ul> <p><b>Rule 3.15(ii)</b></p> <ul style="list-style-type: none"> <li>(a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;</li> <li>(b) a council member disclosed information to someone who at the time was not also a council member of the same local government; and</li> <li>(c) the disclosed information was information the disclosing council member acquired at a council or committee meeting, or a part of a council or committee meeting, that was closed to members of the public under section 5.23(2) of the Act; and</li> <li>(d) the disclosing council member did not derive the disclosed information from a non-confidential document (that is, a document that was <i>not</i> marked by the local government's CEO, or at the CEO's direction, to clearly show that the information in it was not to be disclosed); and</li> <li>(e) the disclosed information was not information already in the public domain (for example, it was not generally available to all persons) at the time of the disclosure by the disclosing council member, and the disclosure did not occur in any of the ways identified in rule 3.16.</li> </ul>
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**Rule 3.15(iii)**

- (a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;
- (b) the council member disclosed information to someone who at the time was not also a council member of the same local government; and
- (c) the disclosed information was personal information as defined in the *Freedom of Information Act 1992* (for example, name, date of birth, address, or a reference to an identification number or other identifying particular such as a fingerprint or body sample).
- (d) the disclosed information was not information already in the public domain (for example, it was not generally available to all persons) at the time of the disclosure by the disclosing council member, and the disclosure did not occur in any of the ways identified in rule 3.16.

*Freedom of Information Act 1992* defines personal information as:

information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead —

- (a) whose identity is apparent or can reasonably be ascertained from the information or opinion; or
- (b) who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample.

<b>Disclosure of interest</b>	<b>Elements of Rule of Conduct</b>
<p>3.17 In this rule —</p> <p><b>interest</b> means a material interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest.</p> <p>3.18 A person who is a council member and who has an interest in any matter to be discussed at a council or committee meeting attended by the member must disclose the nature of the interest —</p> <ul style="list-style-type: none"> <li>i. in a written notice given to the CEO before the meeting; or</li> <li>ii. at the meeting immediately before the matter is discussed.</li> </ul> <p>3.19 Rule 3.18 does not apply to an interest referred to in section 5.60 of the Act.</p> <p>3.20 Rule 3.18 does not apply if —</p> <ul style="list-style-type: none"> <li>i. a person who is a council member fails to disclose an interest because the person did not know he or she had an interest in the matter; or</li> <li>ii. a person who is a council member fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.</li> </ul> <p>3.21 If, under sub-rule (3.18)(i), a person who is a council member discloses an interest in a written notice given to the CEO before a meeting then —</p>	<ul style="list-style-type: none"> <li>(a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;</li> <li>(b) subject to rule 3.19, the person had a private or personal interest in a matter that is more likely than not a conflict of interest or a bias (apparent or real) that does adversely affect, or might adversely affect the council member’s impartiality in considering the matter, and includes an interest arising from kinship, friendship, membership of an association, or another circumstance;</li> <li>(c) the member attended the council or committee meeting concerned and was present when the matter under consideration came before the meeting and was discussed;</li> <li>(d) the member did not disclose the nature of the relevant interest in the matter in either of the two ways required by Rule 3.18(i) or 3.18(ii);</li> <li>(e) Rule 3.20 does not apply.</li> </ul>

<ul style="list-style-type: none"><li>i. before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and</li><li>ii. at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before a matter to which the disclosure relates is discussed.</li></ul> <p>3.22 If —</p> <ul style="list-style-type: none"><li>i. under sub-rule (3.18)(ii) or (3.20)(ii) a person's interest in a matter is disclosed at a meeting; or</li><li>ii. under sub-rule (3.21)(ii) notice of a person's interest in a matter is brought to the attention of the persons present at a meeting,</li></ul> <p>the nature of the interest is to be recorded in the minutes of the meeting.</p>	
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## Code of Conduct survey

As part of the McGowan Government's commitment to transforming local government in WA, the *Local Government Legislation Amendment Act 2019* introduces a mandatory code of conduct (Code) for all council members, committee members and candidates in local government elections.

These reforms are intended to ensure that standards of behaviour are consistent between local governments and address community expectations.

The proposed Code will inform the drafting of regulations. This will be accompanied by guidelines that provides clarification and guidance in relation to compliance and enforcement with the Code.

This survey is intended to provide the Government with feedback regarding the proposed the content of the Code.

Thank you for taking the time to complete this survey.



1. Who are you completing this survey on behalf of?
  - a. Yourself
  - b. An organisation, including a local government, peak body, community organisation or a business
2. What is the name of that organisation?
3. What is your name?
4. What best describes your relationship to local government?
  - a. Resident or ratepayer
  - b. Staff member
  - c. Council member (includes Mayor or President)
  - d. Survey responses are provided on behalf of a local government (council endorsed)
  - e. Peak body
  - f. State Government agency
  - g. Community body
  - h. Other (please specify)
5. What best describes your gender?
  - a. Male
  - b. Female
  - c. Other
  - d. Not applicable/the survey responses are provided on behalf of an organisation
6. What is your age?
  - a. Under 18
  - b. 18-24
  - c. 25-34
  - d. 35-44
  - e. 45-54
  - f. 55-64
  - g. 65+
  - h. Not applicable/the survey responses are provided on behalf of an organisation
7. Which local government do you interact with most?

8. Do you wish for your response to this survey to be confidential?
  - a. Yes
  - b. No
9. What is your email address?
10. Have you previously completed a survey or provided a submission regarding the review of the *Local Government Act 1995*?
  - a. Yes
  - b. No
  - c. Unsure
11. If no, what were your reasons for not previously providing your views to inform the Local Government Act review?
  - a. I was not aware of the Local Government Act review
  - b. I was not interested in providing my views
  - c. I did not have time to provide my views
  - d. Other (please specify)

## Part A - Principles

**Council members, committee members and candidates are expected to adhere to and promote and support the following principles by example.**

**Adhering to these principles will ensure that council members and candidates can comply with the behaviours outlined in Part B or conduct as outlined in Part C. all behaviour should be considered against these principles, whether or not it is covered specifically in Part B or Part C.**

12. Please indicate your support of the following ***Personal Integrity Principles***

- 1.1 Act with care and diligence and participate in decision making in an honest, fair, impartial and timely manner, considering all relevant information.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

- 1.2 Act with honesty, integrity and uphold the concept of natural justice.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.3 Identify, declare and appropriately manage any conflicts of interest in the public interest and interests of the Council including not accepting gifts that may give the appearance of a conflict of interest or an attempt to corruptly influence behaviour.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.4 Uphold the law, and, on all occasions, act in accordance with the trust placed in council members.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.5 Avoid damage to the reputation of the local government.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.6 Not be impaired by mind effecting substances while performing official duties.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

Do you have any comments on these principles?

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13. Please indicate your support of the following **Relationships With Others Principles**

1.7 Treat others with respect, courtesy and fairness.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.8 Maintain and contribute to a harmonious, safe and productive work environment for all.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.9 Respect and value diversity in the workplace and in the community.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

Do you have any comments on these principles?

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14. Please indicate your support of the following **Accountability Principles**

1.10 Base decisions on relevant and factually correct information and make decisions on merit and in accordance with statutory obligations and good governance.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.11 Be open and accountable to the public, represent all constituents and make decisions in the public.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

Do you have any comments on these principles?

15. Should any additional principles be incorporated in Part A?

## Part B – Behaviour

**Part B sets out the standards of behaviour which enable and empower council members to meet the principles outlined in Part A. Behaviour is expected to be managed at the local level by the local government, so Part B also deals with how complaints are to be managed.**

**Failure to comply with this Part may give rise to a complaint against a council member’s conduct, followed by a subsequent investigation and possible corrective action by the local government. The emphasis should be on an educative role to establish sound working relationships and avoid repeated breaches, rather than punishment.**

16. Please indicate your support for the following *Personal Integrity Behaviours*.

2.1 Act in line with the principles outlined in this Code when performing official duties.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.2 Attend and participate constructively in council meetings, briefings, relevant workshops and training opportunities.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.3 Respect and comply with all council policies, procedures and resolutions.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.4 Ensure professional behaviour is not compromised by the use of alcohol or drugs.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.5 Use all forms of media, including social media, in a way that complies with this Code.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

Do you have any comments on these behaviours?

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17. Please indicate your support for the following ***Relationships with Others Behaviours***.

2.6 Treat other council members, council employees and members of the public with courtesy, respect, honesty and fairness.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.7 Do not bully or harass council staff, other council members or members of the public in any form, including social media.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.8 Deal with the media in a positive, informative and appropriate manner in accordance with the Local Government Act 1995 and relevant local government policies.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.9 While acting as a council member, do not:

- (i) Use offensive or pejorative language in reference to another council member, council employee or member of the public;  
or
- (ii) Disparage the character of any council member or council employee or impute dishonest or unethical motives to them in the performance of their duties.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.10 When attending a council or committee meeting, do not:

- (i) Behave in an abusive or threatening manner towards another council member or other person attending the meeting;

- (ii) Make statements that the person knows, or could be reasonably expected to know, that are false or misleading;
- Or
- (iii) Repeatedly disrupt the meeting

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.11 When attending a council or committee meeting:

- (i) Comply with the local law that relates to conduct of people at council or committee meetings;
- (ii) Promptly comply with any direction given by the presiding member at that meeting; and
- (iii) Immediately cease any conduct that has been ruled out of order by the presiding member in accordance with the local government's local law.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.12 Direct all requests for work or actions by council staff to the CEO or the CEO's nominated delegate.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

Do you have any comments on these behaviours?



18. Please indicate your support for the following **Accountability Behaviours**.

2.13 Make decisions honestly and impartially, considering all available information, legislation, policies and procedures.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.14 Take responsibility for decisions and actions.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.15 Abide by the decisions of council and publicly support the decisions even if of an alternative view.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.16 Adhere to the principles in the:

- (i) *Occupational Safety and Health Act 1984(WA)*;
- (ii) *Equal Opportunity Act 1984(WA)*;
- (iii) *Racial Discrimination Act 1975(Cth)*; and
- (iv) *Sex Discrimination Act 1984 (Cth)*.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

Do you have any comments on these behaviours?

19. Should any additional behaviours be incorporated in Part B?

20. Part B of the Code includes a complaint management process. Should this part include a time period in which complaints must be lodged after the alleged breach occurred?

- No time period
- 1 month
- 3 months
- 6 months
- Other (please specify)

21. Who is the best person for Part B complaints to be directed to?

- Mayor or President
- Deputy Mayor or President
- Presiding member
- Chief Executive Officer
- Nominated local government employee

- Other (please specify)

22. What actions are appropriate for councils to impose if a Part B breach is found?

- Apology
- Training
- Mediation
- Counselling
- Other (please specify)

23. Do you have any suggestions for specific actions that could be incorporated into the guidelines?

24. Should recurrent breaches of behaviour be referred to the Local Government Standards Panel?

- Yes
- No

Please provide a reason(s) for your answer

25. Should Council be required to develop an action plan and give the council member an opportunity to resolve their behaviour before a third complaint is referred to the Standards Panel under Part C?

- Yes
- No
- Other (please specify)

26. How beneficial would it be for local governments to engage an independent person to assist with the review of complaints?

- Extremely useful
- Very useful
- Somewhat useful
- Not so useful
- Not at all useful
- Other (please specify)

27. What should happen if a council cannot agree on an investigation or course of action following an alleged breach of Part B?

- An independent person should be engaged to conduct a review
- The complaint should be dismissed
- The Mayor or President makes the decision
- The CEO makes the decision
- Other (please specify)

## Part C – Rules of Conduct

**Rules of conduct breaches are matters that:**

- **Negatively affect the honest or impartial performance of a council member;**
- **Involve a breach of trust placed in the council member; or**
- **Involve the misuse of information or material.**

**Alleged breaches of this part can be referred to the Local Government Standards Panel (Standards Panel) in accordance with the *Local Government Act 1995* (the Act). A breach of this Part is a “minor breach”.**

36. Do you have any comments or feedback on Part C?

## Guidelines

**Guidelines have been prepared to accompany the Code the Conduct. The guidelines are intended to provide clarification and guidance in relation to complain and enforcement.**

37.Are the guidelines a useful tool to accompany the Code?

- Extremely useful
- Very useful
- Somewhat useful
- Not so useful
- Not at all useful

Please specify why

38.Do you have any suggestions for additional inclusions in the guidelines?



**Mandatory Code of Conduct**

**for**

**Council Members, Committee Members and Candidates**

**Submission**

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## Introduction

The City of Joondalup has been an active and cooperative participant in all legislative and reform reviews, surveys and analysis of the local government sector, including the WA Local Government Association *Systemic Sustainability Study* in 2006 and the Ministerial-initiated voluntary Local Government reform initiative in 2009, and Metropolitan Local Government Reform Process 2011-2013.

In 2017 the State Government announced a review of the *Local Government Act 1995* (the Act) which is the first significant reform of local government conducted in more than two decades. The objective of the review, conducted in phases, is for Western Australia to have a new, modern Act that empowers local governments to better deliver for their communities. In November 2017 the Department of Local Government, Sport and Cultural Industries (the Department) released a discussion paper that is structured around Phase 1 of the review of the Act. Phase 1 focused on:

- making information available online
- meeting public expectations for accountability
- meeting public expectations of ethics, standards and performance
- building capacity through reducing red tape.

At its meeting held on 20 February 2018 (Item CJ012-02/18 refers) Council endorsed the City's submission to the Phase 1 consultation process. In August 2018 the Minister for Local Government, the Hon. David Templeman MLA announced the outcomes and positions of the Phase 1 review consultation process and identified various changes would proceed to the drafting of an Amendment Bill.

In September 2018 the Minister for Local Government further announced Phase 2 of the consultation process and called on Western Australians to help shape the future of local government in their community by having a say on the reform of the Act, which aims to empower local governments to better deliver quality governance and services to Western Australian communities now and into the future.

The Department prepared a series of discussion papers and online surveys for public comment. The discussion papers are focused on the State Government's vision for local governments to be agile, smart and inclusive. Phase 2 of the review was focused on the following key topic areas within three themes:

- Agile
  - Beneficial enterprises.
  - Financial management.
  - Rates, fees and charges.
- Smart
  - Administrative efficiencies / local laws.
  - Council meetings.
  - Interventions (Council Conduct and Governance).
- Inclusive
  - Community engagement.
  - Integrated planning and reporting.
  - Complaints management.
  - Local government elections.

At its meeting held on 19 March 2019 (Item CJ023-03/19 refers) Council endorsed the City's submission to the Phase 2 consultation process.

On 27 June 2019, the *Local Government Legislation Amendment Act 2019* was passed in Parliament which included some of the legislative change outcomes detailed within the Phase 1 consultation process. As such, amendments to the Act provided new Codes and Rules provisions under section 5.103(2) of the Act. This new provision states:

“(2) *The model code of conduct must include –*

- (a) general principles to guide behaviour;*
- (b) requirements relating to behaviour; and*
- (c) the rules of conduct.”*

The draft Model Code of Conduct as proposed by the Department is constructed in three Parts:

- Part A – Principles [Section 5.103(2)(a)]
- Part B – Behaviour [Section 5.103(2)(b)]
- Part C – Rules of Conduct [Section 5.103(2)(c)]

Local governments will not be able to amend Parts A and C, but additional behavioural content may be included in Part B that is not inconsistent with the Model Code.

The Department of Local Government, Sport and Cultural Industries (the Department) is seeking feedback on the draft Code of Conduct (draft Code) and accompanying guidelines.

## City of Joondalup comment and position

In November 2015, the then Department of Local Government and Communities released a consultation paper on a review of the *Local Government (Rules of Conduct) Regulations 2007* and the minor breach disciplinary framework. At that time the proposed changes to the current disciplinary framework was intended to:

- empower local government to better manage the risk of misconduct
- establish a more pro-active complaints management culture
- streamline and simplify the process of dealing with complaints that allege low-level misconduct or that are trivial or vexatious.

At its meeting held on 16 February 2016 (Item CJ013-02/16 refers), The City of Joondalup Council endorsed the City's submission which in the main supported the general intent of the consultation paper, subject to some qualifications.

It is unclear from the current consultation paper whether the existing *Local Government (Rules of Conduct) Regulations 2007* are proposed to be replaced by the model Code, although it would seem to be the case. The *Local Government (Rules of Conduct) Regulations 2007* should be the basis and preferred method of dealing with conduct matters. Nor should a code of conduct apply to committee members, of which aspects of a local government's code, would not apply or indeed be relevant.

One of the other failings of the draft Code is in relation to how it is applied to local government election candidates and committee members as the draft Code seems to be deficient in this regard. Notwithstanding local government elections are heavily regulated processes often requiring citizens to embark on a steep learning curve around the election process and legislative requirements as an election candidate. Many of the current rules in the *Local Government (Rules of Conduct) Regulations 2007*, and indeed the draft Code would not apply to a candidate in an election period. Indeed none of the complaints management processes (detailed in Part B) or the Rules of Conduct (detailed in Part C) refer to candidates in local government elections.

It should be noted that Division 11 of Part 4 of the *Local Government Act 1995* details the range of electoral offences that apply for local government elections and the penalties that apply. Consideration could be given to improving these provisions including the *Local Government (Elections) Regulations 1997* as opposed to requiring candidates to conform to the requirements of the *Local Government (Rules of Conduct) Regulations 2007* or any new Code.

## **PART A – PRINCIPLES**

The consultation paper suggests elected members and candidates are expected to adhere to and promote and support the following principles by example. In view of this a set of principles have been outlined in Part A of the draft Code, which are overarching behaviours that elected members, committee members and candidates must take into consideration in their role as public representatives, or potential public representatives.

It is suggested that adhering to these principles will ensure that elected members and candidates can comply with the behaviours outlined in Part B or conduct as outlined in Part C of the draft Code. It has been suggested that all behaviour should be considered against these principles, whether or not it is covered specifically in Part B or Part C.

The principles suggested in the draft Code include the following:

### **Personal integrity**

- 1.1 Act with care and diligence and participate in decision making in an honest, fair, impartial and timely manner, considering all relevant information.
- 1.2 Act with honesty, integrity and uphold the concept of natural justice.
- 1.3 Identify, declare and appropriately manage any conflicts of interest in the public interest and the interests of the Council including not accepting gifts that may give the appearance of a conflict of interest or an attempt to corruptly influence behaviour.
- 1.4 Uphold the law, and, on all occasions, act in accordance with the trust placed in council members.
- 1.5 Avoid damage to the reputation of the local government.
- 1.6 Not be impaired by mind affecting substances while performing official duties.

### **Relationships with others**

- 1.7 Treat others with respect, courtesy and fairness.
- 1.8 Maintain and contribute to a harmonious, safe and productive work environment for all.
- 1.9 Respect and value diversity in the workplace and in the community.

### **Accountability**

- 1.10 Base decisions on relevant and factually correct information and make decisions on merit and in accordance with statutory obligations and good governance.
- 1.11 Be open and accountable to the public, represent all constituents and make decisions in the public interest.

### **City assessment**

The proposed principles in the draft Code are supported as they provide guidance to the Standards Panel and that of the local government, in determining whether “improper use of office” has occurred, in terms of conduct matters to be investigated by the local government (under Part B of the draft Code) or by the Standards Panel (under Part C of the draft Code).

They are similar to the conduct principles in the existing *Local Government (Rules of Conduct) Regulations 2007*. These principles also reflect the behaviour principles and the personal behaviour requirements detailed in the City's *Code of Conduct for Elected Members, Committee Members and Employees*.

Notwithstanding although the principles detailed in Part A purport to apply to local government election candidates and committee members, there does not seem to be any referencing to either type of person in either Part B or C of the draft Code. The City has previously suggested that a mandatory code of conduct should not apply to committee members as a significant amount of the provisions would not apply or indeed be relevant. A local government's meeting procedures should dictate behavioural matters of committee members, in terms of behaviour, declarations of interest and the like, at meetings.

Furthermore the draft Code also seems to be deficient in regard to its applicability to local government election candidates. Local government elections are heavily regulated processes often requiring citizens to embark on a steep learning curve around the election process and legislative requirements. Many of the current rules in the *Local Government (Rules of Conduct) Regulations 2007*, and indeed the draft Code would not apply to a candidate in an election period. Indeed, none of the complaints management processes (detailed in Part B) or the Rules of Conduct (detailed in Part C) refer to candidates in local government elections.

It should be noted that Division 11 of Part 4 of the *Local Government Act 1995* details the range of electoral offences that apply for local government elections and the penalties that apply. Consideration could be given to improving these provisions including the *Local Government (Elections) Regulations 1997* as opposed to requiring candidates to conform to the requirements of the *Local Government (Rules of Conduct) Regulations 2007* or any new Code.

**Proposed City of Joondalup position:**

The City of Joondalup:

- SUPPORTS the principles detailed in Part A of the draft Code
- DOES NOT SUPPORT the draft Code applying to committee members as:
  - a significant amount of provisions in the draft Code would not apply to a committee member
  - a local government's meeting procedures should be the mechanism for how committee members behave and the conduct to occur at meetings
- SUGGESTS the Department of Local Government, Sport and Cultural Industries further examine what behaviour and conduct rules should apply to local government election candidates, possibly involving changes to the *Local Government (Elections) Regulations 1997* to include conduct matters for all candidates, not just those that are elected to Office or a specific section within the draft Code.

## **PART B – BEHAVIOUR**

Part B of the draft Code sets out the standards of behaviour which enable and empower elected members to meet the principles outlined in Part A. Behaviour is expected to be managed at the local level by the local government, so Part B also deals with how complaints are to be managed, which is to be incorporated into a Council adopted policy.

Failure to comply with this Part may give rise to a complaint against an elected member's conduct, followed by a subsequent investigation and possible corrective action by the local government. The consultation paper suggests the emphasis should be on an educative role to establish sound working relationships and avoid repeated breaches, rather than punishment. The consultation paper detailed the possible actions that could be implemented by a local government where a behavioural breach occurs.

The standards of behaviour proposed are detailed as follows:

### **Personal integrity**

- 2.1 Act in line with the principles outlined in this Code when performing official duties.
- 2.2 Attend and participate constructively in council meetings, briefings, relevant workshops and training opportunities.
- 2.3 Respect and comply with all council policies, procedures and resolutions.
- 2.4 Ensure professional behaviour is not compromised by the use of alcohol or drugs.
- 2.5 Use all forms of media, including social media, in a way that complies with this Code.

### **Relationships with others**

- 2.6 Treat other council members, council employees and members of the public with courtesy, respect, honesty and fairness.
- 2.7 Do not bully or harass council staff, other council members or members of the public in any form, including social media.
- 2.8 Deal with the media in a positive, informative and appropriate manner in accordance with the *Local Government Act 1995* and relevant local government policies.
- 2.9 While acting as a council member, do not:
  - i. use offensive or pejorative language in reference to another council member, council employee or member of the public; or
  - ii. disparage the character of any council member or employee, or impute dishonest or unethical motives to them in the performance of their duties.
- 2.10 When attending a council or committee meeting, do not:
  - i. behave in an abusive or threatening manner towards another council member or other person attending the meeting;
  - ii. make statements that the person knows, or could be reasonably expected to know, that are false or misleading; or
  - iii. repeatedly disrupt the meeting.
- 2.11 When attending a council or committee meeting:
  - i. comply with the local law that relates to conduct of people at council or committee meetings;

- ii. promptly comply with any direction given by the presiding member at that meeting; and
  - iii. immediately cease any conduct that has been ruled out of order by the presiding member in accordance with the local government's local law.
- 2.12 Direct all requests for work or actions by council staff to the CEO or the CEO's nominated delegate.

### **Accountability**

- 2.13 Make decisions honestly and impartially, considering all available information, legislation, policies and procedures.
- 2.14 Take responsibility for decisions and actions.
- 2.15 Abide by the decisions of council and publicly support the decisions even if of an alternative view.
- 2.16 Adhere to the principles in the:
- i. *Occupational Safety and Health Act 1984 (WA)*;
  - ii. *Equal Opportunity Act 1984 (WA)*;
  - iii. *Racial Discrimination Act 1975 (Cth)*; and
  - iv. *Sex Discrimination Act 1984 (Cth)*.

It is suggested the draft Code incorporate the complaints management process in terms of breaches of the behavioural standards listed in Part B. The process is detailed as follows:

- 2.17 Any person may make a complaint about a council member under this Part within three months of the alleged breach occurring.
- 2.18 A breach of this part does not include a matter:
- i. that is resolved by the Presiding Member during a meeting, or
  - ii. where a council member complies with a request for remedial action in accordance with the relevant local law.
- 2.19 Complaints about an alleged breach should be made to the Mayor or President or the CEO of the local government or nominated delegate.
- 2.20 Complaints about an alleged breach by the Mayor or President should be made to the Deputy Mayor or President or a nominated delegate.
- 2.21 A complaint may be handled or managed in any manner that council deems appropriate for handling an alleged breach of this section. This includes investigation or dismissal of the complaint. This must be laid out in a council endorsed policy.
- 2.22 A complaint may be dismissed as trivial, vexatious or frivolous and accordingly not investigated.
- 2.23 Following an investigation in accordance with rule 2.21, the Council may, by resolution, make a finding of breach or no breach.
- 2.24 In accordance with rule 2.23, if a breach is found, the Council may, by resolution:
- i. take no action, or
  - ii. prepare an action plan, developed in conjunction with the council member, to address future behaviour.

- 2.25 An action plan may include the requirement for the council member to undertake training, mediation or counselling or any other actions deemed appropriate by the Council.
- 2.26 The Council to which the member is elected, may decide, via resolution, to make an allegation of a rule of conduct breach under Part C:
- i. after the third finding of a breach of this Part by the same council member, or
  - ii. where the council member fails to comply with the action plan in accordance with sub-rule 2.24(ii).
- 2.27 A matter under sub-rule 2.26(i) cannot be alleged as a Part C breach unless an action plan has been developed in accordance with sub-rule 2.24(ii) for the previous two breaches.
- 2.28 Written notification of the outcome of an alleged breach under this section must be given to the council member and complainant.
- 2.29 A written record must be kept of all complaints made under this Part and how they were dealt with.

Local governments are to have a policy on how complaints are to be handled or managed and the consultation paper suggests the Australian / New Zealand complaints resolution standard (AS/NZ 10002:2018) would be a useful framework to assist local governments to develop a policy. It is suggested the policy should incorporate:

- the complaints process
- the process of making a complaint
- acknowledgement of the complaint
- responsiveness
- action
- action plans
- what happens if agreement cannot be reached.

### **City assessment**

It is considered that while there should be a consistent set of standards of conduct/behaviour for all local governments (that is model code provisions), there should also be the ability to modify certain clauses to suit the local government's culture and values and any particular circumstances it considers are standards that are integral to its professional standing (promotion of accountability and ethical decision-making) as long as these do not contradict the standard model. The consultation paper suggests that this is open for local governments to pursue should they wish to do so, and is therefore supported.

The current disciplinary framework the *Local Government (Rules of Conduct) Regulations 2007* and the Act offers, should continue noting the proposals within the *2016 Local Government (Rules of Conduct) Regulations 2007 and Minor Breach Disciplinary Framework Review* and being cognisant of the City's previous submissions. The current framework would benefit from guidelines and standards that could assist local governments in understanding the intent of the legislation as well as the community in terms of what would be a minor breach under the current regulations. The consultation paper suggests that this will be the case and is therefore supported.

Notwithstanding, as part of its Phase 1 submission for the Local Government Act Review process, Council supported, in part, the following positions within the City's submission:



*“The City of Joondalup:*

- *DOES NOT SUPPORT a streamlined Rules of Conduct Regulations as:*
  - *requiring local government to manage disputes internally risks conflict manifesting between the elected body and the administration*
  - *substantial internal resources would be required to manage such matters not covered by a streamlined approach*
  - *possible claims of bias, favouritism or lack of thoroughness could result.*
- *DOES NOT SUPPORT an outcome-based framework for elected members as the proposals of the 2016 Local Government (Rules of Conduct) Regulations 2007 and Minor Breach Disciplinary Framework Review should be investigated and further refined.*
- *SUPPORTS the recommendations arising from the 2016 Review of the Rules of Conduct for Elected Members Regulations being implemented and being cognisant of the City’s submission on the review.”*

The current consultation paper and model Code does not change the City’s position detailed above. In terms of specific parts detailed within the draft Code, the following observations are offered:

- Clause 2.3 will dilute / restrict an elected member’s ability to consider policies in their decision-making processes as a guide. It is suggested that “comply” should be replaced with “observe”.
- Clauses 2.10 and 2.11 should be matters that are covered under a local government’s meeting procedures local law not within a new Code, as these are behavioural matters relating to meetings. It is noted that the draft rules in Part C of the new model Code have removed the provision that specifies that a contravention of a local law relating to conduct of people at council and committee meetings (that is meeting procedures) has been removed, and it is possible that this should be reintroduced into Part C of the model Code.
- Clause 2.12 should not be included as it is up to an individual local government to determine how elected members make requests for work or actions. As it is currently drafted it could also possibly conflict with the current regulation 10 of the *Local Government (Rules of Conduct) Regulations 2007* (relations with local government employees).

In terms of the complaints management process detailed within the draft Code, the suggested approach could result in deteriorated relationships between the elected body and the administration, especially where there are adverse findings. There could potentially be a lack of consistency in findings and outcomes, and if a complaint is made by a member of the community (of which the result is not to the community member’s desired outcome) criticism of the approach and investigation method could arise, in terms of bias, favouritism or lack of thorough investigative procedure. This in itself could also create dysfunction during Council meetings and inappropriate public questions or statements being raised, should it be required that such matters are reported through to Council, and therefore subject to debate.

Local governments spend considerable internal effort and resources in resolving potential disputes and issues for employees and having local governments to attend to elected member conduct issues, would place additional burden on those internal resources, particularly a CEO's time and effort, as it would be more likely than not be, the CEO having to deal with such matters. One option is for local government to engage the services of an external investigator or mediator; however, this would be a cost to the local government. This has been previously suggested in the City's submissions and should be open to local government to pursue should they wish to do so.

**Proposed City of Joondalup position:**

The City of Joondalup:

- SUPPORTS the "personal integrity" standards detailed in the draft Code, subject to clause 2.3 being amended to read "*Respect and observe council policies, procedures and resolutions*"
- SUPPORTS the "relationships with others" standards detailed in the draft Code, subject to the removal of clauses 2.10 through to 2.12, as such matters should be dealt with in meeting procedures or a local government's operational procedures for managing elected member requests
- SUPPORTS the "accountability" standards detailed in the draft Code
- SUPPORTS IN PRINCIPLE the "complaints management" process detailed in the draft Code, subject to the removal of clauses 2.23 through to 2.27, and the removal of the requirement for a local government to develop a complaints management policy as the complaints management process should be adequately detailed within the draft Code or supported through a standardised and consistent operational guideline applicable to all local governments that is developed by the Department of Local Government, Sport and Cultural Industries.

## PART C – RULES OF CONDUCT

Part C of the draft Code contains the rules of conduct, breaches of which are matters that:

- negatively affect the honest or impartial performance of a council member
- involve a breach of trust in the council member  
or
- involve the misuse of information or material.

The rules of conduct detailed in Part C of the draft Code contain provisions around the following matters:

- Misuse of local government resources.
- Securing personal advantage or disadvantaging others.
- Repeated breaches of Part B.
- Prohibition against the involvement in administration.
- Relations with local government employees.
- Unauthorised disclosure of information.
- Disclosure of interest.

It is proposed that any alleged breach of this part be referred to the Local Government Standards Panel in accordance with the process detailed in the *Local Government Act 1995*.

### **City assessment**

The new rules detailed in Part C of the draft Code in the main reflect the current provisions within the current *Local Government (Rules of Conduct) Regulations 2007*.

In 2015-16 the (then) Department of Local Government and Communities completed a substantial review of the *Local Government (Rules of Conduct) Regulations 2007*, and had undertaken comprehensive consultation with the local government sector. A final report was released in 2016 and the City provided a comprehensive submission regarding the review, which was endorsed at the Council meeting held in February 2016 (Item CJ013-02/16 refers).

<http://www.joondalup.wa.gov.au/files/councilmeetings/2016/Attach11brf090216.pdf>

The implementation of the Department's recommendations remain outstanding, however, represented a significant step in more clearly articulating the rules of conduct for elected members and tightening the rules to avoid technical loopholes and unintended consequences.

The draft Code has to some extent taken on board the proposed amendments articulated in the 2016 Consultation Paper, albeit placed the proposed changes in the guidelines that will assist with the understanding of the new rules in the draft Code. It is suggested in the main that the Department should progress the suggested amendments detailed in the 2016 Consultation Paper, as it would go some way to assist with the interpretation of the rules, as opposed to including them in supporting guidelines, that have no legal effect.

The Department's 2016 Consultation Paper also referenced the inadequate protections that currently exist against bullying or harassing behaviour of elected members against employees including chief executive officers. Both the *Fair Work Act 2009* and the *Occupational Safety and Health Act 1984* have limited relevance to the local government context in terms of the

Council, or individual elected members, not being considered as either employees or employers.

The 2016 Consultation Paper made some suggested amendments to regulation 10 of the current *Local Government (Rules of Conduct) Regulations 2007* including:

- adding a prohibition against behaving in an abusive or threatening manner towards any local government employee, including the CEO (the exemption for meetings is not to apply to this rule)
- adding a prohibition against making repeated or unreasonable demands for information or assistance from a local government employee to an extent that impairs the employee's capacity to complete their designated work responsibilities
- adding a prohibition against attempting to influence the performance appraisal or dismissal of a CEO other than through an authorised process consistent with legal requirements and procedural fairness
- adding a prohibition against personally chastising or reprimanding any local government employee for matters related to the administration of the local government.

Such amendments should be revisited. The other alternative, possibly outside of the scope of this consultation paper is to effect changes to *the Occupational Safety and Health Act 1984*

#### **Proposed City of Joondalup position:**

The City of Joondalup:

- SUPPORTS the conduct rule in relation to the “misuse of local government resources” as detailed in Part C of the draft Code
- SUPPORTS the conduct rule in relation to “securing personal advantage or disadvantaging others” as detailed in Part C of the Draft Code, subject to including the suggested amendments detailed the Department’s proposed amendments detailed in the 2016 *Review of the Local Government (Rules of Conduct) Regulations 2007 and Minor Breach Disciplinary Framework Review*
- SUPPORTS the conduct rule in relation to “repeated breaches of Part B” as detailed in Part C of the Code, subject to the removal of (e)(iii) which relates to Council resolving an allegation of a breach under Part C can be made
- SUPPORTS the conduct rule in relation to “prohibition against involvement on administration” as detailed in Part C of the Draft Code, subject to including the suggested amendments detailed the Department’s proposed amendments detailed in section 7.7 of the 2016 *Review of the Local Government (Rules of Conduct) Regulations 2007 and Minor Breach Disciplinary Framework Review*
- SUPPORTS the conduct rule in relation to “relations with local government employee” as detailed in Part C of the Draft Code, subject to including the suggested amendments detailed the Department’s proposed amendments detailed in section 7.8 of the 2016 *Review of the Local Government (Rules of Conduct) Regulations 2007 and Minor Breach Disciplinary Framework Review*

- SUPPORTS the conduct rule in relation to “unauthorised disclosure of information” as detailed in Part C of the Draft Code, subject to including the suggested amendments detailed the Department’s proposed amendments detailed in section 7.4 of the 2016 *Review of the Local Government (Rules of Conduct) Regulations 2007 and Minor Breach Disciplinary Framework Review*
- SUPPORTS the conduct rule in relation to “disclosure of interest” as detailed in Part C of the Draft Code, subject to including the suggested amendments detailed the Department’s proposed amendments detailed in section 7.11 of the 2016 *Review of the Local Government (Rules of Conduct) Regulations 2007 and Minor Breach Disciplinary Framework Review*
- RECOMMENDS the Department of Local Government, Sport and Cultural Industries’ include within the draft Code those amendments detailed in sections 7.8.2 through to 7.8.5 of its 2016 *Review of the Local Government (Rules of Conduct) Regulations 2007 and Minor Breach Disciplinary Framework Review* in regard to bullying and harassing behaviours of elected members towards employees, including chief executive officers.



# Draft Submission

## Mandatory Code of Conduct for Council Members, Committee Members and Candidates

**October 2019**

## About WALGA

The WA Local Government Association (WALGA) is working for Local Government in Western Australia. As the peak industry body, WALGA advocates on behalf of 138 Western Australian Local Governments. As the united voice of Local Government in Western Australia, WALGA is an independent, membership-based organisation representing and supporting the work and interests of Local Governments in Western Australia. WALGA provides an essential voice for 1,222 Elected Members, approximately 22,000 Local Government employees (16,500 Full Time Equivalent's) as well as over 2.5 million constituents of Local Governments in Western Australia.

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## Background

The *Local Government Legislation Amendment Act 2019* will introduce new requirements in relation to Mandatory Codes of Conduct for Council Members, Committee Members and Candidates for Local Government Elections (Part 5, Division 9 as amended by the *Local Government Legislation Amendment Act 2019*).

The Department of Local Government, Sport and Cultural Industries have released a draft document – *Mandatory Code of Conduct for Council Members, Committee Members and Candidates* – for consultation.

While WALGA and other invited parties participated in a working group to develop the document, the draft was released without WALGA's endorsement and there are a number of concerns with the draft that will be expanded upon in this submission. WALGA appreciates the opportunity afforded to participate in the working group process and to make a submission on the draft document.

The Department of Local Government, Sport and Cultural Industries is seeking feedback on the draft document by 6 December 2019. It is important that Local Governments also make submissions to the Department on this draft document to ensure the sector's views are received.

WALGA is seeking feedback on this draft submission by 25 October 2019. WALGA's submission, which will be updated following sector feedback, will then be included in the December State Council Agenda for consideration at November Zone meetings, before being considered at the 4 December meeting of State Council.

## General Comments - Councillor Conduct

WALGA has long led its Member Local Government's advocacy for high standards of behaviour by those who are democratically elected to represent the people within their district, and personal responsibility for the consequences when there is a lack of it.

WALGA commenced lobbying for official conduct legislation in 2002, to enable action to be taken against individuals rather than an entire Council. The Sector held the view that Council dismissals, such as occurred at the City of Cockburn (2000), City of South Perth (2002) and City of Joondalup (2005) could possibly have been averted if powers were available to deal with individual Elected Member's behaviour.

The Sector's advocacy for official conduct legislation correlated with a shared frustration that Codes of Conduct, a compulsory requirement of Section 5.103(3) of the *Local Government Act 1995* ('the Act') were unenforceable when behaviours departed from expressed standards. This was due to the absence at that time of a disciplinary framework in the Act to deal with misbehaviour and misconduct by individual council members.

WALGA conducted extensive consultation with the Sector over a number of years, leading to promulgation of the *Local Government (Official Conduct) Amendment Act 2007*, amending the Act to introduce minor, serious and recurrent breach allegation complaint processes, and the commencement in October 2007 of the *Local Government (Rules of Conduct) Regulations* ('the Regulations').

More recently, the Act was amended to introduce powers enabling the Minister for Local Government to suspend or dismiss individual council members failing in their duties or behaving in an egregious manner if '...seriousness or duration of that failure or conduct make it inappropriate for the council member to remain a member of the council.'<sup>1</sup> The amendments contained in the *Local Government (Suspension and Dismissal) Act 2018* commenced in November 2018.

The Rules of Conduct Regulations were reviewed in 2010 and 2016. WALGA acknowledges past amendments improving operational efficiency e.g. Standards Panel may refuse to deal with frivolous, trivial, vexatious etc. allegations,<sup>2</sup> and recent amendments that extend confidentiality provisions<sup>3</sup> and providing the Standards Panel with discretion to refer parties to participate in mediation.<sup>4</sup>

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<sup>1</sup> *Local Government Amendment (Suspension and Dismissal) Bill 2018* Explanatory Memorandum at Page 1.

<sup>2</sup> Section 5.110(3A) of 2016

<sup>3</sup> Section 5.123 of 2019

<sup>4</sup> Section 5.110(3B) of 2019

## Bringing Codes and Rules Together; Uncoupling Codes of Conduct for Council Members and Employees

The Mandatory Code of Conduct will be a departure from the present legislative form that separates Codes of Conduct and the Rules of Conduct Regulations.

It will also depart from the present requirement to adopt one Code of Conduct that is to be observed by council members, committee members and employees.

The new section 5.51A, to commence at another time, will require the CEO to prepare and implement a Code of Conduct to be observed only by employees, aligning with the Sector's view that all matters relating to employees be separated from Council involvement and be contemplated within the CEO's functions under Section 5.41(g) of the Act.<sup>5</sup>

An additional significance is that the Mandatory Code of Conduct will apply to Local Government election candidates in the same way it applies to council members, and an alleged breach of the Code of Conduct by a candidate can only be referred to the Local Government Standards Panel if elected.<sup>6</sup>

This aligns with the Sector's advocacy that a Code of Conduct should apply to candidates<sup>7</sup> and the proposal that any inappropriate behaviour during the election cycle should result in the successful candidate being held accountable under the Rules of Conduct Regulations.<sup>8</sup>

The Department's Draft for Consultation provides further guidance<sup>9</sup> on the new Code:

- *The Act requires that local governments adopt the Code within three months of the amendments taking effect. Until the Code is adopted, the model Code applies.*
- *While local governments are not able to amend Part A or Part C, additional behaviours can be included in Part B that are not inconsistent with the Code.*
- *In considering additional behaviours, the council may give consideration to behaviours that are not currently represented in the Code that it considers are important. This may include introducing a dress standard for members or use of technology, for example.*
- *To adopt the Code, a resolution passed by an absolute majority is required. Once the Code is adopted, it must be published on the local government's official website.*

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<sup>5</sup> 'be responsible for the employment, management supervision, direction and dismissal of other employees'

<sup>6</sup> Local Government Legislation Amendment Bill 2019 Explanatory Memorandum at Page 2.

<sup>7</sup> WALGA State Council Minutes Review of 2011 Local Government Elections' Ref. Resolution 24.2/2012

<sup>8</sup> WALGA State Council Minutes 'Review of 2013 Local Government Elections' Ref. Resolution 44.2/2014

<sup>9</sup> See 'Guidelines' at Page 3

## Specific Feedback

The following pages provide a commentary on the Draft for Consultation document ('the Draft') released by the Department of Local Government, Sport and Cultural Industries. The Draft refers to a 'Mandatory' Code of Conduct whereas amendments to the Local Government Act refer to a 'Model' Code of Conduct. This paper will use the term 'Model' throughout the following commentary.

### Construction of the Model Code

Codes and Rules will be brought together under Section 5.103(2) as amended by the Local Government Legislation Amendment Act 2019:

- (2) *The model code of conduct must include -*
- (a) general principles to guide behaviour;*
  - (b) requirements relating to behaviour; and*
  - (c) the rules of conduct.*

The Draft informs that the Model Code of Conduct is to be constructed in three Parts:

- **Part A** – Principles [Section 5.103(2)(a)]
- **Part B** – Behaviours [Section 5.103(2)(b)]
- **Part C** – Rules of Conduct [Section 5.103(2)(c)]

Local Governments will not be able to amend Parts A and C, but additional behavioural content may be included in Part B that is not inconsistent with the Model Code.

### Part A - Principles

The Preamble to the Model states that 'the purpose of this Code is to guide the decisions, actions and behaviours of council members, committee members and candidates.'

Part A sets out the Principles to be contained in the new Model Code under the headings 'Personal Integrity', 'Relationships with others' and 'Accountability'. This expands upon the 'General principles that guide the behaviour of council members' currently found under Regulation 3 of the *Local Government (Rules of Conduct) Regulations* and are intended to support Part B – Behaviours, and Part C – Rules of Conduct.

## Part B - Behaviours

### I. Application

It is noted that neither Part B nor Part C of the Model apply to the behaviours of committee members or candidates. No information is provided to clarify why only council members are subject to Parts B and C nor any rationale for the exclusion of committee members and candidates from behavioural standards and Rules of Conduct, particularly noting Section 5.103(3)(b), as amended, states:

- (3) *The model code of conduct may include provisions about how the following are to be dealt with –*
- (b) *alleged breaches of the rules of conduct by committee members*

The Minister for Local Government, Hon. David Templeman, when introducing the *Local Government Legislation Amendment Bill 2019* to Parliament in the Second Reading Speech, specified the application of the Code to candidates, in an effort to improve behaviour during an election period, stating:

*“Alleged breaches of the rules of conduct during the election campaign will be progressed when the candidate is elected.”<sup>10</sup>*

**WALGA recommends seeking comment from the Department of Local Government, Sport and Cultural Industries on the intended application of Part B – behavioural standards, and Part C – Rules of Conduct to committee members and candidates.**

### II. New Complaints Provision

Section 5.103(3)(a) will introduce the discretion for the Model Code of Conduct to deal with alleged breaches of requirements relating to behaviour. This is a significant amendment as the *Local Government Act 1995* has not previously mandated a complaints process relating to behavioural content of a Code of Conduct, but nor has it imposed any restriction.

Under the Model Code, an alleged breach of a Rule of Conduct will continue to be referred to the Local Government Standards Panel. Part B, Rule 2.17 of the Model sets out that Local Governments will be required to deal with allegations made by ‘any person’ of a behavioural breach.

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<sup>10</sup> Extract from Hansard, Legislative Assembly, March 2019 at p1310d to 1312a

Some Local Governments have incorporated in their current Code of Conduct a process for dealing with a behavioural breach that permits ‘any person’ to make a complaint; the majority of Local Governments have not.

The City of Joondalup<sup>11</sup> and City of South Perth<sup>12</sup> are examples of Local Governments that exercised discretion under general competence powers to incorporate a complaints process in their adopted Code of Conduct. No information is currently available on the frequency or management of complaints of a behavioural breach under current Codes of Conduct.

**WALGA seeks comment from Members experienced in dealing with breach allegations relating to their current Code of Conduct to assist with building perspective on processes and consequences associated with managing behavioural breach allegations.**

### III. Complaint Management

Rules 2.17 to 2.22 set out the Complaint Management standards, with Rule 2.21 requiring development of a Council-endorsed policy to guide the process. The associated Guidelines provide additional information on tools and resources to assist with policy development, complaints management and resolution. Attachment 1 provides a matrix of possible actions where there is finding of a behavioural breach.

**WALGA seeks comment on the proposed Complaint Management process.**

### IV. ‘Rules’

Throughout Part B, the numbered provisions are referred to as ‘Rules’. This has the potential to create confusion with the already-established terminology familiar to the Sector of ‘Rules of Conduct’, which form Part C.

**WALGA recommends a separate nomenclature for numbered provisions in Part B (i.e. ‘Item’ or ‘Clause’) to avoid any potential for confusion between Part B and Part C, particularly when breach allegations arise.**

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<sup>11</sup> ‘City of Joondalup Code of Conduct for Employees, Elected Members and Committee Members’ at Page 21

<sup>12</sup> ‘City of South Perth Code of Conduct’ at Page 9

## **Part C – Rules of Conduct**

As previously discussed, Part C of the Model Code only references council members.

It is noted there are numerous, self-evident typographical errors throughout Part C (i.e. inconsistent referencing and numbering) and it is presumed the Department is aware and will remedy where necessary.

The Rules of Conduct replicate for the most part, the existing provisions from the current Rules of Conduct Regulations. The Model Code adds commentary by including 'Elements of Rule of Conduct'. It is not known whether these Elements will have any influence on the deliberations of the Local Government Standards Panel in the event of a breach allegation under Part C.

**WALGA seeks comment on whether the 'Elements of Rule of Conduct' content adds value or assists council members to understand their responsibility to observe Rules of Conduct.**

## **Misuse of Local Government Resources - Regulation 8 of the current Local Government (Rules of Conduct) Regulations**

The Model Code creates a definition of the term 'resource' which does not appear in the current Rules of Conduct:

*'resource is defined to mean tangible and intangible assets, services or other means of supporting the functions of local government, which are owned or paid for by the local government from public money'*

It is not stated why there is a need to define 'resource' specifically, the potential impact this definition may have upon determining a breach allegation<sup>13</sup> or whether the common dictionary definition is known to be ineffective - *'a stock or supply of money, materials, staff, and other assets that can be drawn on by a person or organization in order to function effectively.'*<sup>14</sup>

## **Securing Personal Advantage of Disadvantaging Others – Regulation 7 of the current Local Government (Rules of Conduct) Regulations**

The Model Code is consistent with the current Regulations.

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<sup>13</sup> Section 6 of the *Interpretation Act 1984* (WA) applies – 'Definitions in a written law, application of'

<sup>14</sup> Oxford English Dictionary

## Repeated Breaches of Part B – Not currently Regulated

This new provision will provide an accountability measure where a council member continually breaches the behavioural requirements of Part B of the Model Code and appears to face value to have merit.

Item (iii) of this Rule will require thoughtful consideration, as it requires the Council to make a determination by resolution before a council member, who is found to have committed three or more breaches under Part B, can be referred to the Local Government Standards Panel:

*‘(and) iii. the Council to which the member is elected, decides, via resolution, to make an allegation of a rule of conduct breach under this Part.’*

WALGA notes that this new provision did not appear in early drafts of the Model Code and therefore was not considered at the Working Group convened by the Department of Local Government, Sport and Cultural Industries.

## Prohibition against Involvement in Administration – Regulation 9 of the current Local Government (Rules of Conduct) Regulations

The Model Code is consistent with the current Regulations.

## Relations with Local Government Employees - Regulation 10 of the current Local Government (Rules of Conduct) Regulations

The Model Code creates a definition of the term ‘employee’ which does not appear in the current Rules of Conduct. This definition references Section 5.36 of the Act, whereas the Act defines ‘employee’ under Section 1.4.

The Model Code proposes to add a further prohibition under Item (iii) that does not currently appear in the Rules of Conduct:

*‘behave in an abusive or threatening manner towards any local government employee’*

## Unauthorised Disclosure of Information - Regulation 6 of the current Local Government (Rules of Conduct) Regulations

The Model Code proposes to add a further prohibition under Item (iii) that does not currently appear in the Rules of Conduct:

*‘personal information as defined in the Freedom of Information Act 1992’*

The remainder of the Model Code is consistent with the current Regulations.



## Disclosure of Interest - Regulation 11 of the current Local Government (Rules of Conduct) Regulations

The Model Code amends the definition of the term 'interest'. It currently reads:

*'interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association'*

It is amended to read:

*'interest means a material interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest'*

It is unclear why it is proposed to amend this definition, given that the terms '*kinship, friendship or membership of an association*' provide useful reference points that presently help council members to understand their responsibility to declare this type of interest.

## Contravention of certain Local Laws - Regulation 4 of the current Local Government (Rules of Conduct) Regulations

This provision is now included in Part B of the Model Code at 2.10 and 2.11.

**WALGA seeks comment on the proposed Part C Model Code provisions.**