

City of Albany
Policy

Code of Conduct for Council Members, Committee Members and Candidates

**Local Government
(Model Code of Conduct)
Regulations 2021, as amended**

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1.1	MGR	Administrative Amendment: Inclusion of Council's adopted Corporate Document Policy mandatory content, being: <ul style="list-style-type: none"> Objective Policy Statements Scope Legislative and Strategic Context Review Position and Date Associated Documents Definitions Appendices: <ul style="list-style-type: none"> A: Gift Framework: Reference to Gifts Framework & Flow Charts (modelled of the Dept. Circular 11-2019) B: Complaint About Alleged Breach Form. 	4/05/2021
1.2	MGR	Administrative amendment: Minor formatting changes and reference to Community Strategic Plan 2032.	05/05/2022
1.3	MGR	Administrative amendment: <ul style="list-style-type: none"> Appendix B: Complaint about Alleged <u>Behaviour</u> Breach Form (title now includes the term behaviour). Content of the form at Appendix B, updated. 	17/04/2023

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Objective

The *Local Government (Model Code of Conduct) Regulations 2021* introduced a mandatory code of conduct for Elected Members, committee members and candidates.

The Model Code Regulations provide for:

- overarching principles to guide behaviour;
- behaviours which are managed by local governments; and
- rules of conduct breaches which are considered by the Standards Panel.

POLICY STATEMENT

A: Responding to complaints about behaviour

The Model Code provides a high-level process that requires local councils to make a finding on complaints regarding the alleged behaviour of council members, committee members and candidates that have been elected.

B: Dealing with a complaint (Breach of the Code of Conduct)

Clause 12 of the Regulations outlines the process for dealing with complaints regarding the conduct of elected members and candidates.

It is the responsibility to local governments to determine the most appropriate and effective process for how this is undertaken.

Council appointed the Chief Executive Officer as the Complaints Officer (CEO).

The Council delegated the power to the CEO and/or his/her authorised representative to administer complaints in regard to a breach of the code of conduct.

The CEO may appointment of an independent/external consultant to review complaints and provide a report to the council.

Scope

This code applies to Council Members, Committee Members and Candidates.

It is the individual responsibility of council members, committee members and candidates to become familiar with the Model Code, the Guidelines on the Model Code as well as any relevant policies of their local government, and to follow the Code at all times.

Legislative & Strategic Context

- **Community Strategic Plan:** This item relates to the following elements of the City of Albany Strategic Community Plan 2032:
 - **Theme:** Leadership.
 - **Objective:** To provide strong, accountable leadership.
 - **Outcome:** Proactive, visionary leaders who are aligned with community needs and values.
- **Local Government Act 1995 (the Act):**
 - Section 5.104. Adoption of model code of conduct.
- **Local Government (Model Code of Conduct) Regulation 2021 (The Model Code):**
 - The Model Code must be adopted by absolute majority of the council.
 - Once the Code is adopted, it must be published on the local government's official website (section 5.104(7) of the Act).

Review Position and Date

This policy was adopted on 27 April 2021.

This policy should be reviewed prior to a general Local Government election, or earlier if the regulations are amended.

Definitions

Key terms and acronyms used in the policy, and their definitions are detailed at:

- Division 1 – Preliminary Provisions – Clause 2
- Division 2 – General Principles – Clause 9(b)
- Division 4 – Rules of Conduct – Clause 17
- Division 4 – Rules of Conduct – Clause 21
- Division 4 – Rules of Conduct – Clause 22

Associated Documents

Other documents that have a bearing on this policy and that may be useful reference material for users of this policy, follow:

- **Attendance at Events and Functions Policy** – The purpose of this policy is to establish guidelines for appropriate disclosure and management of acceptance of invitations to events or functions, or other hospitality occasions, where elected members and employees are invited free of charge, whether as part of their official duties as council or City representatives or not.
- **Guidelines: Code of Conduct Behaviour** – Complaints Management Guidelines
- **Forms:**
 - **Appendix B - Complaint About Alleged Behaviour Breach Form** – Code of conduct for council members, committee members and candidates.

City of Albany's Code of Conduct for Council Members, Committee Members & Candidates

Division 1 — Preliminary provisions

1. Citation

This is the City of Albany's Code of Conduct for Council Members, Committee Members and Candidates.

2. Terms used

(1) In this code —

Act means the *Local Government Act 1995*:

- candidate means a candidate for election as a council member.
- complaint means a complaint made under clause 11(1).
- publish includes to publish on a social media platform.

(2) Other terms used in this code that are also used in the Act have the same meaning as they have in the Act, unless the contrary intention appears.

Division 2 — General principles

3. Overview of Division

This Division sets out general principles to guide the behaviour of council members, committee members and candidates.

4. Personal integrity

(1) A council member, committee member or candidate should —

- (a) act with reasonable care and diligence; and
- (b) act with honesty and integrity; and
- (c) act lawfully; and
- (d) identify and appropriately manage any conflict of interest; and
- (e) avoid damage to the reputation of the local government.

(2) A council member or committee member should —

- (a) act in accordance with the trust placed in council members and committee members; and
- (b) participate in decision-making in an honest, fair, impartial and timely manner; and
- (c) actively seek out and engage in training and development opportunities to improve the performance of their role; and
- (d) attend and participate in briefings, workshops and training sessions provided or arranged by the local government in relation to the performance of their role.

5. Relationship with others

- (1) A council member, committee member or candidate should —
 - (a) treat others with respect, courtesy and fairness; and
 - (b) respect and value diversity in the community.
- (2) A council member or committee member should maintain and contribute to a harmonious, safe, and productive work environment.

6. Accountability

A council member or committee member should —

- (a) base decisions on relevant and factually correct information; and
- (b) make decisions on merit, in the public interest and in accordance with statutory obligations and principles of good governance and procedural fairness; and
- (c) read all agenda papers given to them in relation to council or committee meetings; and
- (d) be open and accountable to, and represent, the community in the district.

Division 3 — Behaviour

7. Overview of Division

This Division sets out —

- (a) requirements relating to the behaviour of council members, committee members and candidates; and
- (b) the mechanism for dealing with alleged breaches of those requirements.

8. Personal integrity

- (1) A council member, committee member or candidate —
 - (a) must ensure that their use of social media and other forms of communication complies with this code; and
 - (b) must only publish material that is factually correct.
- (2) A council member or committee member —
 - (c) must not be impaired by alcohol or drugs in the performance of their official duties; and
 - (d) must comply with all policies, procedures, and resolutions of the local government.

9. Relationship with others

A council member, committee member or candidate —

- (a) must not bully or harass another person in any way; and
- (b) must deal with the media in a positive¹ and appropriate manner and in accordance with any relevant policy of the local government; and
- (c) must not use offensive or derogatory language when referring to another person; and

¹ Positive meaning respectful.

- (d) must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and
- (e) must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.

10. Council or committee meetings

When attending a council or committee meeting, a council member, committee member or candidate —

- (a) must not act in an abusive or threatening manner towards another person; and
- (b) must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and
- (c) must not repeatedly disrupt the meeting; and
- (d) must comply with any requirements of a local law of the local government relating to the procedures and conduct of council or committee meetings; and
- (e) must comply with any direction given by the person presiding at the meeting; and
- (f) must immediately cease to engage in any conduct that has been ruled out of order by the person presiding at the meeting.

11. Complaint about alleged breach

- (1) A person may make a complaint, in accordance with subclause (2), alleging a breach of a requirement set out in this Division.
- (2) A complaint must be made —
 - (a) in writing in the form approved by the local government; and
 - (b) to a person authorised under subclause (3); and
 - (c) within 1 month after the occurrence of the alleged breach.
- (3) The local government must, in writing, authorise 1 or more persons to receive complaints and withdrawals of complaints.

12. Dealing with complaint

- (1) After considering a complaint, the local government must, unless it dismisses the complaint under clause 13 or the complaint is withdrawn under clause 14(1), make a finding as to whether the alleged breach the subject of the complaint has occurred.
- (2) Before making a finding in relation to the complaint, the local government must give the person to whom the complaint relates a reasonable opportunity to be heard.
- (3) A finding that the alleged breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.

- (4) If the local government makes a finding that the alleged breach has occurred, the local government may —
 - (a) take no further action; or
 - (b) prepare and implement a plan to address the behaviour of the person to whom the complaint relates.
- (5) When preparing a plan under subclause (4)(b), the local government must consult with the person to whom the complaint relates.
- (6) A plan under subclause (4)(b) may include a requirement for the person to whom the complaint relates to do 1 or more of the following —
 - (a) engage in mediation.
 - (b) undertake counselling.
 - (c) undertake training.
 - (d) take other action the local government considers appropriate.
- (7) If the local government makes a finding in relation to the complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of —
 - (a) its finding and the reasons for its finding; and
 - (b) if its finding is that the alleged breach has occurred — its decision under subclause (4).

13. Dismissal of complaint

- (1) The local government must dismiss a complaint if it is satisfied that —
 - (a) the behaviour to which the complaint relates occurred at a council or committee meeting; and
 - (b) either —
 - (ii) the behaviour was dealt with by the person presiding at the meeting; or
 - (iii) the person responsible for the behaviour has taken remedial action in accordance with a local law of the local government that deals with meeting procedures.
- (2) If the local government dismisses a complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of its decision and the reasons for its decision.

14. Withdrawal of complaint

- (1) A complainant may withdraw their complaint at any time before the local government makes a finding in relation to the complaint.
- (2) The withdrawal of a complaint must be —
 - (a) in writing; and
 - (b) given to a person authorised under clause 11(3).

15. Other provisions about complaints

- (1) A complaint about an alleged breach by a candidate cannot be dealt with by the local government unless the candidate has been elected as a council member.
- (2) The procedure for dealing with complaints may be determined by the local government to the extent that it is not provided for in this Division.

Division 4 — Rules of conduct

Notes for this Division:

1. *Under section 5.105(1) of the Act a council member commits a minor breach if the council member contravenes a rule of conduct.*
2. *This extends to the contravention of a rule of conduct that occurred when the council member was a candidate.*
3. *A minor breach is dealt with by a standards panel under section 5.110 of the Act.*

16. Overview of Division

- (1) This Division sets out rules of conduct for council members and candidates.
- (2) A reference in this Division to a council member includes a council member when acting as a committee member.

17. Misuse of local government resources

- (1) In this clause —
electoral purpose means the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the Electoral Act 1907 or the Commonwealth Electoral Act 1918;
resources of a local government includes —
 - (a) local government property; and
 - (b) services provided, or paid for, by a local government.
- (2) A council member must not, directly or indirectly, use the resources of a local government for an electoral purpose or other purpose unless authorised under the Act, or by the local government or the CEO, to use the resources for that purpose.

18. Securing personal advantage or disadvantaging others

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

19. Prohibition against involvement in administration

- (1) A council member must not undertake a task that contributes to the administration of the local government unless authorised by the local government or the CEO to undertake that task.
- (2) Subclause (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.

20. Relationship with local government employees

- (1) In this clause —
local government employee means a person —
 - (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.
- (2) A council member or candidate must not —
 - (a) direct or attempt to direct a local government employee to do or not to do anything in their 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 local government employee in their capacity as a local government employee; or
 - (c) act in an abusive or threatening manner towards a local government employee.
- (3) Subclause (2)(a) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.
- (4) If a council member or candidate, in their capacity as a council member or candidate, is attending a council or committee meeting or other organised event (for example, a briefing or workshop), the council member or candidate must not orally, in writing or by any other means —
 - (a) make a statement that a local government employee is incompetent or dishonest; or
 - (b) use an offensive or objectionable expression when referring to a local government employee.
- (5) Subclause (4)(a) does not apply to conduct that is unlawful under The Criminal Code Chapter XXXV.

21. Disclosure of information

- (1) In this clause —
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;
confidential document means a document marked by the CEO, or by a person authorised by the CEO, to clearly show that the information in the document is not to be disclosed;
document includes a part of a document;
non-confidential document means a document that is not a confidential document.

- (2) A council member must not disclose information that the council member —
 - (a) derived from a confidential document; or
 - (b) acquired at a closed meeting other than information derived from a non-confidential document.
- (3) Subclause (2) does not prevent 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.

22. Disclosure of interests

- (1) In this clause —
interest —
 - (a) means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest; and
 - (b) 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 council member must disclose the nature of the interest —
 - (a) in a written notice given to the CEO before the meeting; or
 - (b) at the meeting immediately before the matter is discussed.
- (3) Subclause (2) does not apply to an interest referred to in section 5.60 of the Act.
- (4) Subclause (2) does not apply if a council member fails to disclose an interest because the council member did not know —
 - (a) that they had an interest in the matter; or
 - (b) that the matter in which they had an interest would be discussed at the meeting and the council member disclosed the interest as soon as possible after the discussion began.
- (5) If, under subclause (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 must cause the notice to be given to the person who is to preside at the meeting; and
 - (b) at the meeting the person presiding must bring the notice and its contents to the attention of the persons present immediately before any matter to which the disclosure relates is discussed.
- (6) Subclause (7) applies in relation to an interest if —
 - (a) under subclause (2)(b) or (4)(b) the interest is disclosed at a meeting; or

(b) under subclause (5)(b) notice of the interest is brought to the attention of the persons present at a meeting.

(7) The nature of the interest must be recorded in the minutes of the meeting.

23. Compliance with plan requirement

If a plan under clause 12(4)(b) in relation to a council member includes a requirement referred to in clause 12(6), the council member must comply with the requirement.

Appendices

Appendix A: Gift Framework

This gift framework has been simplified, with the focus on transparency and accountability.

This has been achieved by considering the nature of the relationship between the recipient and the donor of the gift and focusing the disclosure requirements on why the person has received the gift and dealing with possible influence created by the gift via the conflict of interest provisions.

Receipt of Gifts

In accordance with sections 5.87A and 5.87B of the Act, council members and CEOs are required to disclose gifts that are received in their capacity as a council member

(or CEO) and –

- are valued over \$300; or
- are of a cumulative value that exceeds \$300 where the gifts are received from the same donor in a 12-month period.

Additionally, a gift given by two or more related bodies corporate (as defined in the Corporations Act 2001 (Cth)) is considered to have been given by a single corporation (donor).

Contributions to travel costs, whether financial or otherwise, are incorporated within the definition of gift.

The decision on whether a gift is received in the capacity of a council member or CEO must be made by the recipient of the gift.

The question is whether the gift would have been given (or a gift of that value given) if the recipient were not a member of the council (or CEO). If the answer is no, it must be disclosed if the value of the gift (or aggregated value) is over \$300.

The onus is on the recipient to prove that it was not received in that capacity (and that the value of the gift(s) is not greater than \$300).

Real time reporting of gifts is achieved through requirements to disclose all gifts within 10 days of receipt, for the CEO to update the register within 10 days, and for an up-to-date version of the register to be published on the local government's official website.

To assist council members and CEOs with complying with the framework, a flowchart is attached to this annexure.

The maximum penalty for failure to disclose a gift is a fine of \$10,000 or imprisonment for two years.

Conflicts of Interest – Interests relating to a gift

Receipt of a gift – any gift, whether or not in a person’s capacity as council member or CEO – will create a relationship of a closely associated person and therefore an interest (sections 5.60 and 5.62 of the Act).

The following situations are specifically excluded from the interest provisions:

- where the gift (or gifts over a 12-month period from the one donor) do not exceed \$300 in value;
- where the gift is a ticket to, or otherwise relates to attendance at an event and the local government approves the person’s attendance in accordance with the Council’s Attendance at Events and Functions Policy; or
- where the gift is received from one of the following organisations:
 - WALGA (but not LGIS)
 - Local Government Professionals Australia (WA)
 - Australian Local Government Association
 - A department of the public service
 - A government department of another State, a Territory or the Commonwealth
 - A local government or regional local government.

(The gifts referred to in the second and third sub-dot points must still be disclosed in accordance with sections 5.87A and 5.87B of the Act as described above.)

This interest creates a perceived or actual conflict which prevents the council member from participating in the meeting or the CEO from providing advice or a report on the matter to be discussed (sections 5.67 and 5.71A), unless approval has otherwise been given.

If the amount of the gift(s) is **less than \$1,000**, under section 5.68 the council may allow the disclosing council member to participate if:

- The council member discloses the extent of the interest they have; and
- Council decides that the interest is so trivial or insignificant as to be unlikely to
- influence the disclosing person’s conduct in relation to the matter; or
- The interest is common to a significant number of other electors or ratepayers.

The interest, the council’s decision and the reasons for that decision must be recorded in the minutes.

If an interest **valued at over \$1,000** is disclosed, under section 5.69 the council or CEO may apply to the Minister to allow the disclosing member to participate in meetings or parts of meetings relating to that matter.

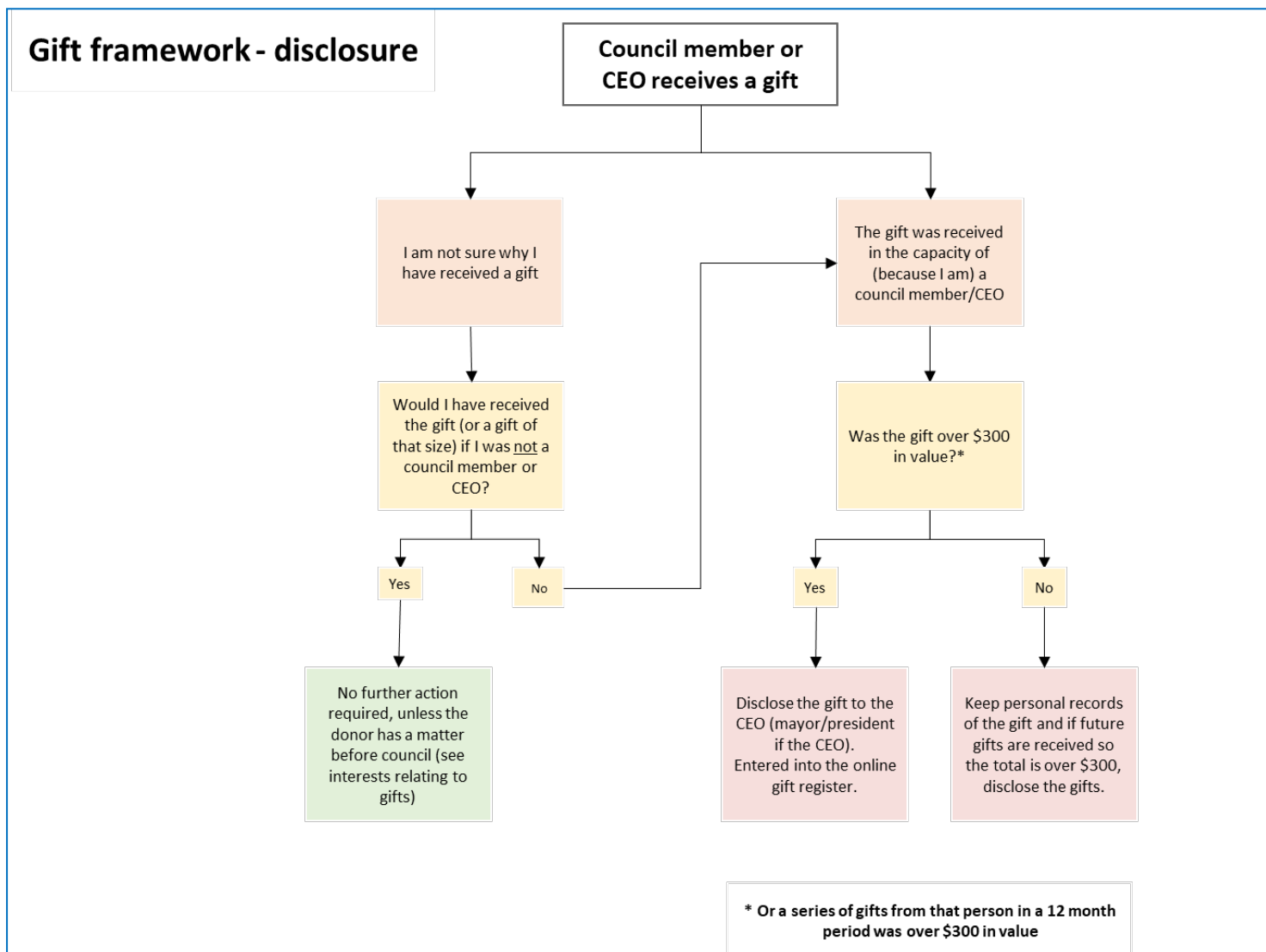
In this case, the Minister must consider that it is in the best interests of the electors or ratepayers for this to happen, or that approval is necessary to provide a quorum.

The Minister’s decision and the reasons for that decision must be recorded in the minutes of the meeting where the matter is discussed.

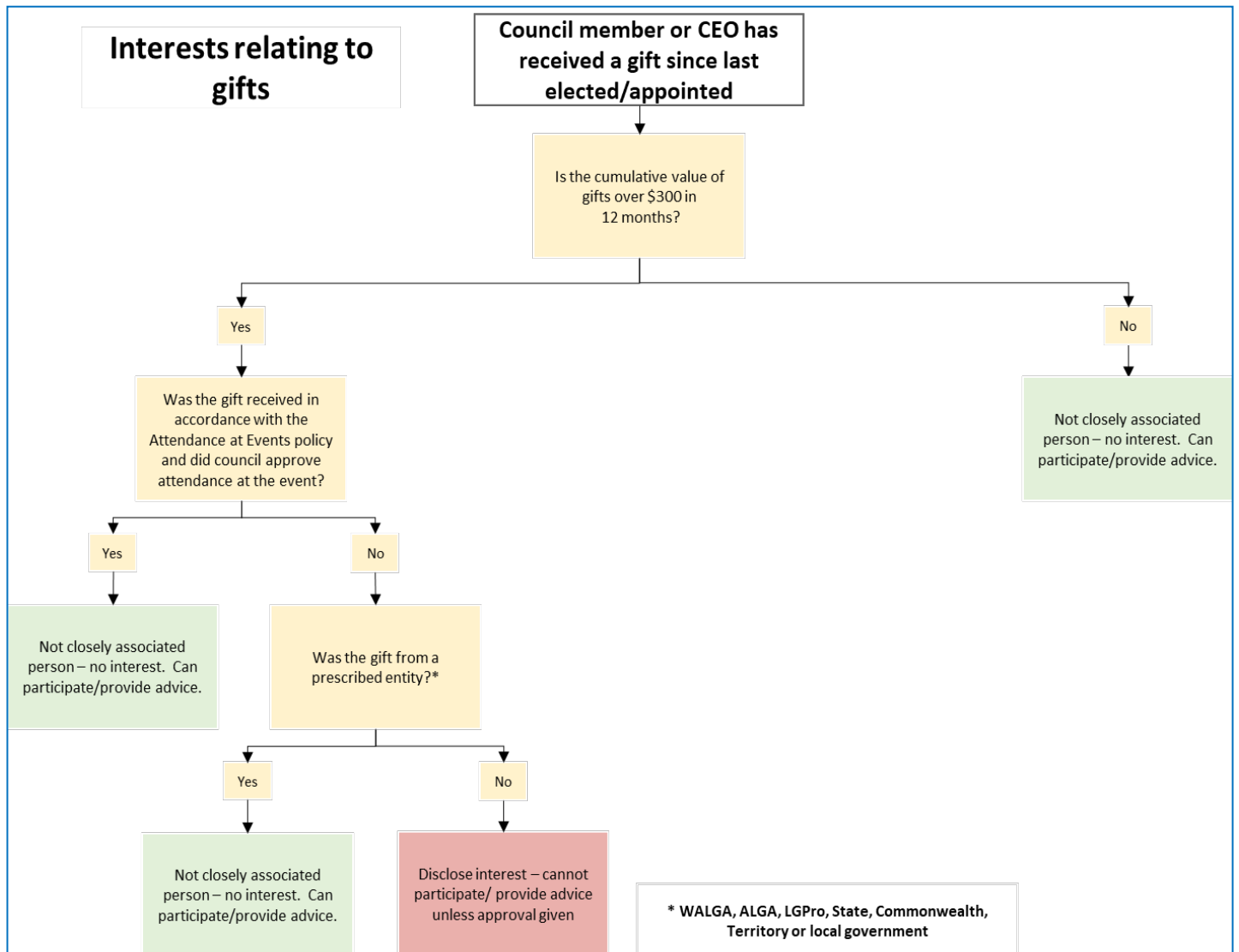
Similar provisions are contained in sections 5.71A and 5.71B in relation to the CEO providing advice or a report, directly or indirectly, to the council or a committee.

To assist council members and CEOs with understanding how the interests relating to gifts operate, a flowchart is attached to this annexure.

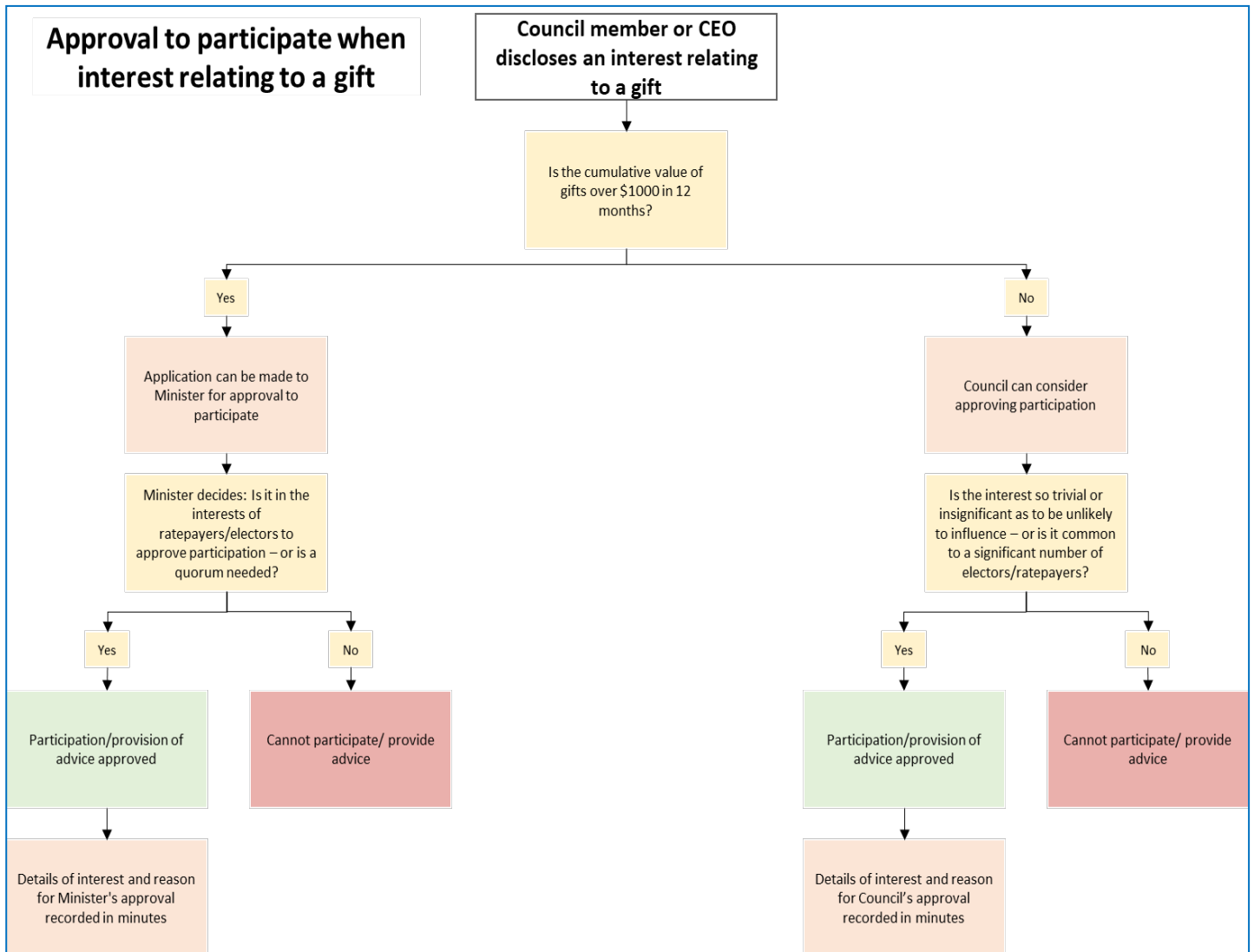
Gift framework – disclosure flow chart



Gift framework – Interests relating to gifts flow chart



Gift framework –Approval to participate when interest relating to a gift flow chart



Appendix B: Complaint about Alleged Behaviour Breach Form

Complaint About Alleged Behaviour Breach Form – Code of conduct for council members, committee members and candidates Schedule 1, Division 3 of the Local Government (Model Code of Conduct) Regulations 2021

Note: A complaint about an alleged breach must be made —
(a) in writing in the form approved by the local government
(b) to an authorised person
(c) within one month after the occurrence of the alleged breach.

Name of person who is making the complaint:

Full Name:

Contact details of person making the complaint:

Address:

Email:

Contact number:

Name of the local government concerned:

CITY OF ALBANY

Name of council member, committee member, candidate alleged to have committed the breach:

Full Name (if known):

State the full details of the alleged breach. Attach any supporting evidence to your complaint form.

Date of alleged behaviour breach:

Date:

Signed:

Complainants signature:

Date of signing:

NOTE TO PERSON MAKING THE COMPLAINT:

This form should be completed, dated, and signed by the person making a complaint of an alleged breach of the Code of Conduct. The complaint is to be specific about the alleged breach and include the relevant section/subsection of the alleged breach.

The complaint must be made to the authorised officer within one month after the occurrence of the alleged breach.

Signed complaint form is to be forwarded to:

Chief Executive Officer

City of Albany

PO BOX 484, Albany, WA, 6331

Email: staff@albany.wa.gov.au

Office Use Only:

Date received by Authorised Officer:

Authorised Officer signature and date received: