

SHIRE OF
WESTONIA
A vibrant community lifestyle

Code of Conduct for Council Members, Committee Members and Employees

This plan is available upon request in alternative formats such as large print, electronic format (disk or Email).

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PREAMBLE

This Code of Conduct provides council members, committee members and employees of the Shire of Westonia with consistent guidelines for an acceptable standard of professional conduct. The code addresses in a concise manner the broader issue of ethical responsibility and encourages greater transparency and accountability.

The code is complementary to the principles adopted in the *Local Government Act 1995* and regulations which incorporate four fundamental aims to result in:

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

The code provides a guide and a basis of expectations for council members, committee members and employees. It encourages a commitment to ethical and professional behaviour and outlines principles in which individual and collective local government responsibilities may be based.

STATUTORY ENVIRONMENT

The Code of Conduct observes statutory requirements of the *Local Government Act 1995* (S 5.103 – Codes of Conduct) and *Local Government (Administration) Regulations 1996* (Regs 34B and 34C).

RULES OF CONDUCT

Council members acknowledge their activities, behaviour and statutory compliance obligations may be scrutinised in accordance with prescribed rules of conduct as described in the *Local Government Act 1995* and *Local Government (Rules of Conduct) Regulations 2007*.

1. ROLES

1.1 Role of Council Member

The primary role of a council member is to represent the community, and the effective translation of the community's needs and aspirations into a direction and future for the Shire of Westonia will be the focus of the council member's public life.

The role of council members, as set out in S 2.10 of the *Local Government Act 1995*, 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."*

A council 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, council 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 Shire of Westonia'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 council members and on local governments.

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

1.2 Role of Employees

The role of employees is determined by the functions of the CEO as set out in S 5.41 of the *Local Government Act 1995*: *"The CEO's functions are to —*

- (a) advise the council in relation to the functions of a local government under this Act and other written laws;*
- (b) ensure that advice and information is available to the council so that informed decisions can be made;*
- (c) cause council decisions to be implemented;*
- (d) manage the day to day operations of the local government;*
- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;*
- (f) speak on behalf of the local government if the mayor or president agrees;*
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to S 5.37(2) in relation to senior employees);*
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and*
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO."*

1.3 Role of Council

The role of the council is in accordance with S 2.7 of the *Local Government Act 1995*: *"(1) The council —*

- (j) directs and controls the local government's affairs; and*
 - (k) 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."*

The role of the Council is to administer the Shire in the best interest of its community. The Shire of Westonia is committed to providing open, responsive and accountable government. It must do that in accordance with the applicable legislation.

The Council will undertake its duties honestly, fairly, impartially and responsibly to the best of its ability, promoting justice, respect and care for the community.

There will be times when the Council must make decisions for the good of the district which are not well understood or popular decisions. Nevertheless the Council must make the decisions without fear or favour and accept accountability for them.

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

1.4 Role of President

The President represents the collective leadership of the Council and provides an interface between the Elected Members and Chief Executive Officer of the Council.

The role of the President falls within the following broad areas:

- (a) Leadership, representation and advocacy
- (b) Chairperson
- (c) Public relations and communications
- (d) Ceremonial responsibilities and social engagements.

Leadership

The President provides:

- (a) Leadership and guidance to the community.
- (b) Corporate leadership at elected level and to act as a link between Council and executive.
- (c) Guidance in the distribution of the workload to Elected Members and;
- (d) Representation for Council at appropriate meetings of organisations.

Chairperson

The President:

- (a) Determines Council meeting procedures in line with the Act and the Standing Orders Local Law.
- (b) Exercises impartiality in encouraging relevant, constructive and concise debate during meetings at which the Mayor presides.

Public Relations and Communications

The President:

- (a) Liaises with the CEO on the Town's affairs and the performance of its functions.
- (b) Is the spokesperson for the Town. The Mayor may authorise the CEO or other appropriate person to speak on behalf of the Town.
- (c) Will lead Council deputations and represent Council at major congresses, seminars etc.
- (d) Endeavours to have open communication with the CEO to raise awareness of the Mayor's activities in regard to Town business.
- (e) Endeavours to be available to members of the public wherever possible; mindful that, the public should be encouraged to discuss any operational issues with a responsible senior officer prior to meeting the Mayor. The Mayor may liaise with the CEO to arrange appropriate officer advice and attendance at meetings.
- (f) Acknowledges the stature of the office of Mayor and endeavours at all times to act with utmost propriety to uphold the standing of the office.

Ceremonial Responsibilities and Social Engagements

The President:

- (a) Represents Council at official and other functions.
- (b) Carries out civic and ceremonial duties on behalf of Council
- (c) May delegate attendances when necessary to the Deputy Mayor, representative Ward members, or the CEO.
- (d) With the assistance of an appropriate Employee, facilitate proper planning of social engagements and obtain protocol information for official duties to be performed at functions.

1.5 Role of Chief Executive Officer

The Chief Executive Officer [CEO] is Council's principal adviser and allocates resources within the framework established by the Act and Council to allow Council's decisions to be implemented and be responsible for the overall management of the Shire's performance. The role of employees is determined by the functions of the CEO as set out in S 5.41 of the *Local Government Act 1995* :-

"The CEO's functions are to —

- (a) advise the council in relation to the functions of a local government under this Act and other written laws;*
- (b) ensure that advice and information is available to the council so that informed decisions can be made;*
- (c) cause council decisions to be implemented;*
- (d) manage the day to day operations of the local government;*
- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;*
- (f) speak on behalf of the local government if the mayor or president agrees;*
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to S 5.37(2) in relation to senior employees);*
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and*
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO."*

1.6 Relationships between Council Members and Employees

(a) An effective council member will work as part of the council team with the CEO and other members of employees. That teamwork will only occur if council members and employees 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 a leadership, not a management or administrative one;
- acknowledge that they have no capacity to individually direct members of employees to carry out particular functions;
- refrain from publicly criticising employees in a way that casts aspersions on their professional competence and credibility

(b) All staff are employed by and responsible to the CEO. Elected Members do not have a role in managing staff, nor should they make direct requests of staff.

(c) The CEO has established a protocol to ensure Elected Member requests are received, recorded and responded to. Elected Members will ensure staff can provide the best support by following the protocol.

(d) A staff member is supported in drawing the protocol to the attention of an Elected Member.

2. CONFLICT AND DISCLOSURE OF INTEREST

2.1 Conflict of Interest

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

(b) Employees will not engage in private work with or for any person or body with an

interest in a proposed or current contract with the Shire of Westonia without first making disclosure to the CEO. 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.

- (c) Council members, committee members and employees will lodge written notice with the CEO describing an intention to undertake a dealing in land within the Shire of Westonia area or which may otherwise be in conflict with the council's functions (other than purchasing the principal place of residence).
- (d) Council members, committee members and employees 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.
- (e) Employees will refrain from partisan 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.

Identifying Conflicts of Interest

It is not wrong to have a conflict of interest; what matters is how it is dealt with.

Actual, potential or perceived conflicts of interest may arise from a number of sources, including but not limited to, friends, relatives, close associates, financial investments, place of residence, property ownership and current or past employment.

In identifying conflicts of interest, Councillors, Committee Members and employees should consider the following points, known as the 6 P's:

1. public duty versus private interests - *do I have personal or private interests that may conflict, or be perceived to conflict, with my public duty?*
2. potentialities - *might there be benefits for me now, or in the future, that could cast doubt on my objectivity?*
3. perception - *how will my involvement in the decision/action be viewed by others? Are there risks associated for me/the Shire?*
4. proportionality - *does my involvement in the decision appear fair and reasonable in all the circumstances?*
5. presence of mind - *what are the consequences if I ignore a conflict of interest? What if my involvement was questioned publicly?*
6. promises - *have I made any promises or commitments in relation to the matter? Do I stand to gain or lose from the proposed action/decision?*

Monitoring and Managing Conflicts of Interest

Identified conflicts of interest must be appropriately disclosed and then managed on an ongoing basis by the discloser.

In managing conflicts of interest, Councillors, Committee Members and employees are to use the "6 R's" as follows:

1. record/register - first disclose the interest in the appropriate form, and then if necessary:
2. restrict your involvement in the matter;
3. recruit or involve an independent third party;
4. remove yourself from the matter;
5. relinquish the conflicting personal or private interest; or
6. resign from your position.

2.2 Financial Interest

Financial interests are not just situations where money changes hands, but can also involve anything with a financial value such as, owning property, a business partnership, a position in a company, election donations, shares, debts, hospitality and gifts.

A financial interest exists when it is reasonable to expect that the matter will, if dealt with by the local government, in any particular way, result in a financial gain, loss, benefit or detriment for the person or a close associate.

References:

Sections 5.59-5.90 Local Government Act 1995

Part 6 Local Government (Administration) Regulations 1996

Proximity Interests

A person has a proximity interest in a matter if it concerns a change to a planning scheme, zoning or use affecting land, or a proposed development of land, that adjoins land owned by the person, or in which the person has an interest.

References:

Section 5.60B Local Government Act 1995 (Sections 5.59-5.90 also apply)

Impartiality Interests

Regulation 34C of the *Local Government (Administration) Regulations 1996* defines an impartiality interest as 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.

Interests affecting impartiality may not have a financial component or value and are not limited to but may include:

1. family relationships;
2. friends and enemies;
3. religious and cultural obligations;
4. membership or holding office in clubs, associations, groups or organisations;
5. beliefs, values and attitudes;
6. volunteer commitments; and
7. reputation, power and influence.

References: Regulation 11 Local Government (Rules of Conduct) Regulations 2007

2.3 Disclosure of Interest

In relation to disclosure of interests Regulations stipulate the requirements for disclosing interests. For Councillors, Regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007* applies. For employees, Regulation 34C of the *Local Government (Administration) Regulations 1996* applies. The provisions of both are essentially the same. The onus is on Councillors, Committee Members and employees to identify possible interests and to determine whether an interest exists, and whether any of the statutory exemptions set out at Section 5.63 of the Act apply.

Councillors, Committee Members and employees must:

1. comply with the laws governing interests, including the disclosure of interests, as set out in the Act; and
2. disclose interests in accordance with the requirements for disclosure set out in Sections 5.59 – 5.90 of the Act.

In doing so, Councillors, Committee Members and employees will ensure that there is no actual, potential or perceived conflict of interest between their personal interests and the impartial fulfilment of their public or professional duties.

Councillors, Committee Members and employees will lodge written notice with the CEO describing an intention to undertake a dealing in land within the Shire of Westonia or which may otherwise be in conflict with the Council's functions (other than purchasing the principal place of residence).

Councillors, Committee Members and employees who exercise a recruitment or other discretionary function will make a disclosure before dealing with relatives or close friends and will disqualify themselves from dealing with those persons.

A Councillor, Committee Member or employee who has an Impartiality Interest in any matter to be discussed at a Council or Committee meeting attended by that person must disclose the nature of the Impartiality Interest:

1. in a written notice given to the CEO before the meeting; or
2. at the meeting immediately before the matter is discussed.

In addition, an employee 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 employee must disclose the nature of any Impartiality Interest he or she has in the matter:

1. in a written notice given to the CEO before the meeting; or
2. at the time the advice is given.

A Councillor, Committee Member or employee is excused from the requirement to disclose an Impartiality Interest if the failure to disclose occurs because the person:

1. did not know he or she had an Impartiality Interest in the matter; or
2. did not know the matter in which he or she had an Impartiality Interest would be discussed at the meeting and the person discloses the nature of the Impartiality Interest as soon as possible after becoming aware of the discussion of that matter.

The disclosure of an Impartiality Interest does not affect the ability of the Councillor or employee to discuss or vote on the matter.

Where an Impartiality Interest is disclosed in a written notice given to the CEO before a meeting, then:

1. before the meeting the CEO is to ensure that the notice is given to the person who is to preside at the meeting; and
2. at the meeting, the person presiding is to bring the notice and its contents to the attention of the persons present immediately before the matter to which the disclosure relates is discussed.

Where an Impartiality Interest is disclosed or brought to the attention of the persons present at a meeting, the nature of the Impartiality Interest must be recorded in the minutes of the meeting

3. PERSONAL BENEFIT

3.1 Use of Confidential Information

Council members, committee members and employees 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.

Due discretion shall be exercised by all those who have access to confidential or sensitive information. Every matter dealt with by, or brought before, a meeting sitting behind closed doors, shall be treated as strictly confidential, and shall not without the authority of the Council be disclosed to any person other than the Elected Members and/or employees of the Shire (and in the case of employees only so far as may be necessary for the performance of their duties) prior to the discussion of the matter at a meeting of the Council held with open doors.

Nothing in this section prevents an Elected Member or officer from disclosing confidential information:

- to a legal practitioner for the purpose of obtaining legal advice; or
- if the disclosure is permitted by law.

3.2 Intellectual Property

The title to intellectual property in all duties relating to contracts of employment will be assigned to the Shire of Westonia upon its creation unless otherwise agreed by separate contract.

3.3 Improper or Undue Influence

Council members and employees will not take advantage of their position to improperly influence other council members or employees 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.

Elected Members shall not take advantage of their position to improperly influence any other person in order to gain undue or improper (direct or indirect) advantage or gain, pecuniary or otherwise, for themselves or for any other person or body. Similarly, Elected Members shall not take advantage of their positions to improperly disadvantage or cause detriment to the Council or any other person.

Elected Members should note that matters which amount to “political support” before council elections may give rise to a non-financial conflict of interest if matters, which effect any person or entity that gave such support, come before Council for discussion and /or decision.

Elected Members will inevitably deal personally with their council (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). They must not expect or request preferential treatment for themselves or their family because of their position. They must avoid any action that could lead members of the public to believe that they are seeking preferential treatment.

References:

Regulations 7 and 10(1) and (2) Local Government (Rules of Conduct) Regulations 2007

3.4 Gifts

Section 5.82 of the *Local Government Act 1995* states that a relevant person is to disclose each gift received by the person. The disclosure is to be in writing to the CEO and made within 10 days of receipt of the gift. The disclosure is to contain:

1. a description of the gift;
2. the name and address of the person who made the gift;
3. the date on which the gift was received;
4. the estimated value of the gift at the time it was made; and
5. the nature of the relationship between the relevant person and the person who made the gift.

A gift does not need to be disclosed if the donor was a relative of the person or if the value of the gift does not exceed **\$300**, unless under the Regulations it is a Notifiable Gift, or the gift was one of 2 or more gifts made by one person at any time during the year and the sum of those 2 or more gifts exceeds **\$300**.

The CEO is required to maintain a register of gifts and record in it details of the disclosures given. The register is to be made available for public inspection and published on the local government's

official website. The Shire's register is via an excel spreadsheet located on the Shire System.

Examples of gifts are:

1. a tangible item, such as a bottle of wine or a book;
2. a contribution towards the provision of accommodation;
3. an act of hospitality, such as payment for a meal or an invitation to a function or event; or
4. discounts on a provider's products.

Nothing in this Code prevents a gift from being received:

1. on behalf of the Shire where it is retained by the Shire; or
2. by a Councillor or employee under and in accordance with the terms of a sponsorship or other commercial arrangement with the Shire.

For example, a ticket to attend a VIP event that is given to a Councillor or employee will not be a 'gift' (and, therefore, will not be subject to the gift provisions of this Code) if it is given because of a contractual obligation to give it under a sponsorship agreement with the Shire. However, a ticket that is given voluntarily, over and above any contractual obligation will be a gift (if it otherwise satisfies the definition of 'gift').

Regulations stipulate the requirements for accepting and disclosing of gifts. For Councillors, Regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* applies. For employees, Regulation 34B of the *Local Government (Administration) Regulations 1996* applies. The provisions of both are essentially the same.

Notifiable Gifts

A Councillor or employee who accepts a Notifiable Gift from a person who is undertaking, seeking to undertake or it is reasonable to believe is intending to undertake an activity involving a local government discretion, must, within 10 days of accepting the gift, notify the CEO of the acceptance in accordance with the following:

1. notification of acceptance is to be recorded in the Shire's Attain software program and is to include:
 - a) the name and address of the person who gave the gift;
 - b) the date on which the gift was accepted;
 - c) a description, and the estimated value, of the gift;
 - d) the nature of the relationship between the gift recipient and the person who gave the gift; and
 - e) if the gift is one of 2 or more gifts received from the same person within the 6 month period, a description, the estimated value and the date of acceptance of each other gift accepted within the 6 month period.

Prohibited Gifts

Councillors and employees are to refrain from accepting a Prohibited Gift from a person who is undertaking, seeking to undertake or it is reasonable to believe is intending to undertake an activity involving a local government discretion,

Any gift valued at \$300 or more should be declined politely. If it is considered inappropriate to reject a gift worth \$300 or more (such as in the case of a gift from a foreign dignitary), the gift should be received on behalf of the Shire and provided to the CEO at the first possible opportunity. At the CEO's discretion, these gifts will be placed in an appropriate position within the Shire and registered in the Shire's memorabilia collection.

The value of a gift can be estimated if you believe its value is low. However, if it is believed its value approaches \$300, the precise value of the gift should be checked before accepting to ensure compliance with this Code.

It is also important to ensure that the full value of the gift is taken into account. This includes all Shire of Westonia (Code of Conduct)

hidden costs in association with acts of hospitality. (For example, if invited to a box at a sporting event, the cost is not just the cost of an entry ticket but a proportion of the cost of the box and the hospitality provided.) It would also include the cost of the attendance of a partner at an event, should the partner be invited to accompany the Shire's representative.

Gifts during Local Government Elections

This requirement relates to Candidates and involves gifts that are valued at \$200 or more and includes *"any disposition of property, or the conferral of any financial benefit, made by one person in favour of another"*.

During the disclosure period of the Local Government election process (as defined by Regulation 30C of the *Local Government (Elections) Regulations 1997*), candidates must:

1. within three days of the making, receipt or promise of a gift, disclose to the CEO the receipt or promise of such a gift; and
2. not receive or accept gifts from a donor whose name and address is not known to the candidate.

A candidate does not commit an offence under Regulation 30B(4) of the *Local Government (Elections) Regulations 1997* if the candidate cannot provide some or all of the information required in Regulation 30F(1) of the *Local Government (Elections) Regulations 1997* and on the Disclosure Form of an Election Gift if:

1. the candidate provides as much of the information as is available to the candidate;
2. indicates what required information is not provided; and
3. provides reasons for not being able to provide the information.

References:

*Sections 4.59, 5.82, 5.83, 5.89, 5.74 and 9.25 Local Government Act 1995 Part 6 Local Government (Administration) Regulations 1996
Regulations 12, 14 and 15 Local Government (Rules of Conduct) Regulations 2007*

Travel Contributions

All Councillors and Designated Employees must declare any contribution towards travel and includes accommodation incidental to a journey. Notifications are to include:

1. a description of the contribution;
2. the name and address of the person who made the contribution;
3. the date on which the contribution was received;
4. the estimated value of the contribution at the time it was made;
5. the nature of the relationship between the recipient of the contribution and the person who made the contribution;
6. a description of the travel; and
7. the date of the travel.

Councillors and employees do not need to declare travel contributions when:

1. the contribution was made from Commonwealth, State or Local Government funds;
2. the contribution was made by a relative of the person;
3. the contribution was made in the ordinary course of an occupation of the person which is not related to his or her duties as a Councillor or employee;
4. the amount of the contribution did not exceed the prescribed amount (\$200) unless:
 - a. the contribution was one of two or more contributions made by one person at any time during the return period; and
 - b. the sum of those two or more contributions exceeded the prescribed amount; or
5. the contribution was made by a political party of which the person was a member and

the travel was undertaken for the purpose of political activity of the party, or to enable the person to represent the party.

As mentioned above, all Councillors and employees who accept a gift or travel contribution shall declare them to the CEO/Executive Office who will input on the Shire's system (excel) which will constitute the register required to be maintained by the CEO.

A table developed by the Department of Local Government and Communities detailing the obligations relating to gift and travel contributions is included in Attachment A.

References:

*Sections 4.59, 5.82, 5.83, 5.89, 5.74 and 9.25 Local Government Act 1995 Part 6 Local Government (Administration) Regulations 1996
Regulations 12, 14 and 15 Local Government (Rules of Conduct) Regulations 2007*

Penalties

It should be noted that Sections 5.89 and 5.89B of the Local Government Act 1995 make it an offence if a person does not comply with Sections 5.82 and 5.83 of the Act, relating to the disclosure of gifts and travel contributions. The penalty for each offence is a fine of \$10,000 or imprisonment for 2 years

4. CONDUCT OF COUNCIL MEMBERS, COMMITTEE MEMBERS AND EMPLOYEES

4.1 Personal Behaviour

(a) Council members, committee members and employees will:

- (i) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this code;
- (ii) perform their duties impartially and in the best interests of the Shire of Westonia uninfluenced by fear or favour;
- (iii) act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the Shire of Westonia and the community;
- (iv) 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; and
- (v) always act in accordance with their obligation of fidelity to the Shire of Westonia.

(b) Council members will represent and promote the interests of the Shire of Westonia, while recognising their special duty to their own constituents.

4.2 Honesty and Integrity

Council members, committee members and employees will:

- (a) observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards;
- (b) bring to the notice of the President any dishonesty or possible dishonesty on the part of any other member, and in the case of an employee to the CEO.

(c) be frank and honest in their official dealings with each other.

4.3 Performance of Duties

(a) While on duty, employees will give their whole time and attention to the Shire of Westonia'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 Shire of Westonia.

(b) Council members and committee members will, at all times, exercise reasonable care and diligence in the performance of their duties, being consistent in their decision making but treating all matters on individual merits. Council members and committee members will be as informed as possible about the functions of the council and treat all members of the community honestly and fairly.

4.4 Compliance with Lawful Orders

(a) Council members, committee members and employees 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 CEO.

(b) Council members, committee members and employees will give effect to the lawful policies of the Shire of Westonia, whether or not they agree with or approve of them.

4.5 Administrative and Management Practices

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

4.6 Corporate Obligations

(a) Standard of Dress

Council members, committee members and employees are expected to comply with neat and responsible dress standards at all times. Accordingly:

(i) Council members and committee members will dress in a manner appropriate to their position, in particular when attending meetings or representing the Shire of Westonia in an official capacity.

(ii) Management reserves the right to adopt policies relating to corporate dress and to raise the issue of dress with individual employees.

(b) Communication and Public Relations

(i) All aspects of communication by employees (including verbal, written or personal), involving Shire of Westonia activities should reflect the status and objectives of the Shire of Westonia. Communications should be accurate, polite and professional.

(ii) 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 be communicated until it is no longer treated as confidential;
- information relating to decisions of the council on approvals, permits and so on ought 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.

(iii) Committee members accept and acknowledge it is their responsibility to observe any direction the Shire of Westonia may adopt in terms of advancing and promoting the objectives of the committee to which they have been appointed.

4.7 Appointments to Committees

As part of their representative role council members are often asked to represent the council on external organisations. It is important that council members:

- clearly understand the basis of their appointment; and
- provide regular reports on the activities of the organisation.

5. DEALING WITH COUNCIL PROPERTY

5.1 Use of Shire of Westonia Resources

Council members and employees will:

- (a) be scrupulously honest in their use of the Shire of Westonia's resources and shall not misuse them or permit their misuse (or the appearance of misuse) by any other person or body;
- (b) use the Shire of Westonia's resources entrusted to them effectively and economically in the course of their duties; and
- (c) not use the Shire of Westonia's resources (including the services of council employees) 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 CEO).

References:

Regulation 8 Local Government (Rules of Conduct) Regulations 2007

5.2 Travelling and Sustenance Expenses

Council members, committee members and employees 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 Shire of Westonia in accordance with policy and the provisions of the *Local Government Act 1995*.

References:

Part 5 Division 8 Local Government Act 1995

Part 8 Local Government (Administration) Regulations 1996

5.3 Access to Information

(a) Employees will ensure that council members are given access to all information necessary for them to properly perform their functions and comply with their responsibilities.

(b) Council members will ensure that information provided will be used properly and to assist in the process of making reasonable and informed decisions on matters before the council.

References:

Regulation 6 Local Government (Rules of Conduct) Regulations 2007

5.4 Freedom of Information

The *Freedom of Information Act 1992* was introduced to facilitate public access to documents. An application can be made seeking access to any information held by the Town. The obligations under both the Act and Regulations require Elected Members to ensure records are accurate, up to date and stored in a way in which they can be easily searched and accessed.

Elected Members, Committee Members and Employees are obliged to assist FOI Officers in locating documents relevant to an application under the *Freedom of Information Act 1992*.

5.5 Public Interest Disclosure

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 (commonly known as whistle-blower protection).

The Shire:

1. does not tolerate corrupt or other improper conduct, including mismanagement of public resources, in the exercise of the public functions of the Shire by its Councillors, Committee Members and employees;
2. is committed to the aims and objectives of the *Public Interest Disclosure Act 2003*;
3. supports disclosures being made by Councillors, Committee Members and employees relating to corrupt or other improper conduct;
4. will take all reasonable steps to provide protection to Councillors, Committee Members and employees who make disclosures from any detrimental action in reprisal for the making of a public interest disclosure; and
5. does not tolerate any of its Councillors, Committee Members and employees engaging in acts of victimisation or reprisal against those who make public interest disclosures.

Councillors, Committee Members and employees who wish to make a public interest disclosure are encouraged to contact the Shire's nominated Public Interest Disclosure Officer in the first instance to seek guidance on making their disclosure.

Further Information

It is important that all Councillors and employees understand their legal rights and obligations, as well as the ethical and behavioural standards expected by the local government and community.

Further information is available from:

| | |
|--|--|
| Department of Local Government & Communities | www.dlgc.wa.gov.au |
| Public Sector Commission | www.publicsector.wa.gov.au |
| Corruption and Crime Commission | www.ccc.wa.gov.au |
| WA Integrity Coordinating Group | www.icg.wa.gov.au |
| WA Local Government Association (WALGA) | www.walga.asn.au |
| LG Professionals Australia | www.lgprofessionalsaustralia.org.au |

6. REPORTING BREACHES AND MISCONDUCT

6.1 Breaches

A complaint alleging that a Councillor has committed a breach of this Code shall be made in writing to the CEO (Complaints Officer), for a minor breach in the form of Official Conduct Form 1 at Attachment C, or for a serious breach in the form of Official Conduct Form 2 at Attachment D.

A Councillor commits a minor breach if he or she contravenes:

1. a Rule of Conduct under Section 5.104(1) of the *Local Government Act 1995*; and/or

2. a Local Law made under the *Local Government Act 1995*, contravention of which the Regulations specify to be a minor breach.

A minor breach becomes a recurrent breach if it occurs after a Councillor has been found under Part 5 Division 9 of the *Local Government Act 1995* to have committed 2 or more other minor breaches.

A Councillor commits a serious breach if he or she commits any offence under written law, other than a Local Law made under the *Local Government Act 1995*, of which it is an element that the offender is a Councillor or is a person of a description that specifically includes a Councillor. A complaint alleging that an employee has breached this Code shall be made in writing. Complaints regarding:

1. an employee are to be made to the CEO; and
2. the CEO are to be made to the President.

Complaints received relating to a Councillor will be determined in consultation between the President and the CEO, which may include referring the matter to the Local Government Standards Panel. Complaints received relating to an employee will be determined by the CEO. The ramifications for Councillors will vary depending on the breach and whether the alleged breach can be dealt with entirely as a breach of this Code or is to be referred to the Local Government Standards Panel as a breach of the Regulations. The Regulations provide for punishments that could range from public censure, a public apology, requirement to attend formal counselling or training to suspension or disqualification from Council.

References:

Part 5 Division 9 Local Government Act 1995

6.2 Misconduct – Serious

The CEO has a statutory obligation to report:

1. to the Public Sector Commission any allegations of suspected minor misconduct; and
2. to the Crime and Corruption Commission any allegations of suspected serious misconduct.

Misconduct occurs if:

1. a public officer corruptly acts or corrupt fails to act in the performance of the functions of the public officer's office or employment;
2. 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;
3. a public officer whilst acting
4. or purporting to act in his or her official capacity, commits an offence punishable by two or more years' imprisonment; or
5. a public officer engages in conduct that:
 - a. adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or
 - b. not the public officer was acting in their public officer capacity at the time of engaging in the conduct;
 - c. constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;
 - d. constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer;

- e. involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person, and constitutes or could constitute; or
- f. a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).

Legislation and Regulations referenced in this Code are available from the State Law Publisher www.slp.wa.gov.au.

Code of Conduct Attachment A

Understanding your obligations in relation to Gifts and Travel

There are three separate areas under the *Local Government Act 1995* that deal with gifts, apart from those made by the local government itself:

- 1 all gifts and contributions to travel unless exempted under Sections 5.82 and 5.83 of the Act;
- 2 gifts where the donor is undertaking or seeking to undertake an activity involving local government discretion or it is reasonable to believe the donor intends to do so; and
- 3 elections gifts.

This table sets out what needs to be disclosed or refused, under what circumstances and by whom.

| Recipient | Term used | Value | | | | | | Section of | Regulation | Exclusions |
|--|--------------------------|---------|----------------|----------|------------------------|------------------------|--|------------|-------------|---|
| | | <= \$50 | >\$50 - <\$300 | >= \$300 | < \$200 | \$200 | > \$200 | | | |
| 1. No conditions on local government discretion | | | | | | | | | | |
| Relevant person ¹ : Council Members and Designated Employees ² | "gift" | | | | No disclosure required | No disclosure required | ³ Annual return/ new register | S. 5.82 | Admin R. 25 | <ul style="list-style-type: none"> • donor a relative; • through a will; • contribution to travel. |
| | "contribution to travel" | | | | No disclosure required | No disclosure required | ³ Annual return/ ⁴ new register | S. 5.83 | Admin R. 26 | <ul style="list-style-type: none"> • from Commonwealth, State or LG funds; • donor a relative; • ordinary course of occupation unrelated to duties as CM or employee; • from a political party where person a member and travelling for political activity or to represent the party. |
| 2A. Codes of Conduct – Donor is undertaking or seeking to undertake an "Activity involving government discretion"⁵ or it is reasonable to believe that the person is intending to do so. | | | | | | | | | | |

¹ Relevant person defined) as council member or designated employee: S. 5.74(1)

² Designated employee defined as CEO, employee with delegated powers or duties (S 5.44), member of committee consisting of council members and employees, and a person nominated as a designated employee by the local government: S. 5.74(1).

³ Two or more gifts that reach threshold in a (return period) year; gifts or contributions to travel from two or more related bodies corporate (defined in *Corporations Act 2001*) treated as from single corporation: S. 5.74(3).

⁴ From 4 March 2016 must be disclosed within 10 days.

Code of Conduct Attachment A

| Recipient | Term used | Value | | | | | | Section of Act | Regulation | Exclusions |
|--|-----------|------------------------|--|--|---------|-------|---------|----------------|------------------------|--|
| | | < = \$50 | >\$50 - <\$300 | > = \$300 | < \$200 | \$200 | > \$200 | | | |
| (Any) Employee | “gift” | No disclosure required | “Notifiable gift” ^{6 7} unless falls within exclusions Register of Notifiable Gifts | “Prohibited gift” unless falls within exclusions | | | | | Admin R. 34B | As for “gift” above except that it also does not include: <ul style="list-style-type: none"> • a gift that must be disclosed under R. 30B of the <i>Elections Regs</i>; or • a gift from a statutory authority, government instrumentality or non-profit association for professional training. |
| 2B. Rules of Conduct – Donor is undertaking or seeking to undertake an “Activity involving government discretion” or it is reasonable to believe that the person is intending to do so. | | | | | | | | | | |
| Council Member | “gift” | No disclosure required | “Notifiable gift” ⁸ unless falls within exclusions Register of Gifts | “Prohibited gift” unless falls within exclusions | | | | | Rules of Conduct R. 12 | As for “gift” above except that it also does not include: <ul style="list-style-type: none"> • a gift that must be disclosed under Regulation 30B of the <i>Local Government (Elections) Regulations 1997</i>; or • a gift from a statutory authority, government instrumentality or non-profit association for professional training. |

⁵ Activity involving a local government’s discretion is an activity that cannot be taken without an authorization from the local government; or by way of commercial dealing with the local government: R.34B(1)

⁶ Within 10 days: R 34B

⁷ One of two or more gifts given to the person by the same person within a period of **six months**.

⁸ Within 10 days: R. 12.

Code of Conduct Attachment A

| Recipient | Term used | Value | | | | | | Section of Act | Regulation | Exclusions |
|--|---------------------|---------|----------------|----------|---------------------------------------|--|---|----------------|---------------------|--|
| | | <= \$50 | >\$50 - <\$300 | >= \$300 | < \$200 | \$200 | > \$200 | | | |
| 3. Election gifts – candidate cannot accept a gift if the name and address of the donor is unknown. | | | | | | | | | | |
| Candidate | “gift” ⁹ | | | | No disclosure required (not relevant) | Disclose to CEO ^{10 11} Form 9A Electoral Gift Register | Disclose to CEO ¹⁰ Form 9A Electoral Gift Register | S. 4.59 | Election Regs: 30B | <ul style="list-style-type: none"> • by will; • from a relative; • that does not relate to a person’s candidature; • volunteer labour. |
| Donor | “gift” | | | | No disclosure required (not relevant) | Disclose to CEO ¹⁰ Form 9A Electoral Gift Register | Disclose to CEO ¹⁰ Form 9A Electoral Gift Register | | Election Regs: 30AC | As above for Candidate |

Note 1: A LG cannot give a gift to an elected member unless it is given in prescribed circumstances (retirement) and is less than the prescribed amount (\$100 for each year served, maximum \$1,000): Ss. 5.100A and Admin Reg 34AC.

Note 2: Disclosure of Interest: A relevant person as defined in S. 5.60 is an elected member or an employee (including a contract for services) who provides advice or a report on a matter (s. 5.70) or has been delegated a power or duty (S. 5.71) and does NOT need to disclose an interest in a matter if they were able to accept the gift under a Code of Conduct and the Rules of Conduct Regs: S. 5.63(1) and Admin Reg 21.

⁹ Gift means a disposition of property, or the conferral of any financial benefit, made by one person in favour of another. A gift can include a gift of money, a gift which is non-monetary but of value, a gift in kind, the payment of an inadequate financial consideration or the receipt of a discount (where the difference or discount is more than \$200 worth), financial or other contribution to travel, the provision of a service for no consideration or for inadequate consideration, and a firm promise or agreement to give a gift at some future time: Elections R. 30A.

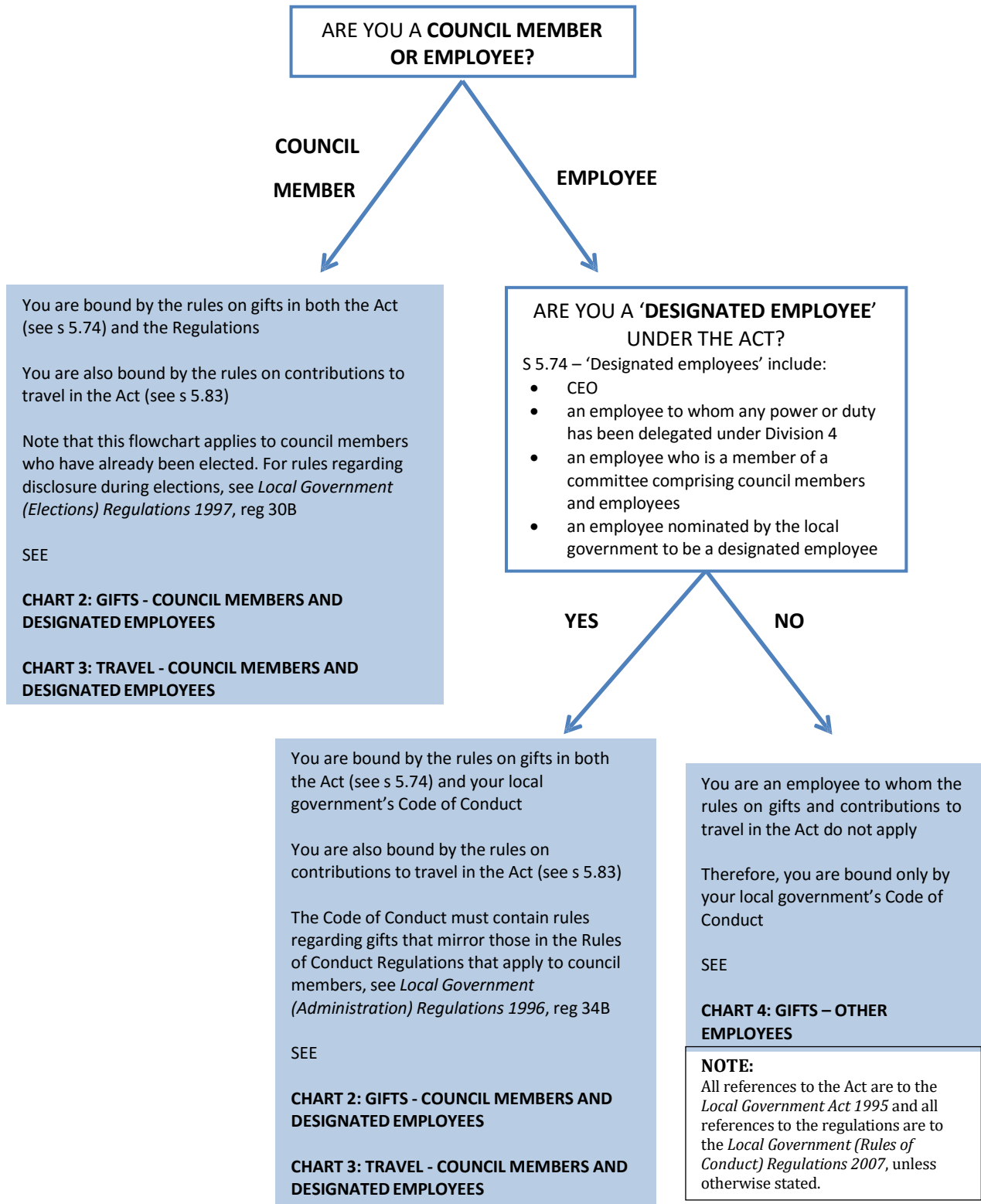
¹⁰ Promised or received – not received if returned or given to CEO: R. 30B

¹¹ Within 3 days

DEALING WITH GIFTS AND CONTRIBUTIONS TO TRAVEL

A Four-Chart Guide for Council Members and Employees

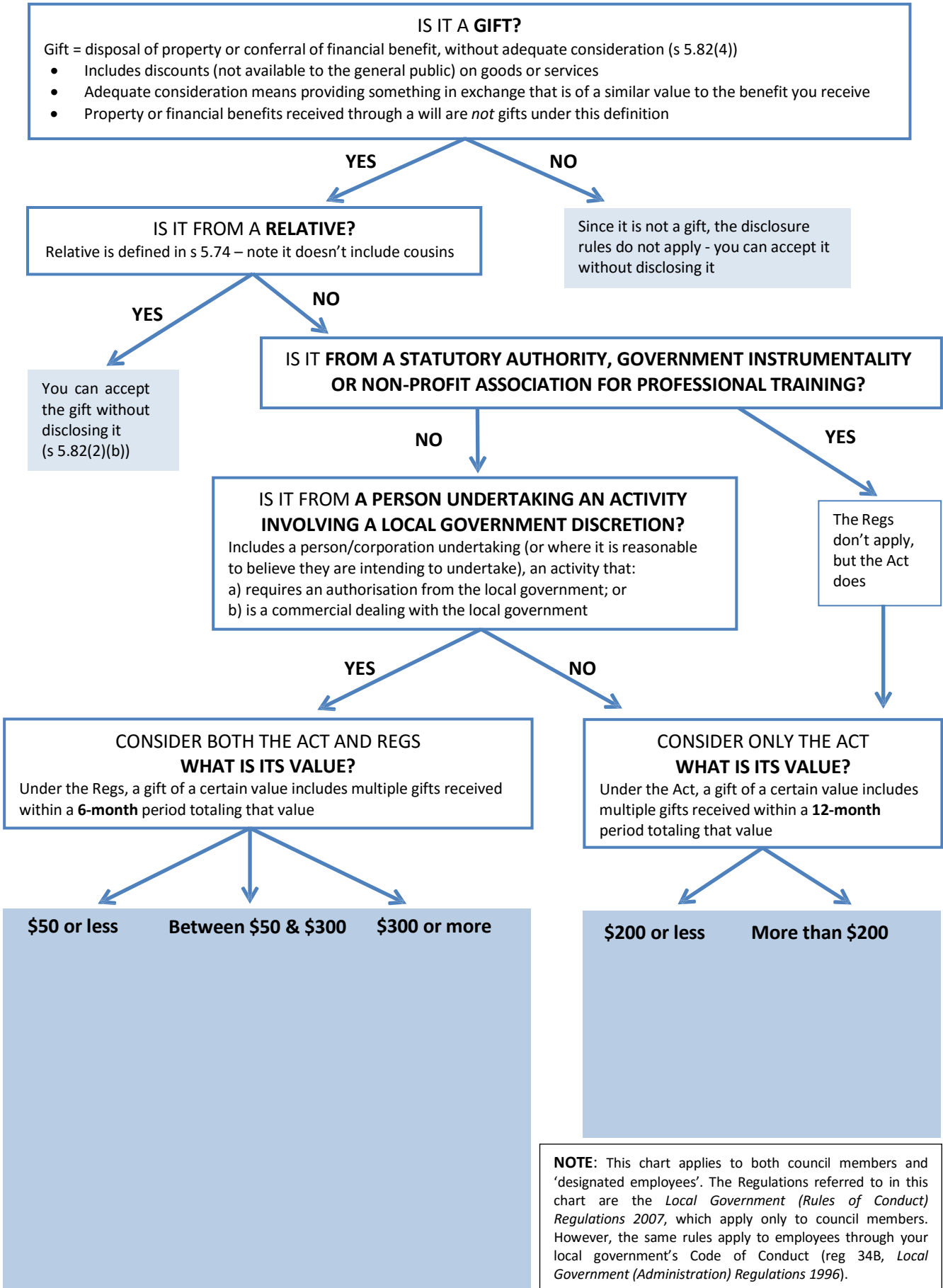
CHART 1: WHICH RULES APPLY TO YOU?



DISCLAIMER

This flowchart is only a guide. Please refer to the relevant sections of the Act and Regulations and seek legal advice for your particular circumstances.

CHART 2: GIFTS - COUNCIL MEMBERS AND DESIGNATED EMPLOYEES

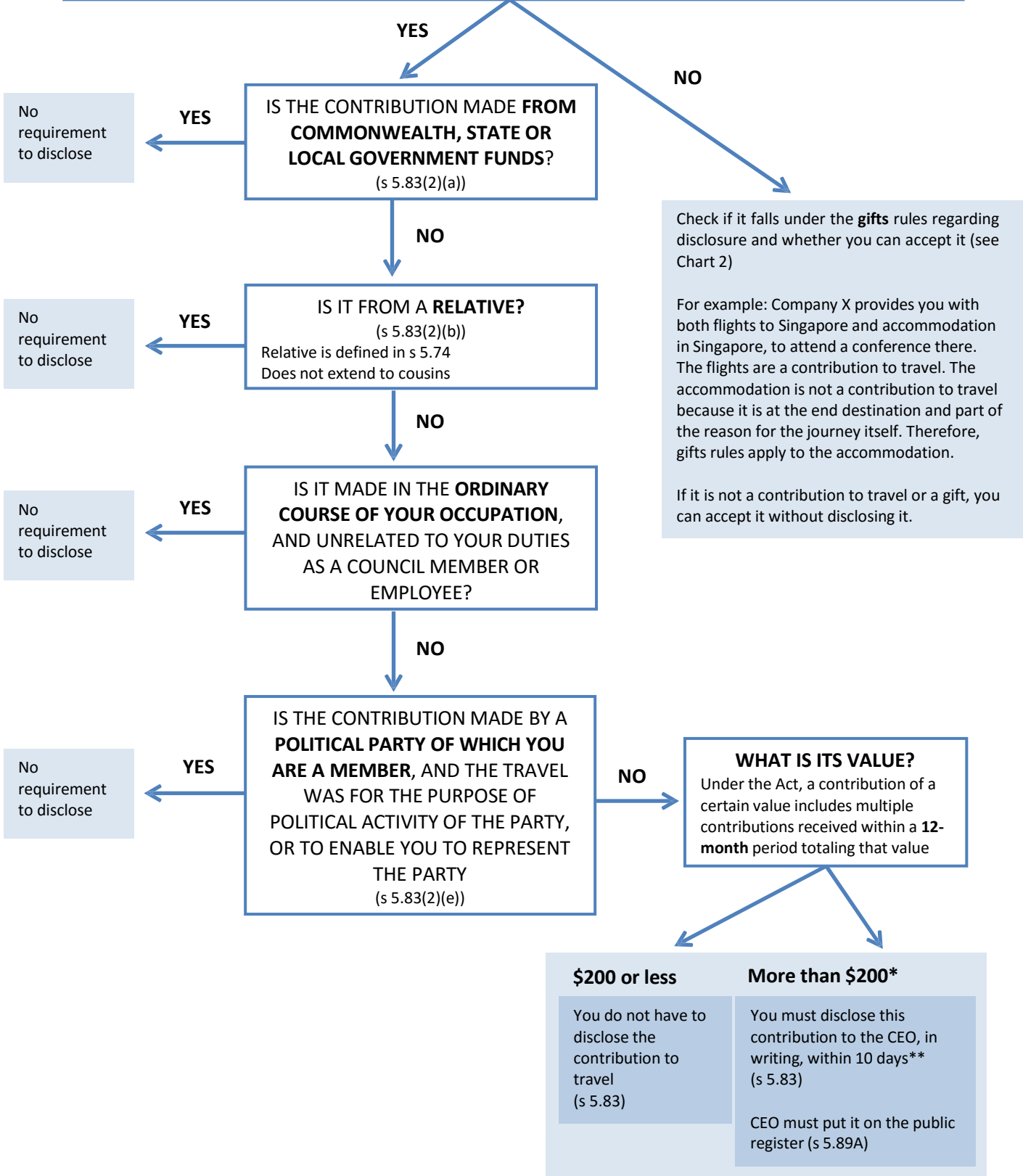


NOTE: This chart applies to both council members and 'designated employees'. The Regulations referred to in this chart are the *Local Government (Rules of Conduct) Regulations 2007*, which apply only to council members. However, the same rules apply to employees through your local government's Code of Conduct (reg 34B, *Local Government (Administration) Regulations 1996*).

* See reg 12 for specific disclosure requirements
 ** See s 5.82(1) for specific disclosure requirements

CHART 3: TRAVEL - COUNCIL MEMBERS AND DESIGNATED EMPLOYEES

IS IT A CONTRIBUTION TO TRAVEL?
 NOTE: Travel includes accommodation incidental to travel (s 5.83). Accommodation is *not* incidental if it is accommodation at the final/end destination, or is the reason for the journey itself (see CCC Report – City of Perth, [182])



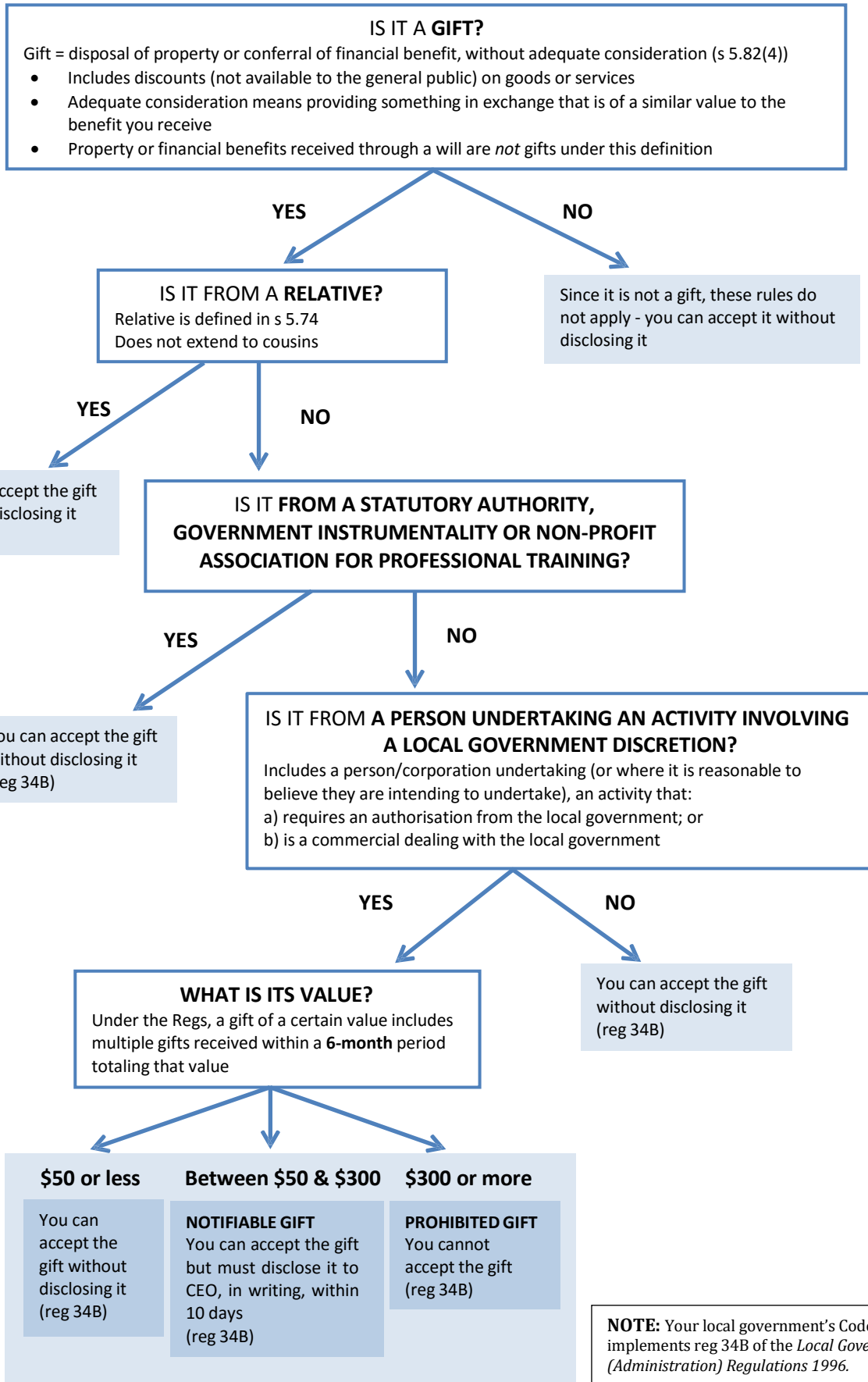
DISCLAIMER

This flowchart is only a guide. Please refer to the relevant sections of the Act and Regulations and seek legal advice for your particular circumstances.
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* Disclosure limits are set by reg 26, *Local Government (Administration) Regulations 1996*

** See s 5.83 for specific disclosure requirements

CHART 4: GIFTS - OTHER EMPLOYEES



Communication with Developments and Interest Groups Disclosure Form

The Shire of Westonia's Code of Conduct requires Councillors and Committee Members to provide written advice in the prescribed form which details discussions had at meetings held with developers and interest groups.

| | |
|------------------------|--|
| Date of Meeting: | |
| Place of Meeting: | |
| Attendees: | |
| Topic of Discussion: | |
| Details of Discussion: | |

I _____ declare that all information and details provided in this form are true and correct, and no known, relevant information is omitted.

SELECT OPTION 1 Handwritten Signature

Signed: _____ Date: _____

Once signed please provide to the Executive Assistant to the CEO

Or

SELECT OPTION 2 Electronic Signature

This form can be sent by email to the Executive Assistant to the CEO (admin@westonia.wa.gov.au) provided the email is sent by the person making the disclosure from their work or personal (e.g. Councillors) email account.

Official Conduct Form 1 – Complaint of Minor Breach Form

(Subsections 5.107(1) and (2) of the Local Government Act 1995)

Note: A person who includes information in a complaint knowing it to be false or misleading in a material particular commits an offence (maximum penalty \$5,000). If this complaint is made during the campaign period for a local government election (that is, during the from the opening of nominations to the Election Day), the fact of making the complaint and its details must be kept confidential during that period (maximum penalty \$5,000)

The law requires a copy of this complaint to be provided to the Council member complained about.

NAME OF PERSON WHO IS MAKING THE COMPLAINT:

Name:

GivenName(s)

Surname

NAME OF THE LOCAL GOVERNMENT (CITY, TOWN, SHIRE) CONCERNED:

NAME OF COUNCIL MEMBER/S ALLEGED TO HAVE COMMITTED BREACH:

WHAT IS YOUR COMPLAINT: State the type of your complaint by ticking the box of the particular breach alleged to have occurred under the *Local Government (Rules of Conduct) Regulations 2007*.

- Regulation 4– Breach of a local law relating to conduct at meetings
- Regulation 6– – Improper disclosure of information
- Regulation 7– Securing personal advantage or disadvantaging others
- Regulation 8– Misuse of local government resources
- Regulation 9– Prohibition against involvement in administration
- Regulation 10 – Relations with local government employees
- Regulation 11– Non-disclosure of interest adverse to impartiality
- Regulation 12– Acceptance of gifts

(State full details of What Happened in that section on the next page)

| |
|--|
| DATE OF INCIDENT: |
| WHAT HAPPENED? What are the details of the contravention that is alleged to have resulted in the breach? <i>[Attach further information if there is insufficient space]</i> |

| | |
|--|--------------------------|
| SIGNED: | |
| I declare that, to the best of my knowledge and belief, the information I have given in this complaint is not false or misleading. | |
| Complainant's Signature | / /20 Date of signing |

Official Conduct Form 2 – Complaint of Serious Breach Form

(Subsections 5.114(1) and (2) of the Local Government Act 1995 (LG Act))

Note: A person who includes information in a complaint knowing it to be false or misleading in a material particular commits an offence (maximum penalty \$5,000). If this complaint is made during the campaign period for a local government election (that is, during the from the opening of nominations to the Election Day), the fact of making the complaint and its details must be kept confidential during that period (maximum penalty \$5,000)

NAME OF PERSON WHO IS MAKING THE COMPLAINT:

Name:

GivenName(s)

Surname

NAME OF THE LOCAL GOVERNMENT (CITY, TOWN, SHIRE) CONCERNED:

NAME OF COUNCIL MEMBER/S ALLEGED TO HAVE COMMITTED BREACH:

DATE OF INCIDENT:

WHAT IS YOUR COMPLAINT: State the type of your complaint by ticking the appropriate box, and include full details of What Happened in that section on the next page

| SECTION OF LG ACT | SECTION OF LG ACT |
|--|--|
| S5.21 – Member failed to vote on a matter at a Council meeting or a delegated Committee meeting | S5.78 – Non-compliance by Member with the requirements of Sections 5.79, 5.80, 5.81, 5.82, 5.83, 5.84, 5.85 and 5.86 in relation to the disclosure of information in a return |
| S5.65 – Member failed to disclose a disclosable or non-exempted direct or indirect financial interest or a proximity interest in a matter discussed at a Council or Committee meeting | S5.89 – In relation to a disclosure under Section 5.65, or a return lodged under Section 5.75 or 5.76, Member provided information in written or oral form that he or she knew to be false or misleading in a material particular or likely to deceive in a material way |
| S5.67 – After disclosing a direct or indirect financial interest or a proximity interest in a matter at Council or any Committee meeting, contravened a condition imposed by the Minister under S5.69 of the LG Act allowing the member to participate etc. in the meeting | S5.90 – Member published information, derived from register of financial interests, without it being a fair or accurate report or summary of the information contained in the register, and without it being published in good faith |
| S5.69 – Member, with a direct or indirect financial interest or a proximity interest in a matter at Council or any Committee meeting, contravened a condition imposed by the Minister under S5.69 of the LG Act allowing the member to participate etc. in the meeting | S5.90 – Member published comment on the facts in register of financial interests, without comment being fair and published in good faith |

Code of Conduct Attachment E

| | |
|--|---|
| S5.75 – Member failed to lodge a primary return when due | S5.93 – Member made improper use of information acquired in the performance of his or her functions under the LG Act or any other written law: (a) to gain directly or indirectly a (financial) advantage for the member or any other person; or (b) to cause (financial) detriment to the local government or any other person |
| S5.76 – Member failed to lodge an annual return when due | |
| Other (specify Section and Act, as applicable): | |

WHAT HAPPENED? What are the details of the contravention that is alleged to have resulted in the breach? *[Attach further information if there is insufficient space]*

SIGNED:

I declare that, to the best of my knowledge and belief, the information I have given in this complaint is not false or misleading.

| | |
|-------------------------|-----------------|
| | / /20 |
| Complainant’s Signature | Date of signing |