



# Council members' responsibilities and rights

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## 2019 Local Government Elections - Fact Sheet 3

### Council members' accountability to the community

#### Public access to information

Members of the public can attend all local government council meetings and certain committee meetings. They are also given a right of access to certain local government records and information.

Any person can visit a local government's website and inspect certain local government information whether it is current or not. Some examples of the documents that can be accessed are:

- the register of financial interests;
- confirmed minutes of council and committee meetings;
- unconfirmed minutes of council and committee meetings;
- notice papers, agenda, reports and other documents that will be tabled or presented at a meeting (these documents must be available to the public at the same time they are available to the members of the council or a committee);
- map showing the district and ward boundaries; and
- local laws.

Members of the public do not have a right to inspect notice papers, agenda or minutes for closed meetings. In most cases only a part of the meeting will be closed. Discussion from that closed part of the meeting will not be accessible to the public either. However, details of each decision made during that time are available.

Meetings can only be closed in a limited number of circumstances prescribed by legislation.

## Disclosure of financial interests

It is pointless to seek election to a local government on a single issue in which you have a financial interest, because you would be unable to vote on that issue. In this case it may be better for you to join a community group which lobbies council about that issue.

Councillors must disclose certain financial interests:

- in matters before council and committee meetings; and
- in primary and annual returns.

This is an important area about which councillors need to inform themselves because there are several offences that can be committed. Fines of up to \$10,000 or imprisonment of up to two years can be imposed.

Disclosures at meetings and in primary and annual returns are recorded in a register to which the public has access. This enhances the accountability of councillors to the public. At the same time, protection is given to councillors because it is an offence for a person to publish information from the register unless under specified circumstances.

**Key concept:** A councillor's right to privacy is balanced by the public's right to be aware of the benefits a council member could gain from a decision.

The Department of Local Government, Sport and Cultural Industries has prepared guidelines on financial interest disclosures in both meetings and annual returns, which can be accessed at [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au).

## Disclosure of interests affecting impartiality

In addition to financial interests, councillors must declare interests that the community may perceive would affect their ability to act with impartiality. Interests which commonly fall within this definition are when a councillor is a member of a group, club or association and that organisation requires council to decide on an application it has made. In addition, if a member's parents, siblings or children (not living at home) have an item before council, the member is required to disclose an interest affecting impartiality.

It is important to note that if members have an interest affecting impartiality, once they have declared their interest they can still take part in debate and vote on the matter.

The department has produced a guideline in relation to disclosure of interests affecting impartiality, which is available from the DLGSC's website.

## Freedom of information

Local government is subject to the *Freedom of Information (FOI) Act 1992* which gives the public a legally enforceable right to access any document held by a local government, unless it has been exempted for a limited number of reasons. Personal information can be exempted from release.

Both FOI legislation and the access provisions in the *Local Government Act 1995* are aimed at encouraging public participation in government and maximising the accountability of local governments to their community.

### **Financial protection and liability**

A councillor is not personally liable for the actions of a local government where that person has acted in good faith and is properly exercising his or her powers and functions under the *Local Government Act 1995*.

However, councillors are effectively the trustees of local government funds and property. Any unauthorised act, such as use of a local government's assets in a wilful way, may result in councillors being personally liable for any loss or damage.

If a councillor is convicted of misapplying money and ordered to repay it, the person may be disqualified from acting as a councillor for up to five years, even if the money has been voluntarily repaid.

### **Defamation**

Council members are not protected from defamation in the same manner as Members of Parliament for statements they make in the council chamber. Defamation is the aspect of law that protects people's reputations. It may be divided into libel, which relates to written or pictorial material, and slander, which relates to oral comments. Defamation can be defined as anything that tends to lower a person in the estimation of members of society.

In a council meeting, the elected member fulfils a public duty and is therefore given limited protection from legal actions of defamation. However, unlike a Member of Parliament, the councillor's privilege is qualified. This means that protection is only provided if the statements are made in good faith. Statements made with malice or made recklessly are not protected by qualified privilege.

Statements made outside council meetings are unlikely to attract qualified privilege. This is particularly pertinent in relation to social media. While it can be a powerful tool for communicating ideas and policy platforms directly with the community, care should be used. The *Local Government Act 1995*, *Defamation Act 2005* and the *Local Government (Rules of Conduct) Regulations 2007* apply in the virtual world, just as they do in real

life. The test is whether a councillor would feel comfortable saying something on social media that could still be said in a public forum like a council meeting, or on the front page of a newspaper.

### **Declarations of office**

A person elected as a councillor or elected at large as a mayor or president must make a declaration to observe the code of conduct of the local government before acting in the office. This declaration includes an undertaking to abide by the *Local Government (Rules of Conduct) Regulations 2007*.

The declaration must be made within two months of election and will be organised by the local government's CEO.

## **Council members' rights**

### **Right to request that votes be recorded**

In council or committee meetings, a member can request that either his or her vote, or the votes of all members present, be recorded in the minutes. If such a request is made, the vote(s) must be recorded.

### **Right to be on at least one committee**

A council member is entitled to be on at least one committee (comprising council members only, or council members and employees), if the council operates using a committee structure.

The council determines the committee(s) on which the councillor is placed.

### **Right to request further information when making decisions**

Council and committee members have rights to access information additional to those given to the public. These rights ensure members are properly informed on matters that are relevant to their functions.

Members can access the following additional information held by a local government:

- all written contracts of the local government;
- all documents relating to written contracts which the local government proposes to enter; and
- any information that is relevant to their functions.

The functions of council members in this context are likely to include:

- any function that a member is appointed or authorised to carry out by the council (such as attending a meeting or conference);
- preparations for an upcoming meeting agenda item decision; or
- anything the member is doing in carrying out his or her role as mayor or president or councillor.

The access provisions do not give members unlimited licence to information held by the local government. Members may only seek access to information that is relevant to the performance of a specific function. Access arrangements should be made through the CEO.

**Important to note:** Council members, committee members or employees who make improper use of information acquired in the performance of their functions to:

- gain an advantage for themselves or any other person either directly or indirectly; or
- cause detriment to the local government or any other person,
- may be liable to a penalty of up to \$10,000 or two years in jail. The *Local Government Act 1995* does not define the term “improper use”, but it is likely to include wilfully taking advantage of confidential or restricted information held by a local government.

**Key concept:** Council members have a right to be informed before making decisions, and they should always ask for further information if they need it.

### Meeting attendance fees

Each council member has a right to be paid meeting attendance fees. The fee for attending a meeting is not a salary but a recognition of the amount of time and effort members must put into preparing for council and committee meetings.

The council decides the amount of the fee within the maximum and minimum amounts determined by the Salaries and Allowances Tribunal (SAT) under the *Salaries and Allowances Act 1975*.

Fees for individual meetings apply unless council decides to pay an annual fee. If the council omits to set the amount of the individual meeting fee payable, members are entitled to claim the minimum amount.

Council members cannot claim fees for attending committee meetings unless they are formally appointed members of that committee.

It should be noted that meeting attendance fees are taxable. Budgets and annual financial reports (accessible by the public) are required to disclose the amount of fees, expenses and allowances paid to council members.

## **Right to reimbursement of expenses**

There are two types of expenses to be considered – those that must be reimbursed by the local government and those that may be reimbursed by council discretion. It is important to note that some expenses may be tax deductible. The Western Australian Local Government Association (WALGA) can provide information regarding taxation matters.

### **Expenses that must be reimbursed**

Each council member is entitled to be reimbursed for information and communications technology expenses, child care expenses, and travel costs.

As with the amount payable for meeting fees, the extent to which the above expenses can be reimbursed is established by the Salaries and Allowances Tribunal (SAT) under the *Salaries and Allowances Act 1975*.

Additionally, where the SAT determines that annual allowances may be paid toward these expenses, councils can decide to pay their members those allowances at the amount, or within the range, set by the SAT.

While there is capacity for councils to reimburse their members for expenses incurred beyond these allowances, the SAT does impose limits on the level of some of these reimbursements.

### **Expenses that may be reimbursed**

A council member who incurs expenses in performing a function under the express authority of the local government; and expenses incurred by a person who accompanies a council member while performing a function of the local government may be reimbursed.

A local government may also decide upon further types of expenses to be reimbursed. Reimbursement of the actual amount is to be verified by the council members providing sufficient information (such as a receipt).

## **Additional allowance for mayors and presidents**

Mayors and presidents are entitled to an annual allowance in addition to their meeting attendance fee. This allowance can be used for any local government related purpose. The right to claim this allowance rests only with the mayor or president and cannot be refused by the council.

The council may decide the amount to be paid, provided it is within the minimum and maximum limits set by the SAT.

Tax deductions are available for the cost of providing entertainment for the public at large in relation to official duties. (Professional advice should be sought on the issue before costs are incurred.)

### **Additional allowance for deputy mayors and deputy presidents**

Councils also have the discretion to provide an annual allowance for the deputy mayor or deputy president of a certain percentage of the annual allowance to which the mayor or president is entitled, as determined by the SAT.

**Tip:** The Salaries and Allowances Tribunal now reviews the appropriate amounts for meeting fees, allowances and reimbursements on an annual basis. For up to date information on the amounts set by the SAT, look for the most current determination in the 'Local Government Elected Members' section of the SAT website, at [www.sat.wa.gov.au](http://www.sat.wa.gov.au).

### **Where can I get more information?**

For more information visit the Department of Local Government, Sport and Cultural Industries website at: [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au) or contact your local government.

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