

City of Kwinana Elected Members, Committee Members and Candidates – Code of Conduct



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Introduction

This is the City of Kwinana Code of Conduct for Elected Members, Committee Members and Candidates. It sets out general principles to guide the behaviour of Elected Members, committee members and candidates.

The Code addresses the broader issue of ethical responsibility and encourages greater transparency and accountability. It further encourages a commitment to ethical and professional behaviour and outlines principles on which individual and collective local government responsibilities may be based.

The Code of Conduct is complementary to the principles adopted in the *Local Government Act 1995* and Regulations which incorporate four fundamental aims:

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

Definitions

In this Code:

Act means the *Local Government Act 1995*;

Activity involving a local government discretion means an activity:

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

Administration Regulations means the *Local Government (Administration) Regulations 1996*;

CEO means the Chief Executive Officer of the City;

Candidate means a candidate for election as an Elected Member;

City means City of Kwinana;

Committee means a committee established by Council under the Act;

Committee Member means a member of a committee of the City;

Council means the Elected Members of the City;

Designated employee means:

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

Elected Member means a person who holds the office of Mayor or Councillor on the Council;

employee means a person employed by the City;

gift means a gift as defined by section 5.57 of the *Local Government Act 1995*;

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.

local law means any local law adopted by Council;

notifiable gift means, in relation to a person who is an Elected Member or designated employee:

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

from a person who is undertaking or seeking to undertake or who it is reasonable to believe is intending to undertake an activity involving a local government discretion.

prohibited gift in relation to a person who is an Elected Member or employee, means —

- (a) a gift worth \$300 or more; or
- (b) a gift that is one of two or more gifts given to the Elected Member or employee by the same person within a period of six months that are in total worth \$300 or more;

from a person who is undertaking or seeking to undertake or who it is reasonable to believe is intending to undertake an activity involving a local government discretion.

Public interest information means information that —

- (a) relates to the performance of a public function by a public authority, public officer or public sector contractor (either before or after the commencement of the *Public Interest Disclosure Act 2003* ('PID Act')); and
- (b) shows or tends to show that a public authority, a public officer, or a public sector contractor is, has been or proposes to be involved in;
 - (i) improper conduct; or
 - (ii) an act or omission that constitutes an offence under a written (State) law; or
 - (iii) substantial unauthorised or irregular use of, or substantial mismanagement of, public resources or;
 - (iv) an act done or omission that involves a substantial and specific risk of:
 - injury to public health; or
 - damage to property of the local government; or
 - prejudice to public safety; or
 - harm to the environment; or
 - a matter of administration that can be investigated under section 14 of the *Parliamentary Commissioner Act 1971* by the Parliamentary Commissioner (Ombudsman Western Australia).

Publish includes to publish on a social media platform;

Regulations means any regulations made under the Act;

Social media means websites and applications that enable users to create and share content or to participate in social networking, including but not limited to Facebook, Snapchat, Instagram and LinkedIn.

Harassment is an action, conduct or behaviour that is viewed as unwelcome, humiliating, intimidating or offensive by the recipient.

Bullying is repeated verbal, physical, social or psychological abuse by a person or group of people.

Roles

Role of Elected Members

The primary role of an Elected Member is to represent the community, and the effective translation of the community's needs and aspirations into a direction and future for the Local Government will be the focus of the Elected Member's public life.

The role of Elected Members is set out at section 2.10 of the Act as follows:

"A Councillor:

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

The role of the Mayor is set out at section 2.8(1) of the Act as follows:

- (1) The mayor or president —*
 - (a) presides at meetings in accordance with this Act; and*
 - (b) provides leadership and guidance to the community in the district; and*
 - (c) carries out civic and ceremonial duties on behalf of the local government; and*
 - (d) speaks on behalf of the local government; and*
 - (e) performs such other functions as are given to the mayor or president by this Act or any other written law; and*
 - (f) liaises with the CEO on the local government's affairs and the performance of its functions.*

An Elected Member is part of the team in which the community has placed its trust to make decisions on its behalf and the community is therefore entitled to expect high standards of conduct from its elected representatives. In fulfilling the various roles, Elected Members activities will focus on:

- achieving a balance in the diversity of community views to develop an overall strategy for the future of the community;
- achieving sound financial management and accountability in relation to the Local Government's finances;
- ensuring that appropriate mechanisms are in place to deal with the prompt handling of residents' concerns;
- working with other governments and organisations to achieve benefits for the community at both a local and regional level;
- having an awareness of the statutory obligations imposed on Elected Members and on Local Governments.

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

Role of Committee Members

The role of committees is generally to deliberate upon matters within their authority as determined by Council, and to give advice and/or make recommendations to Council.

Role of Council

The Role of the Council is in accordance with section 2.7 of the Act:

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

General principles

Overview of Division

This Division sets out general principles to guide the behaviour of Elected Members, committee members and candidates.

Personal integrity

- (1) An Elected Member, committee member or candidate should —
- (a) act with reasonable care and diligence; and
 - (b) act with honesty and integrity; and
 - (c) act lawfully; and
 - (d) identify and appropriately manage any conflict of interest; and
 - (e) avoid damage to the reputation of the local government.
- (2) An Elected Member or committee member should —
- (a) act in accordance with the trust placed in Elected Members and committee members; and

- (b) participate in decision-making in an honest, fair, impartial and timely manner; and
- (c) actively seek out and engage in training and development opportunities to improve the performance of their role; and
- (d) attend and participate in briefings, workshops and training sessions provided or arranged by the local government in relation to the performance of their role.

Accountability

An Elected Member or committee member should —

- (a) base decisions on relevant and factually correct information; and
- (b) make decisions on merit, in the public interest and in accordance with statutory obligations and principles of good governance and procedural fairness; and
- (c) read all agenda papers given to them in relation to council or committee meetings; and
- (d) be open and accountable to, and represent, the community in the district.

Gifts

A gift is defined under section 5.57 of the Act as a conferral of a financial benefit (including a disposition of property) made by one person in favour of another person unless adequate consideration in money or money's worth passes from the person in whose favour the conferral is made to the person who makes the conferral. It includes any contributions to travel.

There are two aspects to gifts: disclosure of receipt and disclosing an interest when a matter comes before council or when the CEO provides advice or a report to council.

Disclosing the receipt of a gift

In accordance with the Act, Elected Members (section 5.87A) and CEOs (section 5.87B) are required to disclose gifts that are received in their capacity as an Elected Member or CEO and:

- are valued over \$300; or
- are of a cumulative value that exceeds \$300 where the gifts are received from the same donor in a 12 month period. Additionally, a gift given by two or more related bodies corporate (as defined by section 50 in the *Corporations Act 2001* (Cth)) is considered to have been given by a single corporation.

All such gifts must be disclosed within ten days of receipt: the CEO makes the disclosure to the Mayor; Elected Members make the disclosure to the CEO. The CEO must update the gifts register within ten days and an up-to-date version of the register is required to be published on the local government's official website. Form 4 of the *Local Government (Administration) Regulations 1996* sets out the information that is to be disclosed:

- a description of the gift;
- the name and address of the donor;
- the date of receipt;
- the estimated value of the gift;
- the nature of the relationship between the donor and recipient; and
- in the case of travel, the date of the travel and a description
- in the case of an excluded gift, the date of the approval and reasons for the approval.

Interests in matters before council

A relationship is created between the donor and a recipient of a gift which could be perceived to affect decision-making.

Where the donor of a gift has a matter before council from which the donor could benefit or suffer detriment, the Elected Member must disclose this interest in writing to the CEO before the meeting or immediately before the matter is discussed.

The receipt of a gift over \$300 (or the cumulative value of gifts from the same donor in a twelve-month period) prevents a Elected Member or CEO from participating in, or providing advice or report on, the matter to be discussed (unless approval has been given).

In accordance with section 5.68, council can allow a Elected Member to participate if they have received a gift valued at up to \$1,000 but only where they decide:

- that the interest is so trivial or insignificant it is unlikely to influence the disclosing member conduct in relation to the matter; or
- the interest is common to a significant number of electors or ratepayers in the case of disclosure by a Elected Member.

If it is the CEO who has the interest relating to a gift, and the gift is valued at up to \$1,000, the council can allow the CEO to provide advice or a report, if they believe the nature of the interest is unlikely to influence the CEO. If the council decides that the interest is not trivial or insignificant and could be perceived to influence, the CEO should make arrangements for another employee to provide the advice or report.

For an interest created by a gift(s) over \$1,000 in a twelve-month period, only the Minister can make a decision to allow participation or the provision of advice or a report.

Gifts excluded from the interest provisions

Certain gifts are specifically excluded from the conflict of interest provisions. These are gifts relating to attendance at an event where attendance has been approved by the council in accordance with the council endorsed Attendance at Events policy, and gifts from specified entities. Regulation 20B of the Local Government (Administration) Regulations prescribe the specified entities as WALGA (but not LGIS), ALGA, LG Professionals, a State public service department, a Commonwealth, State or Territory government department or another local government or regional local government.

Gifts from any of these sources must still be disclosed and published on the gifts register if over \$300 in a twelve-month period.

Gifts received during election periods

The *Local Government (Elections) Regulations 1997* provide for the disclosure of electoral gifts in a separate electoral gift register and are not required to be disclosed again under section 5.87A.

In accordance with section 30C of *Local Government (Elections) Regulations 1997*:

- (1) *For the purposes of regulation 30B(1) and 30CA(1), the period commences 6 months before the relevant election day, and concludes —*
 - a) *3 days after the election day, for unsuccessful candidates; or*
 - b) *on the start day for financial interest returns for successful candidates under section 5.74 of the Act.*
- (2) *Where a delay results from a declaration from the Court of Disputed Returns the period of delay is to be added to the 6 month period set out in subregulation (1)*
- (3) *If the day the Local Government (Elections) Amendment Regulations 2009 regulation 3 comes into operation 1 (the commencement day) is less than 6 months before a relevant election day, the period set out in subregulation (1) commences on the commencement day.*

Behaviour

Overview of Division

This Division sets out —

- (a) requirements relating to the behaviour of Elected Members, committee members and candidates; and
- (b) the mechanism for dealing with alleged breaches of those requirements.

Personal integrity

- (1) An Elected Member, committee member or candidate —
 - (a) must ensure that their use of social media and other forms of communication complies with this code; and
 - (b) must only publish material that is factually correct.
- (2) An Elected Member or committee member —
 - (a) must not be impaired by alcohol or drugs in the performance of their official duties; and
 - (b) must comply with all policies, procedures and resolutions of the local government.

Relationship with others

An Elected Member, committee member or candidate —

- (a) must not bully or harass another person in any way; and
- (b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and
- (c) must not use offensive or derogatory language when referring to another person; and
- (d) must not disparage the character of another Elected Member, committee member or candidate or a local government employee in connection with the performance of their official duties; and
- (e) must not impute dishonest or unethical motives to another Elected Member, committee member or candidate or a local government employee in connection with the performance of their official duties.

Council or committee meetings

When attending a council or committee meeting, an Elected Member, committee member or candidate —

- (a) must not act in an abusive or threatening manner towards another person; and
- (b) must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and
- (c) must not repeatedly disrupt the meeting; and
- (d) must comply with any requirements of a local law of the local government relating to the procedures and conduct of council or committee meetings; and
- (e) must comply with any direction given by the person presiding at the meeting; and

- (f) must immediately cease to engage in any conduct that has been ruled out of order by the person presiding at the meeting.

Complaint about alleged breach

- (1) A person may make a complaint, in accordance with subclause (2), alleging a breach of a requirement set out in this Division.
- (2) A complaint must be made —
 - (a) in writing in the form approved by the local government; and
 - (b) to a person authorised under subclause (3); and
 - (c) within 1 month after the occurrence of the alleged breach.
- (3) The local government must, in writing, authorise 1 or more persons to receive complaints and withdrawals of complaints.

Dealing with complaint

- (1) After considering a complaint, the local government must, unless it dismisses the complaint under subclause (2) or the complaint is withdrawn, make a finding as to whether the alleged breach the subject of the complaint has occurred.
- (2) Before making a finding in relation to the complaint, the local government must give the person to whom the complaint relates a reasonable opportunity to be heard (with such timeframe as is reasonable in the circumstances).
- (3) A finding that the alleged breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.
- (4) If the local government makes a finding that the alleged breach has occurred, the local government may —
 - (a) take no further action; or
 - (b) prepare and implement a plan to address the behaviour of the person to whom the complaint relates.
- (5) When preparing a plan under subclause (4)(b), the local government must consult with the person to whom the complaint relates.
- (6) A plan under subclause (4)(b) may include a requirement for the person to whom the complaint relates to do 1 or more of the following —
 - (a) engage in mediation;
 - (b) undertake counselling;
 - (c) undertake training;

- (d) issue an apology;
 - (e) take other action the local government considers appropriate.
- (7) If the local government makes a finding in relation to the complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of —
- (a) its finding and the reasons for its finding; and
 - (b) if its finding is that the alleged breach has occurred — its decision under subclause (4).

Dismissal of complaint

- (1) The local government must dismiss a complaint if it is satisfied that —
- (a) the behaviour to which the complaint relates occurred at a council or committee meeting; and
 - (b) either —
 - (i) the behaviour was dealt with by the person presiding at the meeting; or
 - (ii) the person responsible for the behaviour has taken remedial action in accordance with a local law of the local government that deals with meeting procedures.
- (2) If the local government dismisses a complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of its decision and the reasons for its decision.

Withdrawal of complaint

- (1) A complainant may withdraw their complaint at any time before the local government makes a finding in relation to the complaint.
- (2) The withdrawal of a complaint must be —
- (a) in writing; and
 - (b) given to a person authorised under clause 11(3).

Other provisions about complaints

- (1) A complaint about an alleged breach by a candidate cannot be dealt with by the local government unless the candidate has been elected as an Elected Member.
- (2) The procedure for dealing with complaints may be determined by the local government to the extent that it is not provided for in this Division.

- (3) The CEO must publish an up-to-date version of the register of complaints on the local governments official website.

Social Media Guidelines for Elected Members

The language and approach used on-line is to be consistent with what the community would expect from an Elected Member.

Elected Members should:

- remember the Mayor and the CEO are the official spokespersons for the City as per the Act; any statements on behalf of the City should only be made with specific authority;
- clearly label content and responses as their own personal views and not those of the City or Council;
- ensure content is accurate, relevant and complies with current policies;
- avoid offensive, defamatory, intimidating and provocative language, and avoid commenting on or liking posts that contain this type of language;
- avoid making personal comments about other Elected Members, staff or members of the community;
- maintain a positive and respectful tone;
- adhere to copyright, privacy, defamation, discrimination, harassment and other applicable laws;
- observe confidentiality;
- remember Council decision making is by majority, and while there may be decisions that are disagreed with, alternative points of view should be made respectfully and constructively;
- where requests for service or official feedback has been posted, comments should encourage direct contact with the City to enable the matter to be dealt with;
- where misinformation or factually incorrect information is posted, encourage the original poster to make contact with the relevant contact at the City for clarification;
- consider the appropriateness of liking, sharing or reacting to another person's/organisation post on Social Media, as it is taken to be an endorsement of that material.
- not to make public statements expressing their opinion on matters before the Council that would indicate a predetermined voting position.

The intent of these guidelines is to protect Elected Members and assist in ensuring that the use of all forms of online and social media by Elected Members aligns with the position of the City and reflective of their professional position and standing in the community.

Rules of conduct

Overview of Division

- (1) This Division sets out rules of conduct for Elected Members and candidates.
- (2) A reference in this Division to an Elected Member includes an Elected Member when acting as a committee member.

Misuse of local government resources

- (1) In this clause —
electoral purpose means the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the Electoral Act 1907 or the Commonwealth Electoral Act 1918;
resources of a local government includes —
 - (a) local government property; and
 - (b) services provided, or paid for, by a local government.
- (2) An Elected Member must not, directly or indirectly, use the resources of a local government for an electoral purpose or other purpose unless authorised under the Act, or by the local government or the CEO, to use the resources for that purpose.

Securing personal advantage or disadvantaging others

- (1) An Elected Member must not make improper use of their office —
 - (a) to gain, directly or indirectly, an advantage for the Elected Member or any other person; or
 - (b) to cause detriment to the local government or any other person.
- (2) Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.

Prohibition against involvement in administration

- (1) An Elected Member must not undertake a task that contributes to the administration of the local government unless authorised by the local government or the CEO to undertake that task.

- (2) Subclause (1) does not apply to anything that a Elected Member does as part of the deliberations at a council or committee meeting.

Relationship with local government employees

- (1) In this clause —

local government employee means a person —

- (a) employed by a local government under section 5.36(1) of the Act; or
 - (b) engaged by a local government under a contract for services.
- (2) An Elected Member or candidate must not —
- (a) direct or attempt to direct a local government employee to do or not to do anything in their capacity as a local government employee; or
 - (b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a local government employee in their capacity as a local government employee; or
 - (c) act in an abusive, threatening or demeaning manner towards a local government employee.
- (3) Subclause (2)(a) does not apply to anything that an Elected Member does as part of the deliberations at a council or committee meeting.
- (4) If an Elected Member or candidate, in their capacity as an Elected Member or candidate, is attending a council or committee meeting or other organised event (for example, a briefing or workshop), the Elected Member or candidate must not orally, in writing or by any other means —
- (a) make a statement that a local government employee is incompetent or dishonest; or
 - (b) use an offensive or objectionable expression when referring to a local government employee.
- (5) Subclause (4)(a) does not apply to conduct that is unlawful under The Criminal Code Chapter XXXV.

Disclosure of information

- (1) In this clause —

closed meeting means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;

confidential document means a document marked by the CEO, or by a person authorised by the CEO, to clearly show that the information in the document is not to be disclosed;

document includes a part of a document;

non-confidential document means a document that is not a confidential document.

- (2) A Elected Member must not disclose information that the Elected Member —
 - (a) derived from a confidential document; or
 - (b) acquired at a closed meeting other than information derived from a non-confidential document.
- (3) Subclause (2) does not prevent a Elected Member from disclosing information —
 - (a) at a closed meeting; or
 - (b) to the extent specified by the council and subject to such other conditions as the council determines; or
 - (c) that is already in the public domain; or
 - (d) to an officer of the Department; or
 - (e) to the Minister; or
 - (f) to a legal practitioner for the purpose of obtaining legal advice; or
 - (g) if the disclosure is required or permitted by law.

Disclosure of interests

- (1) In this clause —

Interest —

 - (a) means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest; and
 - (b) includes an interest arising from kinship, friendship or membership of an association.
- (2) A Elected Member who has an interest in any matter to be discussed at a council or committee meeting attended by the Elected Member must disclose the nature of the interest —
 - (a) in a written notice given to the CEO before the meeting; or
 - (b) at the meeting immediately before the matter is discussed.
- (3) Subclause (2) does not apply to an interest referred to in section 5.60 of the Act.
- (4) Subclause (2) does not apply if a Elected Member fails to disclose an interest because the Elected Member did not know —
 - (a) that they had an interest in the matter; or

- (b) that the matter in which they had an interest would be discussed at the meeting and the Elected Member disclosed the interest as soon as possible after the discussion began.
- (5) If, under subclause (2)(a), a Elected Member discloses an interest in a written notice given to the CEO before a meeting, then —
 - (a) before the meeting the CEO must cause the notice to be given to the person who is to preside at the meeting; and
 - (b) at the meeting the person presiding must bring the notice and its contents to the attention of the persons present immediately before any matter to which the disclosure relates is discussed.
- (6) Subclause (7) applies in relation to an interest if —
 - (a) under subclause (2)(b) or (4)(b) the interest is disclosed at a meeting; or
 - (b) under subclause (5)(b) notice of the interest is brought to the attention of the persons present at a meeting.
- (7) The nature of the interest must be recorded in the minutes of the meeting.

Lobbying

Responsibilities

Mayor

The role of the Mayor includes being a key community leader and the principal spokesperson of the City of Kwinana. The Mayor is to establish partnerships, network and actively promote Council's interests where opportunities arise.

Elected Members

The role of Elected Members is to represent their community, advocate on their behalf to various stakeholders and government bodies and work towards delivering the vision of the City of Kwinana. Elected Members are a valuable link between the community and the local government, and play a key role in communicating messages to the community.

Inappropriate Lobbying

It is in the public interest that lobbying is fair and does not undermine public confidence in impartial decision-making. Lobbying is a two-way process between Elected Members and lobbyists.

Elected Members should take care that their duty to consider issues fairly and properly is not compromised by participating in lobbying practices that are outside the bounds of appropriate or lawful behaviour.

It is not possible to define every type of activity that could constitute inappropriate or unlawful lobbying. Generally, however, inappropriate or unlawful conduct on the part of someone lobbying an Elected Member usually involves an attempt to obtain preferential consideration or treatment based on factors other than the merits of the matter. Examples include:

- (i) accepting undisclosed payments or benefits while making a decision that affects the gift giver's interests;
- (ii) accepting a political donation in return for the favourable exercise of discretion during decision making;
- (iii) granting access to a particular individual or group while unreasonably denying similar access requested by another party;
- (iv) fettering discretion by giving undertakings to an interested party prior to considering all the information relevant to a decision;
- (v) acting in a manner that exceeds the role of an Elected Member as defined in section 2.8, 2.9 or 2.10 of the Act;
- (vi) disclosing confidential information while being lobbied; and
- (vii) being unduly influenced by factors that are irrelevant to the merits of the matter under consideration.

Transparency

Elected Members should exercise judgement when deciding whether to be involved in private meetings with people seeking to influence a Council decision. Suspicions of inappropriate lobbying can occur when lobbying is not open to public scrutiny. Regardless of whether such suspicions are justified, they still have the potential to undermine public confidence in Council decision-making and adversely affect an Elected Member's reputation.

Transparency is the means of governing accountability and perceptions of fairness in lobbying processes. There are a number of ways Elected Members can help ensure transparency whilst being lobbied. These include:

- documenting meetings with proponents;
- generally conducting meetings in official locations, such as City premises;
- having other people present during meetings;
- inviting applicants who have approached them for a meeting to discuss significant developments, to write to the City seeking a meeting with all Elected Members and employees;
- providing copies of information presented during lobbying meetings to City employees for consideration and assessment (if required), distribution to other Elected Members and filing as part of the City records;
- asking people who have requested a meeting to put their arguments in writing; and
- making a declaration at a Council meeting about lobbying activities they have been engaged in that are not part of Council's formal processes.

Tendering

The lobbying of Elected Members, the CEO or other employees by tenderers about the outcome of a tender process is not permissible.

Communication and Public Relations

Communication

- a) Unless on approved leave of absence or unavailable for other reasons, Elected Members shall respond to all written, electronic and verbal enquiries in a timely manner.
- b) All aspects of communication by Elected Members (including verbal, written or personal), involving the City's activities should reflect the status and objectives of Council. Communications should be accurate, polite and professional.
- c) Elected Members should avail themselves of advice from a council officer to ensure their communications are accurate and in accordance with council policy.

Record Keeping

Elected members have a unique and pivotal role within the local government and the community. They represent the interests of electors, residents and ratepayers, participate in local government decision making at council and committee meetings, and facilitate communication between the community and the Council.

The State Records Commission policy regarding the records of local government elected members requires the creation and retention of records of the:

"...communications and transactions of elected members which constitute evidence affecting the accountability of the Council and the discharge of its business."

Elected Members are required to maintain a record of all required correspondence in accordance with the State Records Office of Western Australia – Local Government Elected Members Records.

Mayor to Speak on Behalf of Council

The Mayor or CEO will only express the view or position of Council, where Council has formally determined a view or position. Where Council has not determined the matter or has no clear view/position, the Mayor or CEO may express a personal view, providing they clearly preface such remarks as being their own personal view and not those of Council.

Corporate Obligations

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

- a) as a member of Council there is respect for the decision making processes of Council, which are based on a decision of the majority of Council;
- b) information relating to decisions of Council on approvals, permits and so on ought to be communicated in an official capacity by a designated employee of the City;
- c) information concerning adopted policies, procedures and decisions of Council is conveyed accurately; and
- d) information of a confidential nature shall not be communicated until it is no longer treated as confidential.

Expression of Personal Views

Elected Members are free to make their own personal position known about any matter. It should be made clear that any views expressed are their own and do not necessarily reflect a formal position of the City of Kwinana Council.

Elected Members will not adversely reflect on a Council Decision.

Comment during Public Consultation Period

- will refrain from making public comment expressing a personal opinion or prejudice a matter whilst the matter is being advertised for public comment and/or is yet to be considered and determined by Council;
- will clearly preface any of their remarks as being their own personal views and not those of Council or possibly be construed to be on behalf of Council; and
- will encourage members of the public to make a submission to the City.
- The Mayor and/or CEO may take appropriate action (including issuing a statement to the media) to correct any misinformation or erroneous information which is in the public arena.

Defamation

Elected Members should acknowledge that:

- a) Comments by Elected Members at meetings of Council and/or committees, forums, working or advisory groups of the City are not covered from defamation action by absolute privilege.
- b) Elected Members should ensure that comments made are pertinent to the business of local government and they are not made maliciously or without due regard to whether they represent the truth.

Other Statutory Reporting Mechanisms

Corruption, Crime and Misconduct Act 2003

Elected Members and Committee Members must be aware of the *Corruption, Crime and Misconduct Act 2003* which requires the Principal Officer of an organisation (ie, the CEO) to report possible misconduct or corruption to the Commission.

Section 175 of the *Corruption, Crime and Misconduct Act 2003* provides that a person must not:

- a) threaten to prejudice the safety or career of any person;
- b) intimidate or harass, or threaten to intimidate or harass, any person; or
- c) do an act that is, or is likely to be, to the detriment of any person,

because the person mentioned in paragraph (a), (b) or (c), or someone else, gave evidence to, or helped, the Commission, the Public Sector Commissioner or the Parliamentary Inspector in the performance of their functions.

Public Interest Disclosure Act 2003 ('Whistle Blower Legislation')

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

A public interest disclosure is a disclosure which is made by a person who discloses to the City's nominated Public Interest Disclosure Officer, information which tends to show that the City, or an employee or a contractor of the City, may be involved in activity which constitutes:

- improper conduct
- action which may constitute an offence under a written law
- substantial, unauthorised or irregular use of or mismanagement of public resources
- a substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment; or
- a matter of administration which could be investigated by the Ombudsman.

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

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

A person who makes a false or misleading disclosure commits an offence and is liable to a significant fine or a term of imprisonment.

Implementation, Review and Compliance

Implementation and Review

- a) The original Code of Conduct was first adopted by the City on 28 November 1990 and is reviewed and amended as required by the *Act*.
- b) Council currently review the Code of Conduct after each ordinary election (i.e. every two years) and any amendments to the Code of Conduct will be subsequently communicated to Elected Members, Committee Members, employees and the community.

Adherence to the Code

- a) Elected Members are required to make a declaration to comply with Council's Code of Conduct upon being sworn in.
- b) Any Elected Member and Committee Members having concerns with regard to an actual, perceived, potential, intended or unintended breach of either the specific provisions or the spirit of the Code of Conduct, or any provisions of the Act, Regulations, Council policies or local laws, should discuss those concerns with the CEO where such matters relate to Elected Members, Committee Members or the Mayor in the case of matters involving the CEO.
- c) In all matters, the subject of the complaint shall be treated in the strictest confidence until such time as an appropriate investigation has been undertaken.
- d) Any actions taken as a result of a breach will be made in accordance with the provisions of any applicable legislative requirement and the City's responsibilities as an employer.
- e) Serious and/or repeated breaches of the Code of Conduct will be reported to the Council or appropriate authority or relevant person for consideration and appropriate action, where necessary.

Protection of persons reporting unacceptable or illegal behavior

The CEO is to ensure that Elected Members, Committee Members and employees who report unacceptable or illegal behaviour of Elected Members or employees (that is, whistleblowers) are not in any way disadvantaged or victimised because of their actions. The CEO's action is limited to matters for which he/she has responsibility and/or jurisdiction to act.