

## Code of Conduct



For members of Council,  
members of Committees  
and employees

13 December 2007

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## Annexure 1 – Rules of Conduct

## 1. Introduction

### 1.1. Objectives and context

This Code of Conduct applies to appointed members, committee members and employees of the Eastern Metropolitan Regional Council (**EMRC**) and provides them 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 for the EMRC.

This Code is complementary to the principles adopted in the *Local Government Act 1995* and regulations which incorporates 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 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.

This Code of Conduct must be read with the Rules of Conduct which are made under the *Local Government (Rules of Conduct) Regulations 2007* and apply to all elected members in WA. The Rules of Conduct have their own enforcement regime. A breach by an elected member of a Rule of Conduct may be reported to the EMRC's Complaints Officer. If so, it will be dealt with under Part 5, Division 9 of the *Local Government Act 1995*.

References to the Rules of Conduct are contained in boxed sections in this Code of Conduct. The full text of the Rules of Conduct is set out in Annexure 1.

Unless otherwise indicated, a reference in this Code of Conduct to a 'member' refers to either:

- (a) an appointed member of the Council of the EMRC (to whom the Rules of Conduct also apply); or
- (b) a member (who is not also an elected member) of a committee established by the Council of the EMRC (to whom the Rules of Conduct do not apply).

### 1.2. Role of members

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

A 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 appointed representatives.

In fulfilling their various roles, members' activities will focus on:

- (a) achieving a balance in the diversity of community views to develop an overall strategy for the future of the community;
- (b) achieving sound financial management and accountability in relation to the EMRC's finances;
- (c) ensuring that appropriate mechanisms are in place to deal with the prompt handling of concerns expressed by residents and participants;
- (d) working with other governments and organisations to achieve benefits for the community at both a local and regional level; and
- (e) having an awareness of the statutory obligations imposed on members and on the EMRC.

### 1.3. Guiding principles

The Rules of Conduct set out principles to guide the behaviour of elected members. These include that a person in his or her capacity as an elected member (including when acting as a committee member) should:

- (a) act with reasonable care and diligence;
- (b) act with honesty and integrity;
- (c) act lawfully;
- (d) avoid damage to the reputation of the local government;
- (e) be open and accountable to the public;
- (f) base decisions on relevant and factually correct information;
- (g) treat others with respect and fairness; and
- (h) not be impaired by mind affecting substances.

(See regulation 3 of the *Local Government (Rules of Conduct) Regulations 2007* – Annexure 1 to this Code of Conduct.)

For the purposes of this Code, the guiding principles set out in the Rules of Conduct apply to members and employees of the EMRC.

## 2. Conflict of Interests

### 2.1. Conflict of interests

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.

In applying this principle:

- (a) 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 EMRC, 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;
- (b) members and employees will lodge written notice with the CEO describing an intention to undertake a dealing in land within the district or which may otherwise be in conflict with the EMRC's functions (other than purchasing their principal place of residence);
- (c) members and employees who exercise a recruitment or other discretionary function will make disclosure to the CEO before dealing with relatives or close friends and will disqualify themselves from dealing with those persons; and
- (d) 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 affected by this clause. It is recognised that these convictions cannot be a basis for discrimination and this is supported by anti discriminatory legislation.

### 2.2. Financial interests

Members and employees will comply with the laws governing financial interests, including the disclosure of financial interests, set out in the *Local Government Act 1995* and the Financial Interests Manual prepared by the Department of Local Government and Regional Development.

The laws relating to the disclosure, by an elected member, a committee member or an employee, of financial interests (including proximity interests) are set out in Part 5, Division 6 of the *Local Government Act* (sections 5.59-5.90).

### 2.3. Impartiality interests

For the purposes of this Code of Conduct, an impartiality 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' (see regulation 34(C)(1) of the *Local Government Act (Administration) Regulations 1996* and regulation 11(1) of the *Local Government (Rules of Conduct) Regulations 2007*).

An 'impartiality interest' does not include a 'financial interest' that is subject to the requirements of the *Local Government Act*.

A member or an 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:

- (a) in a written notice given to the CEO before the meeting; or
- (b) 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:

- (a) in a written notice given to the CEO before the meeting; or
- (b) at the time the advice is given.

A member or employee is excused from the requirement to disclose an impartiality interest if the failure to disclose occurs because the person:

- (a) did not know he or she had an impartiality interest in the matter; or
- (b) 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.

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

- (a) before the meeting the CEO is to ensure that the notice is 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 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.

The disclosure of an impartiality interest does not affect the ability of the member or employee to discuss or vote on the matter.

The Rules of Conduct contain detailed provisions relating to the disclosure by elected members of any impartiality interest – see regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007* (Annexure 1 to this Code of Conduct).

### 3. Personal Benefit

#### 3.1. Disclosure of confidential information

Members and employees must not disclose written or oral information that is provided to them, or obtained by them, in confidence or, in the case of a document, is marked by the CEO to be confidential.

The Rules of Conduct also prohibit an elected member from disclosing confidential information, or information acquired at a closed meeting. The full text of regulation 6 of the *Local Government (Rules of Conduct) Regulations 2007* is set out in Annexure 1 to this Code of Conduct.

#### 3.2. Improper use of information

Members and employees must not make improper use of any information acquired in the performance by the person of any of his or her functions under this Act or any other written law.

Due discretion must be exercised by all those who have access to confidential or sensitive information. This applies not only to the proper disclosure of that information, but also to the appropriate measures to be taken to ensure that the security of the information is not compromised.

Section 5.93 of the *Local Government Act* prohibits an elected member or employee from making 'improper use of any information acquired in the performance by the person of any of his or her functions under this Act or any other written law –

- (a) to gain directly or indirectly an advantage for the person or any other persons; or
- (b) to cause detriment to the local government or any other person'.

The penalty, on conviction, is a fine of \$10,000 or imprisonment for 2 years.

#### 3.3. Improper use of position

A member or employee must not make improper use of his or her office or position:

- (a) to gain directly or indirectly an advantage for him or her, or for any other person; or
- (b) to cause detriment to the EMRC or any other person.

The Rules of Conduct also deal with the improper use by an elected member of his or her position. The full text of regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007* is set out in Annexure 1 to this Code of Conduct.

### 3.4. Improper or undue influence

Members and employees will not take advantage of their positions to improperly influence any other person:

- (a) to gain directly or indirectly an advantage for him or her, or any other person; or
- (b) to cause detriment to the EMRC or any other person.

The Rules of Conduct prohibit an elected member from:

- (a) directing or attempting to direct a local government employee; or
- (b) attempting to influence, by means of a threat or the promise of a reward, the conduct of a local government employee.

The full text of regulation 10(1) and (2) of the *Local Government (Rules of Conduct) Regulation 2007* is set out in Annexure 1 to this Code of Conduct.

### 3.5. Gifts and acts of hospitality

#### (a) General

In general, members and employees must not seek or accept (either directly or indirectly) any immediate or future gift (including any financial benefit, reward, donation or hospitality) for themselves, or for any other person or body, as a result of their role with the EMRC.

Despite the general presumption against seeking or accepting gifts or acts of hospitality, members and employees may accept some types of gifts which are excluded from this Code's coverage.

For the purposes of this Code, a 'gift' (which has the extended meaning set out in section 5.82(4) of the *Local Government Act*) excludes:

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

Nothing in this Code prevents a gift from being received on behalf of the EMRC and retained by the EMRC.

A gift can include:

- (a) a tangible item, such as a bottle of wine or a book;
- (b) a contribution towards the provision of accommodation;
- (c) an act of hospitality, such as payment for a meal or an invitation to a function or event; or
- (d) discounts on a provider's products.

**(b) Prohibited gifts**

A member or employee must not accept a **prohibited gift** from a person who:

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

For these purposes:

- (a) a **'prohibited gift'** means:
  - (i) a gift worth \$300 or more; or
  - (ii) a gift that is one of 2 or more gifts given to the member or employee by the same person within a period of 6 months that are in total worth \$300 or more; and
- (b) **'activity involving a local government discretion'** is an activity:
  - (i) that cannot be undertaken without an authorisation from the EMRC; or
  - (ii) by way of a commercial dealing with the EMRC.

Any gift valued at \$300 or more should be declined politely. If you consider it 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 EMRC and provided to the CEO at the first possible opportunity. These gifts will be placed in an appropriate position within the EMRC's buildings.

The value of a gift can be estimated if you believe its value is low. However, if you believe 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 hidden costs in association with acts of hospitality. (For example, if you are 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 EMRC's representative.

The Rules of Conduct prohibit an elected member from accepting a prohibited gift. The full text of regulation 12 of the *Local Government (Rules of Conduct) Regulation 2007* is set out in Annexure 1 to this Code of Conduct.

**(c) Notifiable gifts**

A member or employee may accept a '**notifiable gift**'. However, if he or she accepts a **notifiable gift** from a person who:

- (a) is undertaking or seeking to undertake an activity involving a local government discretion; or
- (b) it is reasonable to believe is intended to undertake an **activity involving a local government discretion**,

he or she must notify the CEO within 10 days of accepting the gift.

For these purposes:

- (a) a '**notifiable gift**' means:
  - (i) a gift worth between \$50 and \$300; or
  - (ii) a gift that is one of two or more gifts given to the member or employee by the same person within a period of 6 months that are in total worth between \$50 and \$300; and
- (b) '**activity involving the local government discretion**' has the same meaning as referred to in 3.5(b) above.

The notification of the acceptance of a 'notifiable gift' to the CEO must be in writing and must 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 member or employee and the person who gave the gift; and
  - (e) if the gift is a notifiable gift under paragraph (ii) of the definition of "notifiable gift" (whether or not it is also a notifiable gift under paragraph (i) 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.

Members and 'designated employees' as defined in section 5.74 of the *Local Government Act*, should also remember to disclose gifts, in a primary or annual return, received and valued at over \$200.

The Rules of Conduct contain similar requirements relating to the acceptance and notification of a 'notifiable gift' by an elected member. The full text of regulation 12 of the *Local Government (Rules of Conduct) Regulation 2007* is set out in Annexure 1 to this Code of Conduct.

**(d) Register of notifiable gifts**

The CEO must maintain a register of notifiable gifts and record any details of notifications given to comply with the requirement under 3.5(c) above.

## **4. Conduct of Members and Employees**

### **4.1. Personal behaviour**

Members and employees will:

- (a) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;
- (b) perform their duties impartially and in the best interests of the EMRC uninfluenced by fear or favour;
- (c) act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the EMRC and the community;
- (d) make no allegations which are improper or derogatory (unless true and in 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
- (e) always act in accordance with their obligation of fidelity to the EMRC.

Members will represent and promote the interests of the EMRC, while recognising their special duty to their own constituents.

The Rules of Conduct prohibit an elected member from:

- (a) making a statement that a local government employee is incompetent or dishonest; or
- (b) using offensive or objectionable expressions in reference to a local government employee.

The full text of regulation 10(3) of the *Local Government (Rules of Conduct) Regulations 2007* is set out in Annexure 1 to this Code of Conduct.

## **4.2. Honesty and integrity**

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 Chairman any dishonesty or possible dishonesty on the part of any member;
- (c) bring to the notice of the CEO any dishonesty or possible dishonesty on the part of an employee; and
- (d) be frank and honest in their official dealings with each other.

## **4.3. Performance of duties**

While on duty, employees 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 EMRC.

Members will at all times exercise reasonable care and diligence in the performance of their duties, being consistent in their decision making but treating each matter on its individual merits. Members will be as informed as possible about the functions and activities of the EMRC, and treat all members of the community honestly and fairly.

## **4.4. Compliance with Lawful Orders**

Members and employees:

- (a) 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; and
- (b) will give effect to the lawful policies and decisions of the EMRC, whether or not they agree with or approve of them.

## **4.5. Administrative and management practices**

Members and employees will comply with the EMRC's administrative and professional practices and conduct standards, including EMRC Policies and the EMRC's Management Guidelines.

## **4.6. Corporate obligations**

- (1) Standard of dress

Members will dress in a manner that recognises the importance of their positions.

Employees will comply with neat and responsible dress standards and ensure that the EMRC's safety requirements are met. The CEO and line managers have the right to raise the issue of dress standards with individual employees.

(2) Communications and public relations

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

As a representative of the community, a member needs to be not only responsive to community views, but to adequately communicate the attitudes and decisions of the Council. In doing so, a member should acknowledge that:

- (a) 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;
- (b) information of a confidential nature must not be communicated until it is no longer treated as confidential;
- (c) information relating to decisions of the Council on approvals, permits and so on ought only be communicated in an official capacity by the Chairman or a designated employee; and
- (d) information concerning adopted policies, procedures and decisions of the Council is conveyed accurately.

**4.7. Relationships between members and employees**

An effective member will work as part of the EMRC team with other members and the CEO. That teamwork will occur only if members and employees have mutual respect for, and co-operate with, each other to achieve the EMRC's corporate goals and implement the EMRC's strategies. To achieve that position, members need to:

- (a) accept that their role is leadership, not a management or administrative one;
- (b) acknowledge that they have no capacity to individually direct employees to carry out particular functions;
- (c) refrain from attempting to influence employees in carrying out their functions; and
- (d) refrain from publicly criticising employees in a way that casts aspersions on their professional competence or credibility.

The Rules of Conduct prohibit an elected member from:

- (a) undertaking a task that contributes to the administration of the local government, unless authorised by the Council or by the CEO to undertake that task;
- (b) directing or attempting to direct a local government employee;
- (c) attempting to influence, by means of a threat or the promise of a reward, the conduct of a local government employee;
- (d) making a statement that a local government employee is incompetent or dishonest; or
- (e) using offensive or objectionable expressions in reference to a local government employee.

The full text of regulations 9 and 10 of the *Local Government (Rules of Conduct) Regulations 2007* is set out in Annexure 1 to this Code of Conduct.

#### **4.8. Representation on external organisations**

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

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

## 5. Dealing with EMRC Property

### 5.1. Use of EMRC's resources

Members and employees will:

- (a) be scrupulously honest in their use of the EMRC's resources and must not misuse them or permit their misuse (or the appearance of misuse) by any other person or body;
- (b) use the EMRC resources entrusted to them effectively and economically in the course of their duties; and
- (c) not use the EMRC's resources (including the services of employees) for private purposes (other than when supplied as part of a contract of employment), unless properly authorised to do so, and appropriate payments (as determined by the CEO) are made.

The Rules of Conduct prohibit an elected member from using the resources of a local government for electoral purposes, or for any other purpose, unless authorised under the *Local Government Act* or by the Council or the CEO. The full text of regulation 8 of the *Local Government (Rules of Conduct) Regulations 2007* is set out in Annexure 1 to this Code of Conduct.

### 5.2. Intellectual property

All intellectual property created by employees in the course of their employment with the EMRC is and remains the property of the EMRC. The title to Intellectual Property in all duties relating to contracts of employment will be assigned to the Local Government upon its creation unless otherwise agreed by separate contract.

### 5.3. Travelling and sustenance expenses

Members and employees may claim or accept travelling and sustenance expenses only arising out of travel related to matters which have a direct bearing on the services, policies or business of the EMRC in accordance with the EMRC's Policies, the EMRC's Management Guidelines and the provisions of the *Local Government Act*.

### 5.4. Access to information

The CEO will ensure that members are given access to all information necessary for them to properly perform their functions and comply with their responsibilities as members.

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

## **6. Breaches and Misconduct**

### **6.1. Breaches**

A person may report a breach, or suspected breach, of this Code:

- (a) by an employee (other than the CEO) – to the CEO;
- (b) by the CEO – to the Chairman;
- (c) by a member (other than the Chairman) – to the Chairman; and
- (d) by the Chairman – to the Deputy Chairman.

Each report of a breach is to be dealt with quickly and fairly in accordance with the principles of procedural fairness.

As indicated earlier (at 1.1), the Rules of Conduct have their own enforcement regime. A breach by an elected member of a Rule of Conduct may be reported to the EMRC's Complaints Officer. If so, it will be dealt with under Part 5, Division 9 of the *Local Government Act 1995*.

### **6.2. Misconduct**

The CEO has a statutory obligation to report to the Corruption and Crime Commission:

- (a) any allegation of misconduct; or
- (b) any situation that otherwise comes to his or her attention involving misconduct,

where the CEO considers on reasonable grounds that misconduct may have occurred.

*Note: for these purposes, 'misconduct' is defined in section 4 of the Corruption and Crime Commission Act 2003.*

### **6.3. Public Interest Disclosure Act 2003**

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

The CEO is to ensure that employees who report unacceptable or illegal behaviour by other employees or members are not in any way disadvantaged or victimised because of their actions.

## Annexure

Rules of Conduct – [EMRC-68048](#)