

Council and committee members' code of conduct

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Introduction

The Local Government (Code of Conduct) Regulations 2003 provides for minimum standards of ethical and professional conduct by elected members and others who may be committee members (as defined in ss 5.8–5.9 of the *Local Government Act 1995*) in local government.

Elected members and committee members should behave consistently in a manner that meets or exceeds these minimum standards and reflects the high level of conduct the community is entitled to expect of them. In this way, public confidence in the system of local government is enhanced.

The minimum standards may be prescribed in a code of conduct regulation in the future and if so will be mandatory and enforceable. Whilst individual local governments have the capacity to add additional standards of behaviour to the regulations, these remain discretionary and are not enforceable.

It is a fact of any working relationship that conflicts will arise from time to time between individuals. Where minor breaches to the code of conduct occur, and where it remains in the public interest, elected members and committee members are encouraged in the first instance to seek to resolve matters through the internal review processes within their own local government.

Future regulations may prescribe minimum standards and establish an external complaints management process through a local government disciplinary framework to deal with serious and enforceable breaches.

Part 1 – General provisions

Scope

1. An elected member or committee member must observe the City of Fremantle Council and Committee Members' Code of Conduct (code of conduct) whenever he or she conducts the business of the local government.
2. Where an elected member or committee member acts as a representative of the local government or on any other body, he or she must comply with the code of conduct or any relevant law.

General obligations

3. An elected member or committee member must—
 - (a) act with honesty and integrity
 - (b) treat others with respect, fairness and equality
 - (c) undertake their role with reasonable care and due diligence
 - (d) be open and accountable to the public for their actions and the manner in which they carry out their responsibilities
 - (e) take account of the views of others in decision-making
 - (f) not do anything which compromises or which is likely to compromise the impartiality of those who work for or on behalf of the local government
 - (g) uphold the law and, on all occasions, act in accordance with the trust the public is entitled to place in them
 - (h) conduct themselves in a manner that maintains the reputation of their office and their local government
 - (i) not undertake official duties of their local government when impaired by mind affecting substances
 - (j) adequately and fairly represent the views of the community in council's decision-making process
 - (k) when a delegate of council, must adhere to and express council's policies and refrain from expressing personal views

- (l) exercise their vote in consideration of all the facts available and in consideration of relevant council policy
- (m) avoid collusion or the appearance of collusion with employees that could jeopardise the employees' responsibility to provide full and impartial advice to all council and committee members
- (n) where time permits, be requested to give prior notice to staff of questions that will be asked of them at council or committee meetings
- (o) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this code of conduct and any relevant law
- (p) perform their duties impartially and in the best interests of the City of Fremantle uninfluenced by fear or favour
- (q) treat members of the public fairly and equitably and with due consideration for their genuine concerns and legitimate interests
- (r) treat employees and each other equitably and with respect
- (s) not make any allegations in a public forum which are derogatory (unless true and in the public interest) or improper
- (t) act in good faith (honestly, for the proper purpose, and without exceeding their powers) in the interest of the City of Fremantle
- (u) always act in accordance with their obligation of fidelity to the City of Fremantle
- (v) observe the highest standards of honesty and integrity, and avoid conduct, which might suggest any departure from these standards.

4. An elected member or committee member must not—

- (a) disclose information relevant to the local government which has been given to him or her or acquired by him or her in their official capacity, and has been designated confidential by the local government, unless he or she is required by law to do so
- (b) improperly use information nor
- (c) notwithstanding sub-clauses (a) and (b), prevent any other person from gaining access to information to which that person is entitled by law.

5. An elected member or committee member must not—
 - (a) in his or her position, confer improperly on or secure improperly for himself or herself, or any other person or body, an advantage or disadvantage
 - (b) in his or her position, seek to improperly influence other elected members, committee members or employees in the performance of their duties or functions for the purpose of gaining advantage or disadvantage for himself or herself or for any other person or body
 - (c) when using or authorising the use by others of the resources of the local government, misuse or permit their misuse by any other person or body nor
 - (d) improperly use resources of the local government for electioneering purposes
 - (e) use council funds, equipment or resources (including the services of council employees) for private purposes, unless such use is lawfully authorised and proper payment made where appropriate.

6. Council or committee members may only claim expenses, which are incurred in the performance of a function under the express authority of the council or incurred in the performing of a function in his or her capacity as a council member (Local Government (Administration) Regulations 1996 r 32–32(1)(a)–(b)).

7. A council or committee member who honestly and faithfully observes the requirements of this code and any relevant law is entitled to expect the publicly expressed support of council and his or her colleagues against unfair allegations of dishonesty or partial performance of his or her public or professional duties. Where unfair allegations of dishonesty or partial performance are made against a council or committee member, he or she may request the deputy mayor to initiate appropriate public expression of support.

8. When dealing with developers and other electors, council or committee members must explain whether they are representing the council or whether they are acting on an individual basis. If acting as an individual, council or committee members cannot speak on behalf of council or offer council’s support for a position.

Reporting breaches of the code of conduct

9. A person may, if he or she becomes aware of any conduct by another elected member or committee member, which he or she reasonably believes involves a breach of the code of conduct, make a written complaint to that effect to the City of Fremantle Code of Conduct Review Committee as soon as practicable.

The complaint must be given in confidence and should:

- (a) identify the complainant and the person against whom the complaint is made
 - (b) set out the details of the alleged breach of the code of conduct regulations
 - (c) give details on the grounds of the complaint
 - (d) be verified by a statutory declaration.
10. A person who has lodged a complaint, or an elected member or committee member against whom a complaint has been made under point 9, must keep confidential all aspects relating to the complaint until such time as the complaint is deemed to be no longer confidential by the person receiving the complaint.
11. The City of Fremantle Code of Conduct Review Committee is to give the elected member or committee member against whom the complaint has been made details of the complaint.
12. Where breaches of this code also constitute breaches of legislation, penalties may be imposed by legislation. Being found guilty of a legislative offence may, in some instances, also lead to a council member being disqualified from holding office.
13. Council or committee members who have good reason to suspect any fraudulent, corrupt, or criminal conduct of council or committee members should report it immediately to the mayor, chief executive office (CEO), public interest disclosures officer (director corporate services), or directly to the Anti-Corruption Commission (*Anti-Corruption Commission Act 1988 s 14*).

14. Council members must submit a primary return of financial interest within three months of commencement. Also, by 31 August each year, council members must submit an annual return of financial interests (*Local Government Act 1995 s 5.76*), elected members should refer to the full text of legislation (*Local Government Act 1995 ss 5.74–5.87*). There are statutory penalties for breaching these requirements (*Local Government Act 1995 ss 5.75–5.76, 5.78* (up to \$10 000 or two years imprisonment) and s 2.22 (disqualification)).

City of Fremantle Code of Conduct Review Committee

15. The City of Fremantle Code of Conduct Review Committee is to be made up of the mayor and deputy mayor. A deputy member, being an elected member of the City of Fremantle who is not the mayor or deputy mayor, is also to be elected by council to participate in the review for reports that involve either the mayor or deputy mayor. If a report is made of the mayor or deputy mayor that person is not to be involved in conducting the review.
16. Where the City of Fremantle Code of Conduct Review Committee is not able to determine an agreed position on the outcome of the review, the deputy member of the committee is to be seconded to assist in determining a majority agreement of the committee.

Part 2 – Conflict of interest

17. An elected member or committee member must regard himself or herself as having a conflict of interest in any matter when—
- (a) he or she has a **financial interest** (including proximity interest) pursuant to division 6 part 5 of the *Local Government Act 1995* or
 - (b) he or she has a **interest affecting impartiality** in any matter as defined in section 18.

Definitions

Financial interest

18. A person has a ‘financial interest’ in a matter if it is reasonable to expect that the matter will, if dealt with by the council in a particular way, result in a financial gain, loss, benefit or detriment for the person, regardless of the amount.

Proximity interest

19. A person has a ‘proximity interest’ in a matter if the matter concerns a proposed development or a proposed change to a planning scheme, zoning or land use in relation to and adjoining the persons’ land or land of a person with whom the person is closely associated. Adjoining land is land with a common boundary or directly across a thoroughfare from the person’s land.

Interest affecting impartiality

20. An elected member or committee member must regard himself or herself as having an ‘interest affecting impartiality’ in any matter if the matter relates to general control or management of a:
- (a) body to which he or she has been appointed or nominated by the local government as its representative where the local government is not a member of that organisation
 - (b) public authority or body exercising functions of a public nature
 - (c) incorporated body, charity or body directed to charitable purposes

- (d) professional body or association or
- (e) sporting, leisure or social club of any description
- (f) any subject or matter other than a personal belief or philosophy which significantly affects the elected member or committee member to a greater extent than other local government ratepayers or residents of the local government generally
- (g) a relative, known friend or known adversary.

Disclosure of interests

21. An elected member or committee member who has an interest in any matter, or is likely to be perceived as having an interest in any matter which is to be discussed at a council or committee meeting to be attended by that elected member or committee member, or in respect of which the elected member or committee member has given or will give advice, must disclose the existence of the interest.
22. The disclosure of an interest affecting impartiality in a matter to be discussed at a council or committee meeting, or in respect of which an elected member or committee member has given or will give advice, must be recorded in the minutes of the meeting at which the issue is discussed or the advice is considered.
23. A council member who attends a committee meeting as an observer but who, if a member of the committee, would be required to disclose an interest in a matter, should disclose the nature of the interest at the commencement of the public question time at the beginning of the meeting, may remain in the chamber during that public question time period, but may not speak, ask a question nor take part in any discussion in relation to the matter.
24. An elected member or committee member with an interest in a matter also has an interest affecting impartiality in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the elected member's or committee member's judgment of the public interest.

Participation in relation to disclosed interests affecting impartiality

25. An elected member or committee member who has an **interest affecting impartiality**, may remain in the room or chamber where the meeting is being held and participate in the discussion, exercise deliberative functions and, where relevant, give advice in relation to that matter if he or she feels that the interest is only perceived interest and he or she able to make an unbiased decision.

26. In relation to **financial interests** council or committee can choose by simple majority to allow a disclosing member, having disclosed the extent of the interest, to remain in the chamber, preside and/or take part in the discussion and decision-making on the basis that the interest is trivial or commonly shared (*Local Government Act 1995* s 5.68), but the member must first leave the meeting after disclosure of the interest whilst this basis is being decided. This basis decision will be recorded in the minutes of the meeting.

27. If, during the time allocated for the public's question, a question relating to a matter in which a council or committee member has an interest is directed to that member then that member is to (*Local Government (Administration) Regulations 1996* r 21):
 - (a) disclose that he or she has an interest in the matter
 - (b) allow another council member, committee member or employee to respond to the question on behalf of the council.

Gifts and hospitality

28. Definitions:

Gift means any disposition of property, or the conferral of any other financial benefit, including contributions to travel, made by one person in favour of another otherwise than by Will (whether with or without an instrument in writing), without consideration in money or money's worth passing from one person in whose favour it is made to the other; or with such consideration so passing if the consideration is not fully adequate.

It does not include—

- (a) a gift from a relative as defined in s 5.74(1) of the *Local Government Act 1995* or
- (b) a gift as defined in r 30A of the Local Government (Elections) Regulations 1997.

Token gift means a gift of, or below, the value of \$250.

Hospitality gift means a gift (or combination of gifts in any one return period) below a value of \$50.

29. An elected member or committee member cannot accept a gift, other than a token gift, from any person who has undertaken, is undertaking or is likely to undertake any dealings with the local government or has undertaken, is undertaking or is likely to undertake any business:

- (a) that requires the person to obtain any authorisation from the local government
- (b) by way of contract between the person and the local government or
- (c) by way of providing any service to the local government.

30. An elected member or committee member who receives, other than in his or her purely private capacity, a gift or other benefit including a token gift, must within five days of its receipt, give to the CEO of the local government written details of:
- (a) the name of the person who gave, and received, the gift or token gift
 - (b) the date of receipt of the gift or token gift
 - (c) a description, and the estimated value, of the gift or token gift.

Such disclosure must be before the annual return date for the financial year in which the gift was received.

31. The CEO of the local government is to keep a register of gifts, including token gifts, and is to include in the register the details that are given under s 30 of the *Local Government Act 1995*.
32. If the particular local government decides that—
- (a) a specified thing given by way of hospitality or
 - (b) a thing given by way of hospitality that belongs to a specified class of things, does not need to be recorded under s 30 of the *Local Government Act 1995*, the specified thing, and things belonging to the specified class, do not need to be recorded.
33. A council or committee member who receives a hospitality gift may disclose to the CEO the details of such gift. The CEO shall record in the gift register details of any such disclosure.

Part 3 – Members role

34. Role of the council as a body

Role: the council is the governing body of the City of Fremantle (*Local Government Act 1995* s 2.6(1)) and is constituted by the elected council members (*Local Government Act 1995* s 2.6(2)). The role of the council is to direct and control the affairs of the City of Fremantle (*Local Government Act 1995* s 2.7(1)(a)).

Responsibilities: the council is responsible for:

- (a) the performance of the local government's functions (*Local Government Act 1995* s 2.7(1)(b))
- (b) ensuring there is an appropriate structure for administering local government (*Local Government Act 1995* s 5.1).

Explicit statutory duties of the council: the council is to:

- (a) oversee the allocation of the local government's finances and resources (*Local Government Act 1995* s 2.7(2)(a))
- (b) determine the local government's policies
- (c) direct and control administration of local laws and legislative other functions (*Local Government Act 1995* s 3.18(1))
- (d) ensure that the services and facilities provided by the City of Fremantle:
 - i) integrate and coordinate with any provided by the Commonwealth, the state or any public body (*Local Government Act 1995* s 3.18(3)(a))
 - ii) do not in duplicate, to an inappropriate extent, the services Commonwealth or state or other body (*Local Government Act 1995* s 3.18(3)(b))
 - iii) are managed efficiently and effectively (*Local Government Act 1995* s 3.18(3)(c)).

Role of council as a body

The role of council can be summarised as:

- (a) guiding council employees in the formation and maintenance of council's vision, aims and objectives and through the decision-making process attempting to bring this vision and aims and objectives to fruition
- (b) monitoring council policies and processes and guiding the City of Fremantle's operations at the macro level so as to achieve council's vision and to best serve the interests of ratepayers and the Fremantle community
- (c) advocating for amendments to the City of Fremantle's operations and council's decisions so as to achieve an operational culture which is cognisant of and responsive to the particular needs of ratepayers as individuals
- (d) in order to achieve this, council members will:
 - i) set in place appropriate strategies to achieve desired outcomes for the community
 - ii) initiate and review policies to guide council
 - iii) consider issues and make decisions at varying levels of complexity to assist officers in carrying out duties associated with achieving council's strategies and implementing its policies.

35. Role of a council member

A council member is to:

- (a) represent the interests of electors, ratepayers and residents of the district
- (b) provide leadership and guidance to the community in the district
- (c) facilitate communication between the community and the council
- (d) participate in the local government's decision-making processes at council and committee meetings
- (e) perform such other functions as are given to a councillor by this Act or any other written law (*Local Government Act 1995 s 2.10*).

36. Role of the mayor

The mayoral role statement is approved by council. In its place ss 4.1, 4.3 include only the statutory roles of council members and the mayor as prescribed in the *Local Government Act 1995*. The mayoral role statement includes these statutory roles, but adds quite a few others and also refers to council's expectation that the mayor should ideally have the ability to carry out the role as a full-time position with a capacity to undertake extensive day time and out-of hours commitments.

The role of the mayor of the City of Fremantle is a complex and varied one and its recognised commitments go far beyond the simple description afforded it under the *Local Government Act 1995*. Whilst recognising that any person is eligible to stand for the position, it is important for council to clearly indicate to prospective candidates the complexities, expectations and demands of the role.

The mayor of the City of Fremantle:

Decision-making

- (a) presides at council meetings to ensure open, informed and free debate and that council resolutions provide adequate direction to the CEO
- (b) presides at committee meetings as appropriate
- (c) participates in the council's decision-making processes at council and committee meetings
- (d) interacts with councillors in formal and informal meetings to facilitate decision-making
- (e) fosters teamwork amongst council members
- (f) represents the mayor's constituency – the electors, ratepayers and residents of Fremantle

Community leadership

- (g) is seen by the community as the City's leader
- (h) facilitates communication between the community and the council

Strategic initiatives

- (i) explores opportunities for enhancements to council's role in the community and for advancement of the City
- (j) advocates for the City at different levels of politics
- (k) applies mayoral prestige to achieve positive outcomes for the people of Fremantle
- (l) and in so doing:
 - i) is bound by council policies and relevant legislation
 - ii) demonstrably ensures that there can be no legitimate perception that decisions are occurring outside the council's decision-making processes
 - iii) liaises with other councillors on strategic direction and policy

Civic and ceremonial duties

- (m) carries out civic and ceremonial duties on behalf of the City of Fremantle
- (n) represents council and attends social and community functions and activities that can be enhanced by the attendance of the City of Fremantle's mayor

Spokesperson

- (o) is the primary spokesperson on behalf of the City of Fremantle, presenting council's agreed position and policies
- (p) provides leadership to and acts as spokesperson for the Fremantle community

Link to the administration

- (q) liaises with the CEO on the City of Fremantle's affairs and the performance of its functions
- (r) liaises with the CEO and other employees on strategic direction and policy
- (s) provides the council's primary influence on the administration
- (t) within an arbitration framework acts as an ombudsman and counsellor providing an individual point of contact and explanation for residents in regard to council's decision-making and policy making role

Advocate

- (u) acts as a last resort counsellor, providing an ultimate point of contact for constituents
- (v) refers action requests to the appropriate councillor or officer in the first instance
- (w) acts as an advocate for the precinct system

Statutory role

- (x) performs such other functions as are given to the mayor or a councillor by the *Local Government Act 1995* or any other written law.

The mayor of the City of Fremantle should ideally have the ability to carry out the role as a full-time position with a capacity to undertake extensive daytime and out of hours commitments.

37. Role of the deputy mayor

The following deputy mayoral role, which adds clarification to the statutory role of performing the functions of mayor when the office is vacant or the mayor, is unavailable or otherwise unable to carry out the mayor's functions.

Additional duties and functions: in addition to the functions of a council member, the deputy mayor is to:

- (a) perform the functions of the mayor when the office is vacant or the mayor is unavailable or otherwise unable to carry out the mayor's functions
- (b) act as the representative of council members regarding civic centre administration and other council member support issues
- (c) liaise with other council members in relation to issues or concerns about council member behaviour.

38. Role of committee presiding member

The committee presiding member's role is to guide and facilitate the committee process to ensure that all points of view are canvassed and that decisions made are given adequate and due consideration. In order to achieve this, presiding members will:

- (a) liaise with officers: liaise with appropriate officers on all matters relating to committee business
- (b) represent the committee: represent the interests of their committee and reflect the viewpoint expressed by the committee in all dealings with council employees and with council as a body
- (c) manage committee: manage the business of the committee in accordance with council's processes
- (d) identify policies: ensure that relevant council policies are identified during committee deliberations and that the reasons for any decision contrary to council policy are included in and form part of the motion and are included in the committee minutes.