

POLICY NO: 1.11
RESOLUTION NUMBER: 1680



NEBO SHIRE COUNCIL
POLICY REGISTER

SUBJECT: COUNCILLORS

POLICY TITLE: CODE OF CONDUCT

OBJECTIVES: To outline Council's Policy in relation to the Statutory Code of Conduct of Councillors

POLICY:

1. Legal Basis for this Code

This code is prepared under the provisions of Section 250J of the *Local Government Act 1993*.

The code will come into effect following completion of the process identified under Section 250J of the *Local Government Act 1993* and will continue to apply until subsequent amendment by Council or as prescribed by Section 250E of the Act

This code should be read in conjunction with Council Policy 15.10 – Code of Conduct

2. Obligations

The *Local Government Act 1993* and the *Local Government Regulation 2005* places a number of statutory obligations on councillors, relating to the way they carry out their roles. The statutory obligations are:

2.1 Statutory Obligations for which the Act provides a penalty

2.1.1 Requirements of councillors before acting in office

Amongst the things required before acting in office, ss.242(1)(a), 242(3) and 242(3A) of the Act provide that a person elected as a councillor is required to give the Council's Chief Executive Officer (CEO) a return in the approved form stating the information required by s.427 of the Act about gifts to candidates and also, if applicable, the information required by s.427A of the Act about gifts to groups of candidates.

Section 242(8) then provides:

The person must not give a return, under subsection (1)(a), containing particulars that are, to the knowledge of the person, false or misleading in a material particular.

2.1.2 Exclusion from meeting of councillor with material personal interest

Section 244 of the Act provides that a councillor who has a *material personal interest* in an issue to be considered at a meeting of the Council, or any of its committees:

- (a) must disclose the interest to the meeting;
- (b) must not be present at or take part in the meeting while the issue is being considered or voted on; and,
- (c) must not be in the chamber where the meeting is being conducted, including any area set apart for the public.

Section 246 provides that a councillor who contravenes s.244 is liable to a penalty if:

- (a) the councillor voted on the issue with an intention to gain an advantage for the councillor or anyone else; or,
- (b) in any other case.

2.1.3 Registers of interests

Section 247 of the Act provides for the keeping of a register of interests – financial and non-financial – of each councillor and persons related to the councillor (as defined in ss.22-25 of the Regulation). If a councillor knows of an interest that must be recorded in the register, in regard to the councillor or a *related person*, or that particulars of such an interest are no longer correct, the councillor must tell the CEO of the interest, or the correct particulars in accordance with the Regulation.

For example, a councillor must declare gifts of more than \$500 (in amount or value) given by a person (a donor) to the councillor.

This does not apply to a gift from a donor who is:

- (a) a person related to the councillor; or
- (b) someone else related by blood or marriage to the councillor; or
- (c) the councillor's friend.

Nevertheless, with regard to the exemptions, the councillor must be satisfied there can not be the perception of a conflict of interest, financial or otherwise, relating to the gift that could conflict with the councillor's duty as a councillor. A councillor must also make similar disclosures of gifts received by the councillor's related persons.

2.1.4 Improper use of information by councillors

Section 250 of the Act provides that a local government councillor must not:

- (1) make improper use of information acquired as a councillor:
 - (a) to gain, directly or indirectly, a financial advantage for the person or someone else; or
 - (b) to harm the local government.
- (2) release information that the person knows, or should reasonably know, is information that:
 - (a) is confidential to the local government ; and
 - (b) the local government wishes to keep confidential.

2.2 Statutory Obligations for which the Act does not provide a penalty

2.2.1 Councillors' Roles

Section 229 of the Act defines the roles of a councillor:

- (1) A councillor:
 - (a) represents the overall public interest of the local government's area and if the councillor is a councillor for a division, also represents the public interest of the division; and
 - (b) takes part in deciding the facilities, services and enterprises that are appropriate for the area; and
 - (c) takes part in formulating, adopting and reviewing –
 - i. the local government's corporate plan and operational plans; and
 - ii. the policies and goals of the local government; and
 - (d) takes part in making decisions for achieving the goals and implementing the policies of the local government; and
- (2) In performing the role a councillor:
 - (a) must serve the overall public interest of the area and, if the councillor is the councillor for a division, the public interest of the division: and
 - (b) if a conflict arises between the public interest and the private interest of the councillor or another person – must give preference to the public interest.
- (3) A councillor must ensure there is no conflict, or possible conflict, between the councillor's private interest and the honest performance of the councillor's role of serving the public interest.

2.2.2 Limitations on Councillors' Roles

Section 230 of the Act provides:

- (1) A councillor who is not the mayor must not assume any part of the mayor's role without the mayor's prior approval.
- (2) A councillor cannot and must not attempt to direct an employee of the local government about the way in which the employee's duties are to be performed.

However, in relation to (2), under s.1135 of the Act:

A councillor may ask for help or advice from the CEO; or, if the request is made under guidelines made by the CEO, another employee; and

The mayor may ask for reasonable help or advice from any employee.

2.2.3 Queries on contents of register

Section 249 concerns queries on contents of a register of a councillor's interests or the register of interest of a person related to a councillor:

- (a) If there is a suspicion that a register does not contain all relevant particulars the councillor must within 30 days establish whether the register should be amended and if so, provide the appropriate particulars in writing.
- (b) If the councillor establishes that the register does not need to be amended the councillor must complete a statutory declaration that the particulars in the register are a true record of fact and give the statutory declaration to the CEO.

2.2.4 Councillors' Liability for Disbursements

Section 523 of the Act provides for situations where a local government makes a disbursement which is not provided for in the budget. Any councillors who knowingly agreed to such a disbursement are jointly and severally liable to repay the amount to the local government.

2.2.5 Councillors' liability for unauthorised borrowings

Section 526 of the Act provides for situations where councillors knowingly agree to borrowing without relevant authority. Those councillors are jointly and severally liable to pay to the local government the amount borrowed and all interest, and other penalties incurred by the local government, for the borrowing.

2.3 Additional Ethical and Behavioural Obligations

Whilst Council totally supports the ethics principles as identified in Section 250G of the Local Government Act it does not wish to impose any additional ethical and behavioural obligations under this code.

The ethical principles referred to are detailed in Council Policy 15.10 – Code of Conduct (Council's Code of Conduct for Elected Members and Staff)

3. Compliance

Section 243A of the Local Government Act requires councillors to comply with the obligations stated in the code of conduct, provides for contraventions of the code to be dealt with under the Act, and confirms that, if an act, omission or contravention is an offence under the provisions of the Act, proceedings may also be taken for the offence (i.e. Court proceedings).

4. Breaches

The type of breach relevant to this code as prescribed by Section 250M of the Act is a **Statutory breach** which occurs when a councillor breaches one of the statutory obligations identified in the code, that is, one of the obligations under the Act (see 2.1 and 2.2).

Section 250H prescribes circumstances when a breach of the code is a repeat breach. For the purposes of the code, this means four breaches within six months. Breaches in excess of four are to be regarded as having occurred within the next six month period.

Section 250I requires details of the process about how a person can find out how to make a complaint. For the purpose of this code, complaints may be made in accordance with the procedures set out in Council's General Complaints Process.

5. Enforcement and Penalties

The procedures for dealing with Code breaches are summarised as follows:-

Breach Type	Reporting	Processing	Action
Statutory	Any person may make a complaint to the CEO and/or to the CMC (if the statutory breach raises a suspicion of official misconduct)	<p>The CEO must firstly determine if the complaint raises a suspicion of official misconduct in which case the CEO is required to refer the matter to the CMC (The CEO is required to make this evaluation of all complaints lodged with the Council.)</p> <p>If no suspicion of official misconduct is raised the CEO is required to refer the complaint to the Council's Conduct Review Panel.</p> <p>If the complaint has been referred to the CMC by the CEO AND the CMC has decided to take no action or to discontinue any action AND has decided to recommend referral of the complaint to the Conduct Review Panel for review the CEO is required to refer the complaint to the Council's Conduct Review Panel.</p> <p>If referred to the Council's Conduct Review Panel the CEO must give the councillor written notice of this referral.</p> <p>The conduct review panel must review the complaint and report to Council. It may</p> <ol style="list-style-type: none"> a) state whether it considers the complaint only concerns a vexatious matter or has been made frivolously b) decide more information is required to make a recommendation c) recommend to the Council as to whether or not the panel considers that the councillor committed the alleged breach and d) recommend to the Council what the panel considers to be an appropriate penalty out of the following available penalties <ol style="list-style-type: none"> i) a written reprimand ii) suspension from a future meeting of the Council or a committee of the Council of which the councillor is a member of up to 2 consecutive meetings <p>Note: The Conduct Review Panel is unable to recommend to the Council that summons action be taken in the justice system</p>	<p>Council may decide to:</p> <ol style="list-style-type: none"> a) take no further action under the code penalty provisions allowed; or b) impose a penalty; and/or <p>Pursue an action in the courts to obtain a prosecution for the offence.</p>

The following table summarises the penalties which may applied in accordance with section 250X of the Act:

Breach Type	Penalty
Statutory breach (Where no penalty applies)	One or more of the following may be imposed by the Council: a) a written reprimand; b) suspension from the remainder of the local government meeting; c) suspension for not more than two consecutive future meetings of the Council and all the Council's committees of which the councillor is a member, the maximum period of suspension not to include more than two consecutive ordinary meetings.
Statutory breach (Where a penalty applies)	In addition to the above the Council (or any other person or agency) may commence legal action with respect to such breaches.

6. Accountability

Public Reporting

The Council must include in its annual reports for the financial year information including the following:

- a. The number of breaches of the Council's Code of Conduct for Councillors in the financial year.
- b. The number of complaints about alleged code of conduct breaches by councillors, other than frivolous or vexatious complaints, that were referred to the conduct review panel during the year by the Council or the chief executive officer under chapter 4, part 3A in the financial year.
- c. The number of recommendations made to the Council by the conduct review panel during the year that were adopted, or not adopted, by the local government in the financial year.
- d. The number of complaints resolved under the Council's general complaints process during the year and the number of those complaints that related to an alleged breach by a councillor of the Council's code of conduct for councillors in the financial year.
- e. The number of complaints made to the Ombudsman, and notified to the Council, during the year about decisions made by the Council in relation to enforcement of its code of conduct for councillors in the financial year.
- f. The name of each councillor who has breached the code, a description of how the councillor breached and details of any penalty imposed.

7. Dictionary

All terms in this Code, unless otherwise defined below, have the meaning assigned under the Act or Regulations there under.

“Confidential Information”	Includes any information or matter which is revealed in a Closed Meeting of Council and any matter communicated to a councillor where such communication is made explicitly or implicitly in a confidential manner.
“Council Policy”	Any policy made or adopted by a resolution of Council provided such policy is listed in a policy register of the Council and made available to a councillor and a member of the public on request.
“Material Personal Interest”	As defined by s. 6 of the Act
“Related Person”	Is a person related to a councillor as defined by s.22 of Local Government Regulation 2005.