



2016
CODE OF CONDUCT

Code of Conduct for *Relevant Persons*

Version 3

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INTRODUCTION

In accordance with section 5.103 of the *Local Government Act 1995*, every local government is to prepare or adopt a code of conduct to be observed by all *Relevant Persons*.

The Bunbury Harvey Regional Council (BHRC) Code of Conduct (the Code) has been prepared for this purpose and ensures the roles and responsibilities of a *Relevant Person* are understood and respected.

The Code of Conduct applies to every Elected Member, Committee Member and employee of the BHRC, whom must comply with the applicable provisions of this Code of Conduct. This Code does not override or affect those provisions or requirements.

The Code must be read in conjunction with the *Local Government Act 1995*, the *Local Government (Rules of Conduct) Regulations 2007*, *Local Government (Administration) Regulations 1996* and other legislation that affect a *Relevant Person* in performing their roles and duties.

If any part of this Code of Conduct in any way conflicts with any provisions of the *Local Government Act 1995* as amended, or any regulations made there under or with any specific policy or decision of Council then, the latter shall prevail if such part cannot be read above so as to confirm with the Act, regulation or policy.

Aim

The safe management of waste is essential for occupational, community and environmental health. It is also important that, irrespective of technology used for treatment and disposal, the standards of environmental and human health performance are uniform across the industry. This ensures a more viable and efficient industry.

All persons involved in the management and disposal of waste shall have appropriate management systems in place to ensure that all waste is managed in accordance with all legislative requirements.

All BHRC Employees shall observe the highest standards of ethics and integrity in undertaking their activities and act in an honest and professional manner that supports the standing of the BHRC in compliance with this Council's Code of Conduct.

Definitions	
Act	<i>Local Government Act 1995</i>
Chief Executive Officer (CEO)	Chief Executive Officer of the Bunbury Harvey Regional Council
BHRC	Bunbury Harvey Regional Council
Code	Code of Conduct adopted by the Council
Committee	A committee established by the Council under the Act
Elected Member	A person who holds the office of Mayor/chairperson or Councillor on the Council
Employee	Person employed by BHRC
Local Law	Any Local Law adopted by the Council
Regulations	Any regulations made under the <i>Local Government Act 1995</i>
Rules of Conduct Regulations	<i>Local Government (Rules of Conduct) Regulations 2007</i>

PURPOSE

The Code sets out principles and standards of behaviour that a *Relevant Person* must observe when performing their duties, and is intended to promote accountability, ethical decision making, and encourage greater transparency and accountability in the areas serviced by the BHRC .

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

- Better decision making by local governments.
- Greater community participation in the decisions and affairs of local governments.
- Greater accountability of local governments to their communities.
- More efficient and effective local government.

The Code of Conduct has been developed to assist a *Relevant Person* to:

- Understand the standard of conduct that is expected of them.
- Enable them to fulfil their statutory duty to act honestly and exercise care and diligence.
- Act in a way that enhances public confidence in the integrity of the BHRC.

VISION, MISSION AND VALUES

The Strategic Community Plan 2015 outlines the BHRC values that guide the direction of the operations of the council in the future.

Vision Statement

To be a leader in the development, implementation, and maintenance of innovative and sustainable waste reduction, recycling and collection services while managing waste facilities with best practice standards within an engaged community.

A key goal is to reduce the environmental impact of waste and maximise conservation of natural resources through reduced overall material use and increased materials and energy recovery.

Mission Statement

To ensure the delivery of an integrated, cost-effective and environmentally sound waste management system and to promote sustainable community programs and policies.

Intergenerational equity – ensuring that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

Leadership

With good leadership, employee wellbeing and performance are enhanced and consequently the organisation thrives and prospers. Leadership is a critical determinant of organisational effectiveness empowering people to help create change. This means that the essence of leadership is building and maintaining a team, and guiding that team towards desired results.

Team work

A team environment demands that you make responsible decisions; It requires you to take charge.

It requires you to develop excellent interpersonal skills to interact at a much different level with your team members.

Integrity

Acting with a level of trust, respect, honesty, hard work, communication and shared responsibility that is exhibited by its people.

Accountability

Ensuring the collection and management of solid waste and recovered materials in an environmentally sound manner in accordance with regulatory requirements.

Respect

'Respect Yourself'

'Respect Others'

'Respect Our Environment'

Innovation

Embracing new and better ways to achieve improved results through creativity, inventiveness, teamwork, and the adoption of appropriate new processes and technology.

Elected Members, Committee Members and Employees are encouraged to observe these values to enable BHRC to achieve its strategic objectives and organisational goals.

ROLE OF COUNCIL, ELECTED MEMBERS AND CHIEF EXECUTIVE OFFICER

The *Local Government Act 1995* prescribes the role of the Council, Mayor/chairperson, Elected Member and the Chief Executive Officer.

Council

(1) The council:

- Directs and controls the local government's affairs.
- Is responsible for the performance of the local government's functions.

(2) Without limiting subsection (1), the council is to:

- Oversee the allocation of the local government's finances and resources.
- Determine the local government's policies.

Mayor/Chairperson

The mayor/chairperson:

- Presides at meetings in accordance with the *Act*.
- Provides leadership and guidance to the community in the district.
- Carries out civic and ceremonial duties on behalf of the local government.
- Speaks on behalf of the local government.
- Performs such other functions as are given to the mayor/chairperson by the *Act* or any other written law.
- Liaises with the CEO on the local government's affairs and the performance of its functions.

As an elected leader of the community, the Mayor/Chairperson shall demonstrate the highest level of civic conscience, impartiality and personal conduct.

Councillors

A councillor shall:

- Represent the interests of electors, ratepayers and residents of the district.
- Provide leadership and guidance to the community in the district.
- Facilitate communication between the community and the council.
- Participates in the local government's decision-making processes at council and committee meetings.
- Perform such other functions as are given to a councillor by the *Act* or any other written law.

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 BHRC's finances.
- Ensuring that appropriate mechanisms are in place to deal with the prompt handling of 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, the BHRC will use its best endeavours to meet the needs of current and future generations through integration of environmental protection, social advancement and economic prosperity.

Chief Executive Officer (CEO)

The CEO's functions are to:

- Advise the council in relation to the functions of a local government under the *Act* and other written laws.
- Ensure that advice and information is available to the council so that informed decisions can be made.
- Cause council decisions to be implemented.
- Manage the day to day operations of the local government.
- Liaise with the mayor/chairperson on the local government's affairs and the performance of the local government's functions.
- Speak on behalf of the local government if the mayor/chairperson agrees.
- Be responsible for the employment, management supervision, direction and dismissal of other Employees (subject to section 5.37 (2) in relation to senior Employees).
- Ensure that records and documents of the local government are properly kept for the purposes of the *Act* and any other written law.
- Perform any other function specified or delegated by the *Local Government Act 1995* or imposed under the *Act* or any other written law as a function to be performed by the CEO.

Employees

Employees will:

- Act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code.
- Perform their duties impartially and in the best interests of the Local Government uninfluenced by fear or favour.
- Act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the Local Government and the community.
- Make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment.
- Always act in accordance with their obligation of fidelity to the Local Government.

Employees have an obligation to:

- Give their attention to the business of Council while on duty.
- Ensure that their work is carried out efficiently, economically and effectively.
- Carry out lawful directions given by any person having authority to give such directions.
- Give effect to the lawful policies, decisions and practices of Council, whether or not the employee agrees with or approves of them.

Relationships between Council Members and Staff

An effective Councillor will work as part of the Council team with the Chief Executive Officer and other members of staff. That teamwork will only occur if Council Members and staff have a mutual respect and co-operate with each other to achieve the Council's corporate goals and implement the Council's strategies. To achieve that position, Council Members need to observe their statutory obligations which include, but are not limited to, the following:

- Accept that their role is one of leadership, not management or administrative.
- Acknowledge that they have no capacity to individually direct members of staff to carry out a particular function.
- Refrain from publicly criticising staff in a way that casts aspersions on their professional competence and credibility.

At the same time, Employees will recognise the Elected Members' views and opinions may reflect valid community viewpoints that must be considered in conjunction with professional opinion.

Employees will therefore make every effort to assist Elected Members in the performance of their role, and to achieve the satisfactory resolution of issues that they may arise in the performance of their official role.

Any employee contacted directly by a Councillor regarding a Council matter shall refer them to the Chief Executive Officer.

The Chief Executive Officer is responsible to the Council for performance and direction of all Employees and delegates/contractors and the use of resources, in the day-to-day management of BHRC.

Inappropriate Interactions

The following interactions are inappropriate and therefore Elected Members shall not approach Employees:

- Other than Chief Executive Officer for information on sensitive or controversial matters.
- Outside the Council building or outside hours of work to discuss Council business.

Elected Members must:

- Refrain from directing BHRC employees other than by giving appropriate direction to the Chief Executive Officer in the performance of Council's functions by way of a Council or Committee resolution.
- Refrain from, in any public or private forum, directing or influencing, or attempting to direct or influence, any other employee of BHRC or a delegate of the Council in the exercise of the functions of the employee or delegate.
- Refrain from contacting an employee unless in accordance with procedures governing the interaction of Elected Members and Employees that have been authorised by the Chief Executive Officer.

- Not contact or issue instructions to any of BHRC's contractors or tenderers, including legal advisers.
- Not be overbearing or threatening to employees.
- Not direct or pressure (or attempt to) employees in the performance of their work, or recommendations they should make.
- Not approach employee organisations; for example unions and associations in relation to employee matters that relate to individual employees rather than broader industrial policy issues.
- Not attend on-site inspection meetings with lawyers and/or consultants engaged by BHRC associated with current or proposed legal proceedings (other than those where approval has been granted to participate).

Employees shall not:

- Approach Elected Members directly on individual employee matters.
- Refuse to give information which is available to other Elected Members to a particular Elected Member because of the employee or Elected Member's political views.
- Provide ad hoc advice to Elected Members without recording or documenting the interaction as they would if the advice was provided to a member of the community.
- Meet with developers alone and outside standard office hours to discuss development applications or proposals.

Dealings with Council by a *Relevant Person*

All commercial/business dealings (including the awarding of contracts) with BHRC by Elected Member and Employees (and their closely associated persons) shall at all times be open, transparent and accountable.

All *Relevant Persons* (and their closely associated persons) wishing to carry out any business activities with BHRC shall only do so in strict accordance within established guidelines.

CONDUCT

Behavioural Principles

The conduct of Councillors is governed by the *Local Government (Rules of Conduct) Regulations 2007*, which provides guiding principles to Council members and also details specific rules of conduct which must be adhered to.

Breaches of the Rules of Conduct can result in sanctions.

Regulation 3 of the Rules of Conduct Regulations outlines general principles to guide the behaviour of council members:

(1) General principles to guide the behaviour of council members include that a person in his or her capacity as a council member should

- *Act with reasonable care and diligence.*
- *Act with honesty and integrity.*
- *Act lawfully.*
- *Avoid damage to the reputation of the local government.*

- *Be open and accountable to the public.*
- *Base decisions on relevant and factually correct information.*
- *Treat others with respect and fairness.*
- *Not be impaired by mind affecting substances.*

(2) The general principles referred to in sub regulation (1) are for guidance of council members but it is not a rule of conduct that the principles be observed.

General

Elected Members, Committee Members and Employees must avoid behaviour and conduct that:

- Contravenes the *Local Government Act 1995*, associated regulations and BHRC's relevant administrative requirements.
- Is improper or unethical.
- Is an abuse of power or otherwise amounts to misconduct?
- Causes, comprises or involves intimidation, harassment or verbal abuse of each other, or other employees of BHRC or the public that use the BHRC facilities, regardless of their gender, ethnic origins, age or their religious, spiritual or political beliefs.
- Causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment.
- Causes, comprises or involves prejudice in the provision of a service to any member of the BHRC community.

Personal

Council members and staff will:

- Act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code.
- Perform their duties impartially and in the best interests of the Local Government uninfluenced by fear or favour.
- Act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the Local Government and the community.
- Make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment.
- Always act in accordance with their obligation of fidelity to the Local Government.

Honesty and Integrity

Elected Members, Committee Members and Employees will:

- Observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards.
- Bring to the notice of the Chief Executive Officer any dishonesty on the part of any other Council Member or any other employee of the BHRC.

- Any dishonesty or breach of this Code of Conduct on the part of the Chief Executive Officer is to be brought to the attention of the Mayor/Chairperson
- Any dishonesty or breach of this Code of Conduct on the part of the Mayor/Chairperson is to be brought to the attention of the Chief Executive Officer.
- Be frank and honest in their official dealings with each other.
- Treat all members of the community honestly and fairly.

Elected Members, Committee Members and Employees:

- Have an obligation to consider issues consistently, promptly and fairly. This involves dealing with matters in accordance with established procedures, in a non-discriminatory manner.
- Must take all relevant facts known to them or that they should be reasonably aware of, into consideration and have regard to the particular merits of each case. They must not take irrelevant matters or circumstances into consideration when making decisions.

Elected Members, Committee Members and Employees must not take advantage of:

- Their position to improperly influence other Elected Members in the performance of their public or professional duties to secure a private benefit for yourself or for somebody else.
- Or seek to take advantage of their status or position with, or functions performed for the Council, in order to obtain unauthorised or unfair benefit for them or for any other person or body.

Performance of Duties

While on duty, staff will give their whole time and attention to the Local Government's business and ensure that their work is carried out efficiently, economically and effectively, and that their standard of work reflects favourably both on them and on the Local Government.

Council Members will at all times, exercise reasonable care and diligence in the performance of their duties, be consistent in their decision making but treat all matters on individual merits.

Council Members will be as informed as possible about the functions of the Council, and treat all members of the community honestly and fairly.

Compliance with Lawful Orders

Council Members, committee members and staff will comply with any lawful order given by any person having authority to make or give such an order, with any doubts as to the propriety of any such order being taken up with the superior of the person who gave the order and, if resolution cannot be achieved, with the Chief Executive Officer.

Council Members and staff will give effect to the lawful policies of the Local Government, whether or not they agree with or approve of them.

Administrative and Management Practices

Council Members, committee members and staff will ensure compliance with proper and reasonable administrative practices and conduct, and professional and responsible management practices.

Harassment and Discrimination

NOTE: See also Procedure QMS006 Harassment, Discrimination and Equal Opportunity.

BHRC recognises its legal obligations under the *Equal Opportunity Act 1984* and actively promotes equal employment opportunity based solely on merit to ensure that discrimination does not occur on the grounds of gender, marital status, sexual preference, pregnancy, disability, race, religion or political beliefs.

BHRC will not tolerate harassment within its workforce.

Harassment is defined as:

Unwelcome offensive action or remark concerning a person's race, sex, colour, language, ethnicity, political or religious convictions, gender, sexual preference, marital status or disability.

In accordance with the provisions of this Act, a *Relevant Person*:

- Have an obligation to consider issues consistently, promptly and fairly. This involves dealing with matters in accordance with established procedures, in a non-discriminatory manner.
- Must take all relevant facts known to them or that they should be reasonably aware of, into consideration and have regard to the particular merits of each case. They must not take irrelevant matters or circumstances into consideration when making decisions.

Sexual Harassment:

Elected Members, Committee Members, Employees and members of the public employed by or engaged in any business with the Council, has a right to do so in an environment that is free from sexual harassment.

Sexual harassment is **any** conduct of a sexual and/or sexist nature whether physical, verbal or non-verbal which is unwelcome and unsolicited. Sexual harassment is considered to be an unacceptable form of behaviour which will not be tolerated and BHRC recognises that sexual harassment is unlawful.

Such forms of sexual harassment include but are not limited to:

- deliberate and unnecessary physical contact such as:
 - Patting, pinching, fondling, kissing, brushing up against and touching.
- Subtle or explicit demands for sexual activities.
- Intrusive enquiries into a person's private life.
- Uninvited/unwelcome jokes that have a sexual and/or sexual undertone.
- Unsolicited gestures of a sexual nature.
- Displays within the workplace of sexually offensive material.

A formal sexual harassment procedure has been developed to set out the process in making and resolving a sexual harassment claim. (*Procedure QMS006 Harassment, Discrimination and Equal Opportunity*)

COMMUNICATION AND PUBLIC RELATIONS

All aspects of communication by staff (including verbal, written or personal), involving Local Government's activities should reflect the status and objectives of the BHRC. Communications should be accurate, polite and professional.

As a representative of the community, Council Members need to be not only responsive to community views, but to adequately communicate the attitudes and decisions of the Council.

In doing so Council Members should acknowledge that:

- As a member of the Council there is respect for the decision making processes of the Council which are based on a decision of the majority of the Council.
- Information of a confidential nature ought not to be communicated until it is no longer treated as confidential.
- They comply with the *Local Government Act 1995* whereby information relating to decisions of Council are to be communicated in an official capacity only by:
 - The Mayor/Chairperson (or his/her representative) with the agreement of the Mayor/Chairperson or by the Chief Executive Officer (or the Chief Executive Officer's representative).
- Information relating to decisions of the Council on approvals, permits and so on ought to only be communicated in an official capacity by a designated officer of the Council.
- Information concerning adopted policies, procedures and decisions of the Council is conveyed accurately.

Expression of Personal Views

Elected Members, Committee Members and employees are free to make their own personal position known about any matter, which is pertinent to the business of BHRC, including Council decisions provided that it cannot be construed to be a statement on behalf of the Council.

Elected Members, Committee Members and Employees will refrain from making personal statements to the media without clearly prefacing such remarks that they are personal views and not those of BHRC.

Elected Members, Committee Members and Employees will not adversely reflect on a Council decision. This shall not prejudice an individual member's right to express a personal opinion on issues of public interest.

Comment during Public Consultation Period

Elected Members, Committee Members and Employees:

- Will clearly preface any of their remarks as being their own personal views and not those of the Council or possibly be construed to be on behalf of the Council.
- Will encourage members of the public to make a written submission to BHRC.

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

CONFLICT AND DISCLOSURE OF INTEREST

Council members and staff will ensure that there is no actual (or perceived) conflict of interest between their personal interests and the impartial fulfilment of their professional duties.

Council members and staff will not engage in private work with or for any person or body with an interest in a proposed or current contract with the Local Government, without first making disclosure to the Chief Executive Officer. In this respect, it does not matter whether advantage is in fact obtained, as any appearance that private dealings could conflict with performance of duties must be scrupulously avoided.

Council Members and staff who exercise recruitment or other discretionary function will make disclosure before dealing with relatives or close friends and will disqualify themselves from dealing with those persons.

Staff will refrain from biased political activities which could cast doubt on their neutrality and impartiality in acting in their professional capacity. An individual's rights to maintain their own political convictions are not impinged upon by this clause. It is recognised that such convictions cannot be a basis for discrimination and this is supported by anti-discriminatory legislation.

Financial interest

Elected Members, Committee Members and Employees must comply with the laws governing financial interests, including the disclosure of financial interests, set out in the *Local Government Act 1995*.

Sections 5.59-5.90 of the *Local Government Act 1995* establish the requirements for disclosure by Elected Members, Committee Members or Employees of financial interests (including proximity interests).

The onus is on a *Relevant Person* to identify possible financial interests (including proximity interests and non-financial interests), to determine whether an interest exists, and whether any statutory exemption applies.

Disclosure of Interest

Definition

In this clause, and in accordance with Regulation 34C of the Local Government (Administration) Regulations 1996 '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.

A person who is an elected member, committee member or employee and who has an interest in any matter to be discussed at a council or committee meeting attended by the person is required to disclose the nature of the interest:

- In a written notice given to the CEO before the meeting or
- At the meeting immediately before the matter is discussed.

A person who is an elected member, committee member or employee and who has given, or will give, advice in respect of any matter to be discussed at a council or committee meeting not attended by the person is required to disclose the nature of any interest the person has in the matter:

- In a written notice given to the CEO before the meeting or
- At the time the advice is given.

A person is excused from the requirement above to disclose the nature of an interest if:

- The person's failure to disclose occurs because the person did not know he or she had an interest in the matter.
- The person's failure to disclose occurs 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 discloses the nature of the interest as soon as possible after becoming aware of the discussion of a matter of that kind.

If a person who is an elected member, committee member or employee makes a disclosure in a written notice given to the CEO before a meeting to comply with requirements above then:

- Before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting.
- Immediately before a matter to which the disclosure relates is discussed at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present.
- The nature of the disclosure to be recorded in the minutes of the meeting.

GIFTS AND BENEFITS

Definition

In this clause, and in accordance with Regulation 34B of the Local Government (Administration) Regulations 1996: 'Activity involving local government discretion' means an activity –

- *That cannot be undertaken without an Authorisation from the local government.*
- *By way of a commercial dealing with the local government.*

In this clause, and in accordance with Regulation 5.59, 5.74 of the Local Government Act 1995: 'Relevant Person' means a person who is a council member or a designated employee.

In this clause, and in accordance with Regulation 5.82 of the Local Government Act 1995:

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

In this clause, and in accordance with Regulation 5.83 of the Local Government Act 1995:

'Travel Contribution' means the amount of a contribution (other than a financial contribution) is to be treated as being an amount equal to the value of the contribution at the time the contribution was made.

NOTE: See also [Gift Register](#) and form QMS F-021 Gift Declaration

A Relevant Person must not:

- Seek or accept a bribe or other improper inducement.
- By virtue of their position acquire a personal profit or advantage which has a monetary value, other than one of the notifiable or hospitality gift.

A *Relevant Person* must not seek or accept any payment, gift or benefit intended or likely to influence, or that could be reasonably perceived by an impartial observer as intended or likely to influence them to:

- Act in a particular way (including making a particular decision).
- Fail to act in a particular circumstance.
- Otherwise deviate from the proper exercise of their official duties.

Acceptance of gifts

A *Relevant Person* may accept gifts or benefits of a nominal or token value that do not create a sense of obligation on their part. An exception to this Code is where an *Relevant Person* is invited to attend a function in their role of representing Council or the community unless acceptance may reflect adversely on Council or be seen as potentially affecting any matter then before Council or likely to come before it.

A *Relevant Person* shall not seek or accept (directly or indirectly) from any person or body, any immediate or future gift, reward, donation, inducement or benefit for themselves or for any other person or body, relating to their status within the BHRC, or their performance of any duties or work which touches or concerns the BHRC.

A *Relevant Person* may accept acts of moderate hospitality for community related events or events related to the performance of their duties for the BHRC.

This section does not prevent the acceptance of a gift/benefit:

- On behalf of the BHRC in the course of performing professional or ceremonial duties in circumstances where the gift is presented in whole to the Chief Executive Officer, entered into the Gifts Register and used or retained exclusively for the benefit of the BHRC.
- By a *Relevant Person* where the gift/benefit is provided to the BHRC as part of a broader sponsorship package, where such benefit would be provided to any other organization that undertakes similar sponsorship of the event and the gift/benefit is included as part of that package.
- Where a gift(s) is of a civic nature exceeds \$200 is received from a visiting dignitary as part of civic/ceremonial protocols and/or customs, they can only be accepted on behalf of the BHRC and shall become the property of the BHRC.
- It is not permissible to transfer or pass on an accepted gift (e.g. concert tickets, function invitation). However, in instances where for example, two or more gifts or benefits are issued (e.g. tickets), it is permissible for a *Relevant Person* to be accompanied by a spouse/partner/or other individual.

Gifts of value

A *Relevant Person* must never accept an offer of money, regardless of the amount.

A *Relevant Person* must avoid situations in which the appearance may be created that any person or body, through the provision of hospitality or benefits of any kind, is securing or attempting to influence or secure a favour from them or the BHRC.

A *Relevant Person* must also take all reasonable steps to ensure that their immediate family members do not receive gifts or benefits that could appear to an impartial observer to be an attempt to influence or secure a favour. Immediate family members ordinarily include parents, spouses, children and siblings.

Prohibited gifts

A *Relevant Person* must not accept a gift from a person:

- Who is undertaking or seeking to undertake or
- Who it is reasonable to believe is intending to undertake an activity involving local government discretion.

Notification of Acceptance of Gifts

A *Relevant Person* who accepts a gift from a person must within 10 days of accepting the gift, notify the Chief Executive Officer, and in accordance with this procedure:

- The notification of the acceptance of a gift be in writing
- Be on the correct notification form, Form QMS F-021

The Chief Executive Officer is to maintain a register of gifts in which details of notices received are recorded with information is to be made available online at <http://www.bhrc.wa.gov.au>.

Contributions to Travel

A *Relevant Person* must disclose each financial or other contribution that has been made to any travel undertaken by the person in writing to the CEO within 10 days of receipt of the contribution and must include in accordance with this procedure:

- The notification of the acceptance of a contribution to travel be in writing
- Be on the correct notification form, Form QMS F-021

The Chief Executive Officer is to maintain a register of gifts in which details of notices received are recorded with information is to be made available online at <http://www.bhrc.wa.gov.au>.

Hospitality gifts

A 'hospitality gift' is a gift (or a combination of gifts in any one annual return period) with a value of less than \$50 and these are not required to be recorded in the BHRC's Gifts Register. These gifts are not limited to, but may include items such as:

- Trinket gifts of an insignificant nature.
- Minor items of apparel (e.g. ties, scarves, cuff-links, tie pins).
- Minor items of a promotional nature (e.g. coasters, diaries, mouse pads, mugs, pens, pencils).
- Provision of flowers, food, beverages, liquor (gifts of single bottles of reasonably priced alcohol) and refreshments of small amounts.
- Free or subsidised meals, of a modest nature, and/or beverages that have been arranged primarily for, or in connection with, the discussion of official business.
- Free meals, of a modest nature, and/or beverages provided to persons who formally represent the BHRC at work related events such as training, education sessions and workshops.
- Refreshments, of a modest nature, provided at conferences where you are a speaker/presenter.
- Invitations to appropriate out of hours 'cocktail parties' or social functions organised by groups, such as, community organisations.

Where an Elected Member, Committee Member or employee's partner is invited to attend an official function that is related to the BHRC, with the Elected Member, Committee Member or employee, the partner may accept 'notifiable gifts' or moderate acts of hospitality.

The acceptance of 'notifiable gifts' and/or moderate acts of hospitality by a particular Elected Member, Committee Member or employee from a person(s) or organisation on a frequent basis shall not be permitted.

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

This section does not apply to gifts received from a relative (as defined in S 5.74(1) of *the Local Government Act 1995*) or an electoral gift (to which other disclosure provisions apply).

Disclosure of gifts in annual returns

A Relevant Member, as defined in section 5.74 of the *Local Government Act 1995*, should also remember to disclose gifts, in an annual return, received and valued at over \$200, that are not covered by the *Local Government (Rules of Conduct) Regulations 2007* (for Elected Members) or this Code (for employees).

Disclosure of election campaign contributions

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

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

INFORMATION

Use of Confidential Information

In accordance with the *Local Government Act 1995*, Elected Members and Committee Members are to be given access to all information for them to properly perform their functions and comply with their responsibilities as Elected Members and Committee Members.

Elected Members and Committee Members will ensure that information provided will be used properly and to assist in the process of making reasonable and informed decision on matters before Council.

The BHRC must provide access to documents available under section 5.94 of the *Local Government Act 1995* to all members of the public, and to Elected and Committee Members. BHRC must also provide Elected Members with information sufficient to carry out their civic functions.

Elected Members and Committee Members who have a personal (as distinct from civic) interest in a document of the BHRC have the same rights of access as any member of the public.

Employees have an obligation to provide full and timely information to Elected Members and Committee Members about matters that they are dealing with, in accordance with BHRC procedures.

Elected Members and Committee Members have an obligation to properly examine all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter.

Council Members, Committee Members and staff will not use confidential information to gain improper advantage for themselves or for any other person or body, in ways which are inconsistent with their obligation to act impartially and in good faith, or to improperly cause harm or detriment to any person or organisation.

Intellectual Property

BHRC owns all intellectual property rights (including copyright) in material created by its employees pursuant to their employment.

The title to Intellectual Property in all duties relating to contracts of employment will be assigned to BHRC upon its creation unless otherwise agreed by separate contract.

Improper or Undue Influence

Council Members, Committee Members and staff will not take advantage of their position to improperly influence other Council Members or staff in the performance of their duties or functions, in order to gain undue or improper (direct or indirect) advantage or gain for themselves or for any other person or body.

Improper use of information

Elected Members, Committee Members and employees of the BHRC will not use information to gain improper advantage for themselves or for any other person or body, in ways which are inconsistent with their obligation to act impartially and in good faith, or to improperly cause harm or detriment to any person or organisation.

Use of confidential information

Definition

A *confidential document* means a document marked by the Chief Executive Officer to clearly show that the information in the document is confidential and is not to be disclosed.

A *closed meeting* means a Council meeting 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 *Local Government Act 1995*.

Elected Members, Committee Members and employees must not disclose to another person, written or oral information that is provided to them, or obtained by them, in confidence, or derived from a confidential document, or acquired at a closed Council meeting or Committee meeting which is not open to the public.

An Elected Member, Committee Member or employee is not prevented from disclosing information:

- To an officer of the Department of Local Government and Communities.
- To the Minister for Local Government.
- To a legal practitioner for the purpose of obtaining legal advice.
- If the disclosure is required or permitted by law.

Request for Information

An Elected Member, Committee Member or employee making an enquiry on a matter being considered by the BHRC administration or the Council in which that employee has a personal/financial interest shall seek the information only from the Chief Executive Officer and that when required by the Chief Executive Officer the request shall be in writing.

An Elected Member, Committee Member or employee making an enquiry on a matter being considered by the BHRC administration or the Council must not use confidential information gained through their official position for the purpose of securing a private benefit for themselves or for any other person.

Refusal of Access to Documents

The Chief Executive Officer must act reasonably in deciding whether a document sought by Elected or Committee Members should be made available under section 5.92 of the *Local Government Act 1995* or because it is relevant to the performance of the Council Member's civic duty. The Chief Executive Officer must state the reasons for the decision if access is refused.

DEALING WITH COUNCIL PROPERTY

Use of BHRC Resources

Council Members and staff will:

- Be honest in their use of the BHRC resources and shall not misuse them or permit their misuse (or the appearance of misuse) by any other person or body.
- Use the BHRC resources entrusted to them effectively and economically in the course of their duties.
- Not use the BHRC resources (including the services of Council staff) for private purposes (other than when supplied as part of a contract of employment), unless properly authorised to do so, and appropriate payments are made (as determined by the Chief Executive Officer).

Travelling and Sustenance Expenses

Council Members, Committee Members and staff will only claim or accept travelling and sustenance expenses arising out of travel-related matters which have a direct bearing on the services, policies or business of the BHRC in accordance with the provisions of the Local Government Act.

Use of BHRC property for election purposes

The interests of an Elected Member in their re-election are considered to be a personal interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate.

BHRC letterhead, logo and other information that could give the impression it is official BHRC material must not be used for these purposes.

BREACHES AND SUSPECTED BREACHES OF THE CODE

Rules of Conduct Regulations

Elected Members are required by the Rules of Conduct Regulations to observe the rules of conduct prescribed in the Rules of Conduct Regulations and those rules do not form part of this Code.

The *Local Government Rules of Conduct Regulations 2007* cover the following key areas:

- *“Principles of general behaviour;*
- *Local Law as to conduct at meetings;*
- *Use of Information;*
- *Securing unauthorised advantages or disadvantages;*
- *Misuse of Council resources;*
- *Prohibition against involvement in administration;*
- *Relations with local government employees;*
- *Disclosure of interest adversely affecting impartiality; and*
- *Restriction on receiving and disclosure of certain gifts.”*

(Local Government (Official Conduct) Amendment Act 2007 (Explanatory Notes))

The Act

Certain conduct and actions by a *Relevant Person* constitute an offence under the Act and Regulations and are not dealt with by this Code.

Breaches of the Act, Regulations or the Code can be identified in three (3) categories:

- *Minor Breach:* Breach of the Rules of Conduct, Regulations or a local law under the *Act*, contravention of which has been specified as a minor breach;
- *Recurrent Breach:* Two (2) or more minor breaches; and
- *Serious Breach:* Breach of a written law other than a local law.

Enforcement of the Code

Any Elected Member, Committee Member or employee having concerns with regard to an actual, perceived, potential, intended or unintended breach of either the specific provisions or the spirit of the Code of Conduct, or any

provisions of the *Local Government Act 1995*, Regulations or local laws, should discuss those concerns with the Chief Executive Officer where such matters relate to Elected Members, Committee Members or employees.

If the matter involves the Chief Executive Office then it shall be referred to the Mayor/Chairperson.

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

Any actions taken as a result of a breach will be made in accordance with the provisions of any applicable legislative requirement and the BHRC's responsibilities as an employer.

Serious and/or repeated breaches of the Code will be reported to the Council or appropriate Authority for consideration and appropriate action, where necessary.

Dealing with Complaints and Allegations

If a person has any complaint concerning the performance, ability, character or integrity of any Elected Member, Committee Member or employee, or of any act or omission by an Elected Member, Committee Member or employee, and desires to bring such complaint to the notice of the Council, he or she shall notify the Chief Executive Officer of the complaint, in writing, giving such details as are available in order that the complaint may be investigated and, if necessary reported upon by the Chief Executive Officer.

The complaint must be given in confidence and:

- Identify the complainant and the person against whom the complaint is made.
- Set out the details of the complaint, alleged breach of the Code of Conduct and/or legislation.
- Be in writing.

Any person who has lodged a complaint, or any Elected Member, Committee Member or employee, against whom a complaint has been made, must keep it confidential, until the complaint has been determined or finalised.

Employees:

- Any complaint about an employee (other than the Chief Executive Officer) shall be dealt with administratively by the Chief Executive Officer.
- Any complaint about the Chief Executive Officer shall be in writing, signed by the person or persons making the complaint and shall be addressed to the Mayor/Chairperson, with a copy to the Chief Executive Officer and will be dealt with as part of the performance review of the Chief Executive Officer, or as agreed by the Mayor/Chairperson and the Chief Executive Officer.

Elected Members and Committee Members:

- Any complaint about an Elected Member or Committee Member shall be in writing and be reported to the Chief Executive Officer.

Making a Complaint of a Breach

The Act establishes a complaints process that must be followed by any person seeking to lodge a complaint. It includes the requirement that all complaints be lodged in writing, giving details of:

- Who is making the complaint?
- Who is alleged to have committed the breach?
- The contravention that is alleged to have resulted in the breach.
- Any other information that the regulations may require.

Complaints can be lodged by an Elected Member, a Council employee or a member of the general public. Two (2) initial contact points have been established through the legislation, to facilitate the lodgement of complaints. They are the respective local governments 'Complaints Officer' (the CEO unless otherwise designated) and the Director General of the Department of Local Government and Communities.

Complaints of a minor breach are to be referred to the CEO, while serious breaches are to be referred to the Director General. Recurrent breaches may be referred by the Standards Panel, to the Director General and may then be dealt with as a serious breach.

The Standards Panel, established to consider serious breaches will be formulated to consist of a Chairperson (from the Department of Local Government and Communities), a nominee from the Western Australian Local Government Association (with relevant Local Government experience) and a person having relevant legal knowledge. The legislation does not permit the local government, or the CEO, to determine an outcome from receiving a complaint.

Procedure for Dealing with Complaints and Allegations

All complaints and allegations will:

- Be treated as confidential and will ensure that the principles of 'natural justice' and 'procedural fairness' are followed at all times
- For Elected Members and Committee Members, be dealt with in accordance with the Act, and Regulations.

Corruption and Crime Commission Act 2003

The Chief Executive Officer being a 'principal officer of a notifying authority' (for the purposes of the *Corruption and Crime Commission Act 2003*) has a statutory obligation to report to the Corruption and Crime Commission:

- Any allegation of misconduct.
- Any situation that otherwise comes to his or her attention involving misconduct, where the CEO suspects on reasonable grounds that the suspected misconduct is of relevance or concern to the CEO in his or her official capacity.

Notwithstanding, any Elected Member, Committee Member, employee or any other person may report directly to the Corruption and Crime Commission any matter which that person suspects on reasonable grounds concerns or may concern misconduct that;

- Has or may have occurred.
- Is or may be occurring.
- Is or may be about to occur.
- Is likely to occur.

Penalties will prevail if a person who makes a complaint: -

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

Definition

The Corruption and Crime Commission has produced the following information:

'Misconduct' essentially occurs if a public officer (which includes Local Government Elected Members and employees):

- (a) Corruptly acts or corruptly fails to act — in the performance of the functions of the public officer's office of employment;*
- (b) Corruptly takes advantage for own benefit or detriment to another — a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; or*
- (c) Commits an offence in official capacity — a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment.*

OR

A public officer engages in conduct that:

- (i) Adversely affects or could adversely affect the honest or impartial performance of the functions of a public authority or public officer whether or not acting in their official capacity at the time;*
- (ii) Involves the public officer performing his or her functions without honesty or impartiality;*
- (iii) Constitutes or involves a breach of trust placed in the public officer by reason of his or her office or employment as a public officer; or*
- (iv) Suggests that the public officer misused information for personal benefit or the detriment of another person.*

AND constitutes or could constitute:

- (v) An offence against the Statutory Corporations (Liability of Directors) Act 1996;*
- (vi) An offence against any other written law; or*
- (vii) A disciplinary offence that could lead to termination of employment if the disciplinary process in the Public Sector Management Act were applied (even if the Public Sector Management Act does not apply to the position).*

What Does Corruptly Mean?

The term corruptly is not defined under the Act.

'Corruption' usually involves calculated, often continuing, covert and wrongful exercise of public duty or function. The Criminal Code also provides guidance by defining the offence of corruption at section 83, in the following terms:

'... Any public officer who, without lawful authority or a reasonable excuse:

- (a) Acts upon any knowledge or information obtained by reason of his office or employment;*
- (b) Acts in any matter, in the performance or discharge of the functions of his office or employment, in relation to which he has, directly or indirectly, any pecuniary interest; or*
- (c) Acts corruptly in the performance or discharge of the functions of his office or employment so as to gain a benefit, whether pecuniary or otherwise, for any person, or so as to cause a detriment, whether pecuniary or otherwise, to any person.'*

Protection of Persons Reporting Unacceptable Or Illegal Behaviour

The Chief Executive Officer is to ensure that the *Relevant Person* who report unacceptable or illegal behaviour of Elected Members, Committee Members or employees (that is, whistle-blowers) are not in any way disadvantaged or victimised because of their actions.

The Chief Executive Officer's actions are limited to matters for which he/she has responsibility and/or jurisdiction to act.

REFERENCES

- Independent Commission against Corruption - *'Lobbying Local Government Councillors'* August 2006
- Department of Local Government and Regional Development *'Council Members Relationship with Developers'* Operational Guidelines as from time to time issued
- *Local Government (Rules of Conduct) Regulations 2007*
- *Local Government Act 1995*
- *Local Government (Administration) Regulations 1996*
- *Public Interest Disclosure Act 2003*
- *Corruption and Crime Commission Act 2003*
- *Equal Opportunity Act 1984*
- *Statutory Corporations (Liability of Directors) Act 1996*

FURTHER INFORMATION

- *Procedure QMS006 Harassment, Discrimination and Equal Opportunity.*
- *Procedure QMS F-021 Gift Declaration*
- *Gift Register*