



MINISTER FOR LOCAL GOVERNMENT; RACING AND GAMING; MULTICULTURAL INTERESTS AND CITIZENSHIP; GOVERNMENT ENTERPRISES; MINISTER ASSISTING THE MINISTER FOR PLANNING AND INFRASTRUCTURE; GOLDFIELDS-ESPERANCE; YOUTH

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TO ALL MAYORS AND PRESIDENTS

CIRCULAR N^o 2-2007

DRAFT LOCAL GOVERNMENT (RULES OF CONDUCT) REGULATIONS 2007

I refer to my Circular No. 1-2007 of 22 March 2007 and am pleased to provide a draft of the Local Government (Rules of Conduct) Regulations 2007 for your local government to comment.

The draft Regulations contain various matters that would already be in your existing Code of Conduct, along with several additional matters identified by the Department of Local Government and Regional Development (the Department) in association with the Western Australian Local Government Association (WALGA) and the Local Government Managers Australia (LGMA).

Complaints about council members not following the Rules under draft Regulations 3 to 11 will be considered by the new statewide standards panel. These Regulations cover conduct relating to the standing orders, use of council information, obtaining personal advantage, misuse of council resources, restrictions on involvement in administration and directing council employees, disclosure of particular interests and obtaining and disclosing gifts.

Regulation 2 deals with the general principles of behaviour that council members should follow, however, the panel will not sit in judgment about matters such as care, honesty and integrity that are subjective principles.

I would also welcome your council identifying any further rules that would be appropriate for the uniform Rules for all local governments.

Extensive consultation on the draft Regulations has already occurred with WALGA and LGMA. I would appreciate your comments by mid June 2007, or earlier if possible, so that the development of the content of the Rules can be finalised well in advance of the proposed operative date of 20 October 2007.

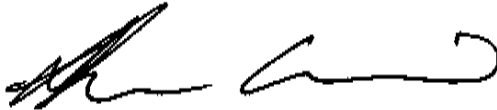
Comments should be forwarded to:

Co-ordinator - Official Conduct Regulations
Department of Local Government and Regional Development
GPO Box R1250
PERTH WA 6844
Fax: 9217 1555
Email: officialconduct@dlgrd.wa.gov.au

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Should you require any additional information about this matter, please contact Ms Carolyn Gatward at the Department on 9217 1575 or email carolyn.gatward@dlgrd.wa.gov.au.

Yours sincerely



Hon Ljiljanna Ravlich MLC

Minister for Local Government; Racing and Gaming;
Multicultural Interests and Citizenship; Government Enterprises;
Minister Assisting the Minister for Planning and Infrastructure;
Goldfields-Esperance; Youth

att

3/5/07

Western Australia

Local Government (Rules of Conduct) Regulations 2007

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Local Government Act 1995

**Local Government (Rules of Conduct)
Regulations 2007**

Made by the Governor in Executive Council.

Part 1 — General

1. Citation

These regulations are the *Local Government (Rules of Conduct) Regulations 2007*.

2. 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 —
- (a) act with reasonable care and diligence; and
 - (b) act with honesty and integrity; and
 - (c) act lawfully; and
 - (d) avoid damage to the reputation of the local government; and
 - (e) be open and accountable to the public; and
 - (f) base decisions on relevant and factually correct information; and

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- (g) treat others with respect and fairness; and
- (h) not be impaired by mind affecting drugs.

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

3. Contravention of certain local laws

- (1) The contravention of a local law as to conduct is a minor breach for the purposes of section 5.105(1)(b) of the Act.
- (2) In subregulation (1) —

“local law as to conduct” means a local law relating to conduct of people at council or committee meetings that is substantially equivalent to a provision of the *Model Local Law (Standing Orders) 1998* (published in the *Gazette* on 3 April 1998).

Local Government (Rules of Conduct) Regulations 2007**Rules of conduct****Part 2****r. 4****Part 2 — Rules of conduct****4. Rules of conduct**

- (1) This Part contains the rules of conduct referred to in section 5.104(1) of the Act.
- (2) The rules of conduct apply to a council member whether or not acting as a committee member.

5. Use of information

- (1) A person who is a council member must not disclose —
 - (a) information that the council member derived from a document marked by the CEO to clearly show that the information in the document is not to be disclosed; or
 - (b) any other information that the council member acquired at a closed meeting other than by deriving it from a document.
- (2) Subregulation (1) does not prevent a person who is a council member from disclosing information —
 - (a) at a closed meeting; or
 - (b) to the extent specified by the council and subject to such other conditions as the council determines; or
 - (c) that is already in the public domain; or
 - (d) to an officer of the Department; or
 - (e) to the Minister; or
 - (f) to a legal practitioner for the purpose of obtaining legal advice; or
 - (g) if the disclosure is required or permitted by law.
- (3) In this regulation —

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

Local Government (Rules of Conduct) Regulations 2007**Part 2 Rules of conduct****r. 6**

6. Securing personal advantage or disadvantaging others

- (1) Subject to subregulation (2), a person who is a council member must not make improper use of the person's office as a council member —
 - (a) to gain directly or indirectly an advantage for the person or any other person; or
 - (b) to cause detriment to the local government or any other person.
- (2) Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or *The Criminal Code* section 83.

7. Misuse of council resources

A person who is a council member must not either directly or indirectly use the resources of a local government —

- (a) for the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under this Act, the *Electoral Act 1907* or the *Commonwealth Electoral Act 1918*; or
- (b) unless authorised under the Act to do so, for any other purpose.

8. Prohibition against involvement in administration

- (1) A person who is a council member must not undertake tasks that contribute to the administration of council functions.
- (2) Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.

9. Relations with local government employees

- (1) A person who is a council member must not —

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Rules of conduct

Part 2**r. 10**

- (a) direct or attempt to direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee; or
 - (b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a person who is a local government employee in the person's capacity as a local government employee.
- (2) Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.
- (3) During a council or committee meeting at which members of the public are present, a person who is a council member must not, either orally, in writing or by any other means —
 - (a) make a statement that a local government employee is incompetent or dishonest; or
 - (b) use offensive or objectionable expressions in reference to a local government employee.
- (4) Subregulation (3)(a) does not apply to conduct that is unlawful under *The Criminal Code* Chapter XXXV.

10. Disclosure of interest

- (1) In this regulation —
 - “**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.
- (2) A council member who has an interest in any matter to be discussed at a council or committee meeting attended by the member must disclose the nature of the interest —
 - (a) in a written notice given to the CEO before the meeting;
or

Local Government (Rules of Conduct) Regulations 2007**Part 2****Rules of conduct****r. 11**

- (b) at the meeting immediately before the matter is discussed.
- (3) Subregulation (2) does not apply to an interest referred to in section 5.60 of the Act.
- (4) Subregulation (2) does not apply if a council member fails to disclose an interest because —
 - (a) the council member did not know he or she had an interest in the matter; or
 - (b) the council member did not know the matter in which he or she had an interest would be discussed at the meeting.
- (5) If, under subregulation (2)(a), a council member discloses an interest in a written notice given to the CEO before a meeting then —
 - (a) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
 - (b) at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before a matter to which the disclosure relates is discussed.
- (6) If —
 - (a) under subregulation (2)(b) a council member's interest in a matter is disclosed at a meeting; or
 - (b) under subregulation (5)(b) notice of a council member's interest in a matter is brought to the attention of the persons present at a meeting,the nature of the interest is to be recorded in the minutes of the meeting.

11. Gifts

- (1) In this regulation —
“**activity involving a council discretion**” means an activity —

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Part 2**r. 11**

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

“gift” has the meaning given to that term in section 5.82(4) of the Act except that it does not include —

- (a) a gift from a relative as defined in section 5.74(1); or
- (b) a gift that must be disclosed under regulation 30B of the *Local Government (Elections) Regulations 1997*; or
- (c) a gift from a statutory authority, government instrumentality or non-profit association for professional training;

“notifiable gift”, in relation to a person who is a council member, means —

- (a) a gift worth between \$50 and \$250; or
- (b) a gift that is one of 2 or more gifts given to the council member by the same person within a period of 6 months that are in total worth between \$50 and \$250;

“prohibited gift”, in relation to a person who is a council member, means —

- (a) a gift worth \$250 or more; or
- (b) a gift that is one of 2 or more gifts given to the council member by the same person within a period of 6 months that are in total worth \$250 or more.

- (2) A person who is a council member must not accept a prohibited gift from a person —

- (a) who is undertaking or seeking to undertake; or
- (b) who it is reasonable to believe is intending to undertake, an activity involving a council discretion.

Local Government (Rules of Conduct) Regulations 2007**Part 2 Rules of conduct****r. 11**

- (3) A person who is a council member and who accepts a notifiable gift from a person —
- (a) who is undertaking or seeking to undertake; or
 - (b) who it is reasonable to believe is intending to undertake,
- an activity involving a council discretion must, within 10 days of accepting the gift, notify the CEO of the acceptance in accordance with subregulation (4).
- (4) Notification of the acceptance of a notifiable gift is to be in writing and is to include —
- (a) the name of the person who gave the gift; and
 - (b) the date on which the gift was accepted; and
 - (c) a description, and the estimated value, of the gift; and
 - (d) the nature of the relationship between the person who is a council member and the person who gave the gift; and
 - (e) if the gift is a notifiable gift under paragraph (b) of the definition of “notifiable gift” (whether or not it is also a notifiable gift under paragraph (a) of that definition) —
 - (i) a description; and
 - (ii) the estimated value; and
 - (iii) the date of acceptance,
- of each other gift accepted within the 6 month period.
- (5) The CEO must maintain a register of gifts in which details of notices received under subregulation (4) are recorded.

By Command of the Governor,

Clerk of the Executive Council.