

Shire of Mundaring

ORGANISATIONAL PRACTICE

CODE OF CONDUCT FOR EMPLOYEES

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HR-25 Management of Suspected Misconduct

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n/a

PURPOSE

To provide employees with clear guidelines for the standards of professional conduct expected of them in carrying out their functions and responsibilities.

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PART 1 - INTRODUCTION

1.1 Application

Under the *Local Government Act 1995* (Section 5.51A) the Chief Executive Officer (CEO) is required to prepare and implement a code of conduct to be observed by employees of the local government.

Recently amended Local Government (Administration) Regulations 1996 (Part 4A) prescribe the minimum contents of such a code of conduct for employees.

This Code of Conduct applies to all Shire of Mundaring employees, including the CEO, while on the Shire’s premises or while engaged in Shire related activities.

For the purposes of this Code, the term employees includes persons employed by Shire of Mundaring or engaged by Shire of Mundaring under a contract for services.

1.2 Definitions

In this Code of Conduct:

Act	means the <i>Local Government Act 1995</i>
CEO	means the Chief Executive Officer of Shire of Mundaring
Shire	means Shire of Mundaring
Clear intention	in relation to a “ dealing in land ” occurs when an individual concerned either: <ul style="list-style-type: none"> a) accepts an offer; or b) makes an offer; or c) enters into any contract for a dealing in land
Closely associated person	has the meaning given in section 5.62 of the <i>Local Government Act 1995</i>
Dealing in land	means, for the purpose of clause 6.1, a dealing of a person that involves: <ul style="list-style-type: none"> a) acquiring or selling real property; b) acquiring or selling a lease or other interest in real property; or c) a proposal to develop land or a building that is within the Shire, other than a dealing relating to the person’s principal place of residence
Designated employee	has the meaning given in section 5.74 of the <i>Local Government Act 1995</i>
Employee	Is defined in reg. 19AA of the <i>Local Government (Administration) Regulations 1996</i> and means a person — <ul style="list-style-type: none"> (a) employed by a local government under section 5.36(1) of the Act; or (b) engaged by a local government under a contract for services

Policy	For the purpose of this Code, Policy includes all Policies, Organisational Practices, Procedures and Guidelines
Secondary Employment	means any work, employment or engagement in a business unconnected to an employee's role at Shire of Mundaring

1.3 Statutory Environment

This Code addresses the requirement in section 5.51A of the Act for the CEO to prepare and implement a code of conduct to be observed by employees of the local government, and includes the matters prescribed in Part 4A of the *Local Government (Administration) Regulations 1996*.

The Code should be read in conjunction with the Act and associated regulations. Employees should ensure that they are aware of their statutory responsibilities under the Act, other legislation and all Shire policies.

PART 2 - VALUES AND ETHICAL PRINCIPLES

2.1 Values

Employees of the Shire must conduct themselves in a manner that reflects the Shire's corporate values:

Respect

Care of yourself and others, whilst supporting diversity of skills, backgrounds and perspectives.

Integrity

Being who you say you are, telling the truth and being consistent and reliable.

Team Spirit

Helping others, sharing knowledge, celebrating milestones, and working towards a common goal.

Excellence in Customer Service

Total commitment to informing, educating, consulting and responding to customer needs in a respectful and professional way.

Innovation

A willingness to seek ideas, share knowledge and remain flexible to new ways of doing things. It also means taking risks, making mistakes and making time to reflect to allow new solutions to surface.

Continuous Improvement

A continual openness to learning, sharing, reflecting, challenging and improving the way things are done.

PART 3 - CONDUCT OF EMPLOYEES

3.1 Objectives

High standards of professional conduct are required of employees, to ensure that a positive image of the Shire is conveyed when the Shire interacts with its stakeholders and the general public. The conduct displayed should encourage fair, equitable and lawful management and operation of the Shire.

3.2 Personal behaviour

Employees must:

- a) act lawfully and in accordance with the terms of this Code;
- b) act with reasonable care and diligence;
- c) act with honesty and integrity;
- d) act in the interests of the Shire and the community, uninfluenced by fear or favour;
- e) avoid damage to the reputation of the Shire;
- f) be open and accountable to the public;
- g) base decisions on relevant and factually correct information;
- h) treat others with respect and fairness;
- i) not be impaired by mind affecting substances;
- j) make no allegations which are improper or derogatory and refrain from any form of conduct, in the performance of their professional duties, which may cause, or is likely to cause any reasonable person unwarranted offence or embarrassment; and
- k) always act in accordance with their obligation of fidelity to the Shire and not publicly reflect adversely upon any decision of Council or the Executive Leadership Team.

3.3 Honesty and Integrity

Employees must:

- a) observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards; and
- b) be frank, honest and fair in performing their functions and in their professional dealings with each other and members of the public.

3.4 Performance of Duties

- a) While on duty, employees must give their whole time and attention to Shire business. They must ensure that their work is of a high standard, carried out efficiently and effectively in accordance with the Shire's policies, procedures and strategic direction;
- b) Employees must act within the limits of their delegation and/or authority;
- c) Employees will comply with any lawful and reasonable direction given by any person having authority to make or give such an order, including but not limited to their supervisor, manager, director or the CEO; and
- d) Employees must implement the lawful decisions of the Shire.

3.5 Discretionary decision-making

3.5.1 Role

Regularly employees will be called upon to make decisions while exercising discretionary powers, such as when deciding to approve or not approve applications for planning approval, and for other approvals, licences, consents and permits. Employees must therefore act in a quasi-judicial manner (meaning judge-like) when making such decisions.

3.5.2 Decision-making Principles

- a) The community expects employees to act in a quasi-judicial manner when exercising discretionary power;
- b) To act in a quasi-judicial manner, employees must apply the principles of natural justice, without bias or conflict of interest and make decisions in a judicial manner based on:
 - i. the law and Council policies as they exist; and
 - ii. the facts and merits of the case;
- c) Applicants submitting approval documents may attempt to persuade individual employees in favour of their proposals. Employees must remain objective and deal with applicants or affected persons impartially; and
- d) Decisions must be made on sound legislative rationale and not based on small public interest groups that do not represent the wider community.

3.6 Record Keeping Responsibilities

Employees are at all times responsible for the creation and maintenance of full and accurate records to evidence the performance of their functions.

Employees must maintain accurate and reliable records and ensure information is recorded accurately and in accordance with the Shire's recordkeeping plan and legislative requirements.

PART 4 - PERSONAL BENEFIT

4.1 Disclosure of Confidential Information

Employees must not disclose to another person, unless it is required for the performance of their duties, 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.

4.2 Improper Use of Information

Employees must not make improper use of any information acquired in the performance of any of their functions under the *Local Government Act 1995* or any other written law. Employees shall use discretion with information and avoid improperly causing harm or detriment to any person, organisation or the Shire.

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.

Employees must not use information, whether assigned confidential status or not, to gain improper advantage for themselves or for any other person or body, or in ways which are inconsistent with their obligation to act impartially.

4.3 Improper Use of Position

Employees must not make improper use of their position:

- (a) to gain directly or indirectly an advantage for themselves or for any other person; or
- (b) to cause detriment to the Shire or any other person.

4.4 Improper or Undue Influence

Employees must not take advantage of their position to improperly influence other employees in the performance of their duties or functions. They must not act to gain undue or improper (direct or indirect) advantage or gain, pecuniary or otherwise, for themselves or for any other person or body.

Similarly, employees must not take advantage of their position to improperly disadvantage or cause detriment to the Shire or any other person.

PART 5 - CORPORATE OBLIGATIONS

5.1 External Communications

External communications by employees must:

- (a) respect the decision making processes of the Shire;
- (b) be accurate, polite and professional;
- (c) refrain from publicly criticising either a council member, committee member or an employee in a way that casts aspersions on their competence or credibility;
- (d) maintain the confidentiality of information that has been assigned that status, until the status is removed by either a decision of Council or advice from the CEO;
- (e) ensure that information relating to quasi-judicial decisions (for example approvals, licences, permits) is communicated only in an official capacity by an authorised employee;
- (f) ensure that information concerning adopted policies, practices, procedures and decisions of the Shire is conveyed accurately; and
- (g) be undertaken in a manner that promotes understanding, participation, accountability and responsibility.

5.2 Public Statements

Only employees expressly authorised by the CEO may communicate with the media on behalf of the CEO on specific issues.

5.3 Appointments to External Organisations

Employees representing the Shire on an external organisation are to ensure that they:

- (a) clearly understand the basis of their appointment;
- (b) provide regular reports on the activities of the organisation in accordance with the confidentiality requirements of that organisation;
- (c) represent the Shire's interests on all matters relating to that organisation, while maintaining the confidentiality requirements of the Shire; and
- (d) communicate the resolved position of Council to the external organisation as determined from:
 - i. resolutions of Council dealing generally or specifically with the matter involving the external organisation; and
 - ii. relevant statements of the Council's positions contained in adopted Council policies or the Shire's Strategic Community Plan.

5.4 Defamation

Comments by an employee at a meeting of Council or a Committee may be covered by qualified privilege against defamation. Qualified privilege does not apply where a comment is made maliciously, or without due regard for whether it represents the truth.

An employee is able to rely on the defence of qualified privilege only while exercising the proper discharge of their duties, and doing so in the public interest.

An employee may also be protected by the provisions of section 9.56(2) of the *Local Government Act 1995* in relation to all tort actions (including defamation). The provision applies to anything a person has, in good faith, done in the performance or purported performance of a function under the *Local Government Act 1995* or any other written law.

5.5 Personal Communications and Social Media

- a) Personal communications and statements made privately in conversation, written, recorded, emailed or posted in personal social media, have the potential to be made public, whether they were intended to be made public or not.

Therefore, on the basis that personal or private communications may be shared or become public at some point in the future, employees must ensure that their personal and private communications do not breach the requirements of this Code of Conduct;

- b) Unless specifically authorised to do so, employees must not disclose information, make comments or engage in communication activities about or on behalf of the Shire, its elected members, employees or contractors, which breach this Code of Conduct; and
- c) Employee comments which become public and breach this Code of Conduct or any other operational practice or procedure, may constitute a disciplinary matter and may also be determined as misconduct and reported under the *Corruption, Crime and Misconduct Act 2003*.

5.6 Use of Shire Resources

Employees must:

- a) be scrupulously honest in their use of Shire resources (including facilities, funds, employee time, materials and equipment) and must not misuse them or permit their misuse (or the appearance of misuse) by any person or body;
- b) use Shire resources entrusted to them effectively, economically and lawfully in the course of their duties;
- c) not use Shire resources for private purposes (other than when supplied as part of a contract of employment), unless expressly authorised by the Chief Executive Officer to do so;
- d) not make unauthorised use of information and other intellectual property produced or registered by employees or external contractors for the Shire. The title to intellectual property created in the course of performing a function for or on behalf of the Shire must be assigned to the Shire upon its creation; and
- e) promote the concept of pride in public property, fostering an awareness of the community's ownership of the Shire's natural and built environment.

5.7 Personal Presentation

The appearance and dress of employees, whilst conducting Shire business, should be in accordance with the standards appropriate to their duties and the people with whom they are dealing.

Employees are required to dress professionally, reflecting pride in the Shire and respect for those that they deal with, particularly the public.

In some circumstances, employees may be required to adopt a particular dress standard, which may include wearing a uniform, safety clothing or formal attire. Where such standards are required, they must be complied with.

When attending a Council meeting, employees are required to wear appropriate business attire.

Corporate branded attire (uniform, personal protective equipment or other corporate attire with Shire of Mundaring name or logo) is intended to be worn only during working hours. While wearing corporate branded attire all employees are seen as representing the Shire brand and corporate image and must adhere to the Code of Conduct at all times.

PART 6 - CONFLICT AND DISCLOSURE OF INTEREST

6.1 Conflicts of Interest

Employees are bound by the provisions of the *Local Government Act 1995* and the provisions of this Code in relation to conflicts of interest and must comply with those provisions.

Employees must ensure that there is no actual, potential or perceived conflict of interest between their personal interests or those of closely associated persons and the impartial fulfilment of their public or professional duties and functions.

In applying this principle, employees must:

- (a) familiarise themselves with the different types of interests that are regulated by legislation and this Code and the disclosure requirements that apply to them;
- (b) adhere to the Shire's gifts policy (refer Part 7);
- (c) exercise diligence in identifying and making timely disclosure of any interests as they perform their duties;
- (d) not engage in private work with or for any person or body with an interest in a proposed or current contract with the Shire, without first making a written disclosure to the CEO. Employees undertaking private works shall under no circumstances use Shire equipment, premises, time, resources or consumables to conduct or undertake activities associated with private works;
- (e) lodge written notice with the CEO describing an intention to undertake a dealing in land which either occurs within the district or which may otherwise be in conflict with the Shire's functions. The notice must be received within 10 days of the individual concerned forming a clear intention to undertake a dealing in land. It is intended that the employee will be removed from any Shire process related to that dealing and should act accordingly;
- (f) if they exercise a recruitment or any other discretionary function, make written disclosure to the CEO before dealing with any matter in which they have an interest that could affect, or could reasonably be perceived to affect, their impartiality. This includes interests arising from kinship, friendship, or membership of an association, and will disqualify the employee from dealing with the matter unless the CEO has authorised their continued involvement and there is no other prohibition under law or the Code, which precludes their involvement. Where the CEO has authorised an employee who has an actual or perceived conflict of interest in the matter to continue acting in some capacity, that employee must follow all conditions and limitations that the CEO has placed on their involvement; and
- (g) if disclosure is required under any law or this Code, complete a disclosure form in writing and submit it to the CEO, or where the disclosure is by the CEO to the Shire President.

In addition, an employee must:

- (h) refrain from partisan political activities associated with Shire of Mundaring local government elections, which could cast doubt on their neutrality and impartiality in carrying out their public duties and functions. This does not include non-

partisan activity such as work associated with the administration of a local government election; and

- (i) seek approval from the CEO prior to undertaking any secondary employment. If an employee is already undertaking secondary employment they must ensure a request for approval is lodged immediately.

6.2 Financial Interests

Employees must comply with the laws governing financial interests, including the disclosure of financial interests, set out in the Act. Employees must also comply with the rules governing the disclosure of impartiality interests, as set out in this Code, which are consistent with Part 6 of the *Local Government (Administration) Regulations 1996*.

6.3 Proximity Interests

A proximity interest is defined by section 5.60B of the Act. Employees are bound by the disclosure requirements of the Act.

- (1) For the purposes of this Subdivision, a person has a proximity interest in a matter if the matter concerns —
 - (a) a proposed change to a planning scheme affecting land that adjoins the person’s land; or
 - (b) a proposed change to the zoning or use of land that adjoins the person’s land; or
 - (c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person’s land.
- (2) In this section, land (the *proposal land*) adjoins a person’s land if —
 - (a) the proposal land, not being a thoroughfare, has a common boundary with the person’s land; or
 - (b) the proposal land, or any part of it, is directly across a thoroughfare from, the person’s land; or
 - (c) the proposal land is that part of a thoroughfare that has a common boundary with the person’s land.
- (3) In this section a reference to a person’s land is a reference to any land owned by the person or in which the person has any estate or interest.

6.4 Impartiality interests

Employees must comply with the rules governing the disclosure of impartiality interests, as set out in this Code, which are consistent with Part 6 of the *Local Government (Administration) Regulations 1996*.

For the purpose of this Code, 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” (regulation 19AA of the *Local Government (Administration) Regulations 1996*).

An 'impartiality interest' is different from a 'financial interest' which is subject to the requirements of the *Local Government Act 1995*.

6.5 Requirement to Disclose

The onus is on employees to identify possible financial, proximity or impartiality interests, to determine whether an interest exists, what disclosure is required by this Code or applicable laws and whether any statutory exemption applies.

An employee who has an interest in any matter to be discussed at a Council or Committee meeting attended by that person must disclose the nature of the interest:

- a) before the meeting in a written notice to the CEO 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 .

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 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.

An employee is excused from the requirement to disclose an interest if the failure to disclose occurs because the person:

- a) did not know they had an interest in the matter; or
- b) did not know the matter in which they had an interest would be discussed at the meeting and the person discloses the nature of the interest as soon as possible after becoming aware of the discussion of that matter.

Where a verbal disclosure is made at a meeting without a prior written disclosure, a written disclosure form must be completed in relation to the interest disclosed. The completed disclosure form must be submitted as soon as practicable following the meeting.

6.6 Disclosure of Information in Returns

Designated employees must provide primary and annual returns in accordance with the requirements of Division 6 of Part 5 of the *Local Government Act 1995*.

Other disclosures or returns may be required for specific roles such as Related Party Disclosures for key management personnel.

PART 7 – GIFTS

In accordance with regulations 19AB and 19AC of the *Local Government (Administration) Regulations 1996*, this Code does not apply to the CEO in relation to gifts. Instead, the CEO is subject to the requirements of Part 5, Division 6 of the Act in relation to gifts. In particular, sections 5.71A and 5.71B of the Act define the CEO's obligations for disclosure and management of conflicts of interest arising from the acceptance of gifts, when providing advice or reports to Council either directly or indirectly.

For the purpose of regulation 19AF of the *Local Government (Administration) Regulations 1996* the CEO has determined that the threshold amount for a prohibited gift is **\$20. As such any gift that has an estimated value of more than \$20 is to be politely refused.**

If you become aware of a breach of this provision of the code you have a duty to report it to the CEO. Non-compliance may constitute misconduct and may result in disciplinary action. This applies regardless of your position in the organisation.

7.2 Procedure for Employees

Employees are required to professionally inform vendors, potential vendors and others of this policy.

Employees will request that vendors respect the Shire policy.

If in doubt about whether a gift is acceptable or not in terms of its value, the employee should try and accurately assess its value and discuss with their service manager if at all unsure.

7.3 Disclosure of Gifts

All offers of prohibited gifts must be politely declined and reported on the Gift Declaration Form as declined.

All gifts under \$20 that are accepted by an employee, must be declared on the Gift Declaration Form, unless exempted as per 7.4.

7.4 Exceptions

Conference etc. trinkets

Exempted from these provisions of the Code are gifts such as t-shirts, pens, trade show bags and all other trinkets that employees obtain as attendees at events such as conferences, training events, seminars, and trade shows that are offered equally to all attending the event.

Personal gifts not connected to employment

Genuinely personal gifts and benefits from friends and family that have no connection to an employee's employment are exempted from the no-gifts policy.

Ceremonial gifts

Official gifts that are offered by an organisation to representatives of the Shire when conducting official business with delegates from another organisation. Although these gifts may sometimes be offered to express gratitude, the gratitude usually extends to the work of several people in the Shire, and therefore the gift is considered to be for the Shire not a particular employee.

Prizes

Prizes won at event competitions are exempt as the benefit is considered a prize from a game of chance, rather than a gift. As the beneficiary is not known until drawn and the transfer of property is by chance, rather than by a decision of the donor to the recipient, this is not considered a gift. Prizes from games of chance (i.e. raffles, lucky door prizes, business card draws etc.) need not be disclosed as gifts.

7.5 Guidance for particular types of gifts

Hospitality, functions and events

Other than token hospitality given as a matter of course to function and event attendees, such as during a meeting or training course, offers of hospitality must be declined.

By way of example, token hospitality may include a coffee, bottled water, soft drinks etc. that may be provided at an event are acceptable as is a regular supplier purchasing a staff member a coffee as part of a work meeting. Lunch that is provided as part of a training course is also acceptable and need not be declared.

Invitations to events such as sports matches and theatre shows, as well as restaurant lunches paid for by companies must be declined.

Where it is of value for an employee to attend a particular event, Shire of Mundaring will pay for the employee to attend in accordance with OP 10 Employee Attendance at Conferences and Travel.

Reward points

Reward points and gifts/benefits earned through purchases, travel etc. paid by Shire of Mundaring must not be used for the personal benefit of employees.

Sponsored Travel and Accommodation

Sponsored travel or accommodation offered by other organisations must not be accepted unless prior approval has been obtained.

Offers of free conference registration, may be acceptable, but the Shire must generally pay for all travel and accommodation requirements. In the circumstances where the employee is to be a speaker at the conference, application is to be made to the Chief Executive Officer to make a determination regarding the acceptance of sponsored travel and accommodation.

Gifts offered to a Shire employee as a conference presenter for commercial enterprises

These gifts must be declined and must be declared on the Shire's Gift Declaration Form as declined, as they have the real potential to influence decisions made by the Shire employee.

Gifts offered to a Shire employee as a conference presenter for a professional organisation

It is not uncommon for staff to speak at professional events and in some cases, gifts are offered as a token of appreciation for doing so. These gifts must not exceed the \$20 threshold and should be declared in accordance with 7.3 above. Examples of such associations are the Western Australian local Government Association, Local Government Professionals and the Royal Australian Planning Institute and others.

Trade samples

Suppliers of equipment will from time to time offer samples of various equipment to enable evaluation of such equipment, which may be useful before decisions are made on actual purchase. Trade samples offered to the Shire can be accepted. Trade samples that are offered directly to employees must be declined.

Family members

Employees must take all reasonable steps to ensure that immediate family members do not receive gifts or benefits that may be perceived as attempts to influence your behaviour or decision making. Should this occur, the employee must declare the gift or benefit on the Gift Declaration Form.

PART 8 – PERSONAL RELATIONSHIPS, BULLYING AND INAPPROPRIATE BEHAVIOUR

8.1 Personal Relationships

Employees must maintain clear boundaries between personal and business interactions.

A personal relationship includes:

- A family relationship;
- A business/commercial/financial relationship;
- A close personal friendship; or
- A romantic/sexual relationship.

Any personal relationship between employees must not adversely affect service provision, or its management arrangements, or cause other employees to feel embarrassed and/or excluded in their workplace.

Where an employee with a personal relationship is to be involved in a supervisor/subordinate arrangement or is to oversee services provided, they must advise their Director. In consultation with the CEO, the Director will draft a written proposal to manage the situation in such a way as to minimise any potential conflicts of interest (whether real or perceived) and potential friction between employees.

Employees should be neither advantaged nor disadvantaged because of a personal relationship with another person.

Employees must behave professionally towards each other at all times. If the relationship ends, there must not be any harassment, discrimination or bullying.

8.2 Bullying

Bullying is repeated unreasonable, inappropriate or aggressive behaviour that is directed towards an individual or group and creates a risk to health or safety. The Shire is committed to providing a safe work environment that is free from bullying and encourages the reporting of any evidence of bullying.

Bullying behaviour breaches this Code and is also prohibited by the *Occupational Safety and Health Act 1984* (in relation to conduct within a workplace or during the course of employment) and other legislation.

Bullying includes both direct and indirect actions and both are in breach of this Code. It is important to note that bullying does not include reasonable management of an employee (such as allocating tasks or providing performance feedback) when undertaken in a reasonable manner.

Refer to Policy HR-01 'Equal Employment Opportunity and Anti-Bullying' for more detailed information.

8.3 Single Instances

To be considered bullying, repeated behaviour is required. However, while behaviour may not be considered bullying where it violates legislation, Shire policies or procedures, or other provisions in this Code it will still be considered a breach of the Code and will be treated accordingly.

8.4 Discrimination

Discrimination is dealt with by the *Equal Opportunity Act 1984* (and other legislation) and means treating someone less favourably than another, in circumstances that are the same (or are not materially different), on the basis of a ground such as race, sex, impairment, age, religious or political conviction, family status, pregnancy or gender history. Employees must not discriminate against or harass any person.

PART 9 - BREACHES AND MISCONDUCT

9.1 Internally Reporting Misconduct – Public Interest Disclosure

Corruption Crime and Misconduct Act 2003:

Misconduct occurs if —

- (a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment; or
- (b) a public officer corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; or
- (c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years’ imprisonment; or
- (d) a public officer engages in conduct that —
 - (i) 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 not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or
 - (ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or
 - (iii) 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; or
 - (iv) 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 —
 - [(v) *deleted*]
 - (vi) 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).

When an employee believes or suspects that misconduct is occurring or has occurred, they should report the matter to the CEO.

Alternatively, if the employee wishes to make a confidential complaint, this can be done under the provisions of the *Public Interest Disclosure Act 2003*. Refer to OP Admin-44 Public Interest Disclosure – Internal Procedure for the process for making a 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 the Act.

The Shire:

- a) does not tolerate corrupt or other improper conduct, including mismanagement of public resources by its employees in the exercise of their public duties;
- b) is committed to the aims and objectives of the *Public Interest Disclosure Act 2003*;
- c) strongly supports employees making disclosures about corrupt or other improper conduct;
- d) will take all reasonable steps to protect employees from any detrimental action in reprisal for the making of a the disclosure; and
- e) does not tolerate any of its employees engaging in acts of victimisation or reprisal against a person who makes a public interest disclosure.

Employees are encouraged to contact one of the Shire's nominated Public Interest Disclosure Officers to seek guidance on reporting misconduct, their disclosure, and to lodge a Public Interest Disclosure form.

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

- a) incurs no civil or criminal liability for doing so; and
- b) is not, for doing so, liable:
 - i. to any disciplinary action under a written law;
 - ii. to be dismissed;
 - iii. to have his or her services dispensed with or otherwise terminated; or
 - iv. for any breach of duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by a written law) applicable to the person (section 13).

All persons have the option to report a matter of misconduct directly to the Corruption and Crime Commission (CCC) or the Public Sector Commissioner (PSC) under the *Corruption and Crime, and Misconduct Act 2003*.

Please refer to the *Corruption and Crime, and Misconduct Act 2003* section 4 for detailed definitions of misconduct, serious misconduct and minor misconduct.

Referrals to the PSC can only be about employees, while referrals to the CCC can be about council members and employees.

9.2 CEO obligation to report misconduct

The CEO has a statutory obligation to report to the CCC:

- a) any allegation of serious misconduct by an employee; or

b) any situation that otherwise comes to his or her attention involving serious misconduct, where the CEO considers on reasonable grounds that serious misconduct may have occurred.

The CEO has a statutory obligation to report to the PSC:

- a) any allegation of minor misconduct by an employee; or
- b) any situation that otherwise comes to his or her attention involving minor misconduct of employees.

This practice was approved by:
JONATHAN THROSSELL
Chief Executive Officer



Date: 18 October 2021