

# Guideline

## Local Government Elected Members

### Personal Use of Social Media

Social media is a powerful communication and networking tool which has become increasingly part of our everyday life.

This guideline is designed to assist Local Government Elected Members in understanding their obligations when using Social Media in their personal life and to provide advice for how they may better protect themselves from risks.

### Quick Tips

#### Think before you post

- Could my comments cause the Local Government, the community, residents, ratepayers or other stakeholders to lose confidence in my ability to perform my role in an impartial and professional manner?
- Are my comments consistent with how the community expects the Local Government to operate and behave?
- Could my comments lower or undermine the reputation of the Local Government?
- Could my comments breach the law? For example, do they comply with anti-discrimination legislation and laws relating to defamation, or the Local Government Act?
- Would I be comfortable if the person who is the subject of my comments read them?
- What if my comments were printed in the *Inside Cover* of the *West Australian*?
- Think and rethink before you post. Sometimes you can unintentionally say something hurtful or upsetting when you don't mean to. Consider how someone else may interpret what you say.

#### What to do if you become a victim of online bullying

- Keep evidence of the offensive or harmful content (screenshots). This may be needed for an investigation.
- Contact the social media service provider and ask them to block the offensive content.
- You could also contact the person who posted the offensive content and ask them to remove it.
- Seek advice and support from someone you trust. A counselling service may help you to cope with particularly difficult or ongoing concerns.
- Take a stand. If someone is being disrespectful or offensive, let them know but never respond to offensive content with posts which may also be perceived as offensive. Regardless of the severity of the content to which you are responding, an offensive post by you may still constitute a breach of the law.
- Always be respectful and model behaviours that align with the Rules of Conduct.
- Posts which are threatening or imply unlawful activity should always be reported to Police.

## *Social Media - Local Government Context*

### **What is social media**

Social media consists of tools such as websites and applications that allow users to create and share content and to participate in social networking. Social media may include:

- Social networks, such as Yammer, Facebook and LinkedIn.
- Media sharing networks, such as Snapchat, Instagram, Soundcloud and YouTube.
- Bookmarking and content curation networks, such as Pinterest.
- Corporate networks, such as SharePoint and Skype.
- Blogging networks, such as WordPress or newshub.
- Micro-blogging networks, such as Twitter and Tumblr.
- Discussion forums, such as speechbubble and Whirlpool.
- Wikis, such as Wikipedia.
- Online gaming networks, such as World of Warcraft and Second Life.
- Sharing economy websites, such as Gumtree and Uber.

The term “post” in this guideline refers to any shared or created content put on social media.

### **What’s Public and What’s Private**

You may mistakenly believe that your comments and interactions on social media are private and anonymous. Particularly where you have applied the highest level of privacy or security settings to your accounts. There is however, no guarantee of privacy.

You should be aware that according to the terms and conditions of some third-party sites, the content you create is the property of the site where it is posted and so may be re-used in ways which you had not intended.

Before you post to a social media site you should understand the tool/platform you are using. Read the terms of service and user guides and look through existing content to get an idea of the posting etiquette and any cultural and behavioural norms associated with the social media platform you intend to engage with.

What you publish online can remain there for a long time. Content can also be replicated and shared beyond the original intended audience and sent to recipients who were never expected to see it, or who may view it out of context.

As an Elected Member your private online identity may become blurred with your Local Government identity and any inappropriate public comment or content may damage the reputation of yourself, another person or your Local Government.

Consequently, the public perception may be that there is no distinction between statements made in an official capacity on behalf of your Local Government and those made as an individual Elected Member. If the comments made privately were inappropriate and they become public, you will be accountable under your Code of Conduct and the *Local Government (Rules of Conduct) Regulations 2007*.

There are risks to your personal well-being also. There are many examples of Western Australian Local Government Elected Members being subjected to harassment (trolling) over long periods of time through their personal online accounts due to their association with a Local Government. Some of these people have suffered severe implications to their personal lives, well-being and reputation.

This guide provides information that will assist you in understanding the behavioural obligations of Elected Members and also support you in protecting yourself from avoidable risks.

## **What the Local Government Code and Rules of Conduct Require**

Codes of Conduct include behaviour requirements which help to inform Elected Members when considering their on-line profile, comments and content.

### **4.1 Personal Behaviour**

(a) *Council Members, Committee Members and employees will:*

- (i) *act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;*
- (ii) *perform their duties impartially and in the best interests of the Local Government uninfluenced by fear or favour;*
- (iii) *act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the Local Government and the community;*
- (i) *make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment; and*
- (ii) *always act in accordance with their obligation of fidelity to the Local Government.*

(b) *Council Members will represent and promote the interests of the Local Government, while recognising their special duty to their own constituents.*

### **4.3 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 it was 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, Elected Members and Employees must ensure that their personal and private communications do not breach the requirements of this Code of Conduct and for Elected Members, the Local Government (Rules of Conduct) Regulations 2007.*

(b) *Employees must not, unless specifically authorised to do so, disclose information, make comments or engage in communication activities about or on behalf of the «Shire / Town / City», it's Elected Members, employees or contractors, which breach this Code of Conduct.*

(c) *Elected Member comments which become public and breach the Local Government (Rules of Conduct) Regulations 2007 may constitute a serious breach of the Local Government Act 1995 and may be referred for investigation.*

**(d) Employee comments which become public and breach the Code of Conduct, or any other operational policy or procedure, may constitute a disciplinary matter and may also be determined as misconduct and be reported under the Public Sector Management Act 1992.**

The Code of Conduct also requires Elected Members to:

- ensure that there is no actual or perceived conflict of interest between their personal interests and the impartial fulfilment of their professional duties; and
- not use confidential information, intellectual property or their position to improperly influence the performance of their duties or the duties of others or to gain undue or improper advantage or gain for themselves or others.

Elected Members must adhere to the *Local Government (Rules of Conduct) Regulations 2007*, which generally require Elected Members to:

- *Act with reasonable care and diligence;*
- *Act with honesty and integrity;*
- *Act lawfully;*
- *Avoid damage to the reputation of the local government;*
- *Not reflect adversely on a decision of the Council (except to move a motion for a decision to be revoked or changed);*
- *Not reflect adversely on the character or actions of another Elected Member or Employee;*
- *Not use offensive or objectionable expressions in reference to any Elected Member or Employee.*

### *Recommended Reading:*

**Elected Members:**

The [Local Government \(Rules of Conduct\) Regulations 2007](#).

## **Elected Members Expressing Personal Opinion**

The WALGA Template Communications and Social Media Policy makes clear that Elected Members have a right to make public comment in their personal capacity. Elected members may not however, make any public comment which is or may be perceived as being a statement made on behalf of their Local Government.

It is recommended that Elected Members pre-script any personal comment they make about activities or matters which are relevant to their local government with a statement similar to:

***As a «Shire / Town / City of XXXX» Councillor, the views expressed here are my personal views only.***

## Receiving Works Requests or Community Feedback

Elected Members who use social media as part of their Local Government role, may receive posts or comment from community members that is; a request for works or service, an administrative enquiry, a complaint or a compliment.

It is important to recognise that the Community may see these communications in the same way that they historically would have seen a letter or email and rightfully, the community expects that their communication will be actioned and responded to.

### *Remember*

It is not the Elected Member's role to find the answers or become involved in resolving the community member's request. That is the role of the Local Government's Administration.

The Elected Member's role is only to receive the community member's communication and ensure that it is directed to the Local Government's Administration for action.

Therefore, if Elected Members are using social media to connect with their community, then it is important that the Elected Member:

- has discussed and agreed with the CEO the method for forwarding community requests to the Local Government's Administration for action; and
- ensures that they are regularly reviewing their social media and forwarding the community requests to the Administration in a timely manner.

Elected Members should then ensure that community members are advised of how their communication has been received and actioned. For example:

***Thank you for providing this advice. It has been forwarded to the <<Shire / Town / City's>> for response direct to you. Please contact the Customer Service Team on 9696 1010 or <<email address>> for more information.***

## What happens if I have breached the requirements?

If a breach by an Elected Member has been reported to or identified by your Local Government, then it may be the subject of an official complaint to the Local Government Standards Panel. The Panel will investigate and may determine sanctions under the Local Government Act. If however, the breach constitutes serious misconduct, it may be subject to mandatory reporting to the Corruption and Crime Commission.

If you believe that you have previously posted comments or content that may breach your obligations, it is recommended that you remove (delete) the offending material as soon as possible after you become aware that the material may constitute a breach.

At the most basic, an inquiry into a Rules of Conduct breach will answer just two questions:

1. Is it reasonable to conclude that the person did engage in particular conduct, and
2. If so, did that amount to a breach of the Rules of Conduct?

What the person meant to do or how serious any breach was, are not relevant. Factors of that kind may only be relevant when determining an appropriate sanction is if the person is found to have committed the breach. They don't affect the decision about whether the person breached the Rules of Conduct.

This guideline will help you to consider your own actions and draw an informed conclusion about whether you are at risk of breaching the Code by making public comments - and, if so, how seriously.

## **Legislation**

Elected Member behaviour and activity, including when using social media for professional or personal purposes is governed by:

- *Local Government Act 1995*
  - *Code of Conduct*
- *Local Government (Rules of Conduct) Regulations 2008*
- *Local Government (Elections) Regulations 1996*
- *State Records Act 2000*
- *Freedom of Information Act 1988*

Check your Local Government's policies too as there may be specific policies which apply to communications and social media and which you must therefore also comply with. For

Example:

- Public Relations / Media
- Election Caretaker Period

The State Records Office of Western Australia also provides a [Local Government Elected Member Record Keeping Information Sheet](#), which will help you to understand when your social media content is required to be kept as a Local Government record.

## *Risk factors*

A number of factors can affect a decision about whether material you have posted or published potentially breaches the law.

### ***Does it criticise the work of your Local Government?***

Publicly criticising the work, the administration, the Council, Elected Members, Employees or Contractors of your Local Government is almost always going to be seen as a breach of the Rules of Conduct. As an Elected Member, people will assume that you have a high level of knowledge about what your Local Government does, and that you may have access to sensitive information. They will think that you know 'what's really going on'. Your comments have a strong capacity to affect your Local Government's reputation.

If you have serious concerns about the way in which your Local Government is being run or the behaviour of another Elected Member or an Employee, there are proper ways to report these. Posting on social media is not the answer.

As an Elected Member you are able to make personal comments and participate in community discourse in your own right. However, it is important that you make clear that you are not communicating on behalf of the Local Government. WALGA's Template Council Policy on Communications and Social Media provides the following principles for Elected Member personal communications:

1. Clearly state that the comment or content is a personal view only, which does not necessarily represent the views of <<Shire/ Town / City of XXX>>.
2. Be made with reasonable care and diligence;
3. Be lawful, including avoiding contravention of; copyright, defamation, discrimination or harassment laws;
4. Be factually correct;
5. Avoid damage to the reputation of the local government;
6. Not reflect adversely on a decision of the Council;
7. Not reflect adversely on the character or actions of another Elected Member or Employee;
8. Maintain a respectful and positive tone and not use offensive or objectionable expressions in reference to any Elected Member, Employee or community member.

If you feel strongly about posting comments or content and are unsure about how the comments may be perceived, then discuss them with your CEO to make sure you're on safe ground before you post.

### ***Language and tone***

Think about the language you use when making public comments about sensitive issues. Is it consistent with the kind of language that people would expect an Elected Member representing their Local Government to use? Is it nuanced and thoughtful, or blunt and inflammatory? Does it recognise that there may be alternative points of view?

Be moderate in your language and focus on the facts. Picking fights online is not behaviour consistent with the Rules of Conduct.

### ***Bullying and Harassment***

Employees have a right not to be bullied or harassed at work and as such, it is unlawful under the *Occupational Safety and Health Act 1984*. Bullying is generally defined as:

- a person or group of people repeatedly act unreasonably towards a worker or a group of workers; and
- the behaviour creates a risk to health and safety.

Unreasonable behaviour includes victimising, humiliating, intimidating or threatening. Whether a behaviour is unreasonable can depend on whether a reasonable person might see the behaviour as unreasonable in the circumstances. Bullying is defined by the effect of the behaviour, even though there may not be a specific intent to bully.

Examples of bullying include, repeatedly, unreasonably or inappropriately:

- behaving aggressively
- teasing or practical jokes
- pressuring someone to behave inappropriately
- excluding someone from work-related events or
- unreasonable work demands.

Elected Members cannot engage in bullying or harassment of the Local Government's employees.

If however an Elected Member becomes the subject of bullying or harassment, it is a personal, civil matter which may be subject to defamation or other legal action. The *Occupational Safety and Health Act 1984* does not apply, as Elected Members are not employees (workers as defined under the OSH Act) of the Local Government.

### ***Personal criticism, or policy debate?***

Elected Members may participate in public debates about important public issues, subject to the restrictions explained in this Guideline and the WALGA Template Council Policy – Communications and Social Media.

This does not equate to a right to attack other people personally. If you make personal comments about the character or ability of other people in your community, including other Elected Members or Employees, you immediately raise the risk that you have breached the Rules of Conduct as well as opening the door to those people taking legal action against you.

A right to participate in policy debate is not the same as a right to insult people. People who read those insulting comments will form views about whether you can in fact act impartially in your decision making role

Care must be taken when entering into policy debate to ensure that you are not making comment which is adverse to a position previously resolved by the Council.

### ***Confidential or sensitive information***

Confidential or sensitive information held by your Local Government or obtained in the course of your duties may not be disclosed publicly without prior authorisation from the Local Government.



### ***Misrepresentation and misinterpretation***

The written word can be interpreted many ways. It is important that when drafting content for posting on social media that you read, re-read, think and re-think about how others will read, understand and interpret what you have said.

Information and views can be spread very quickly and widely through online media and can easily be taken out of context and subject to misinterpretation and misrepresentation.

### ***Lack of Control***

Once online material is posted online, even if posted privately, it can easily be made public and there is little control or influence over how it might be used or modified or integrated (“mashed”) with other content.

### ***Intellectual property infringement***

The term “intellectual property” covers the various legal rights to protect the results of the original and creative effort.

You may infringe intellectual property by:

- Re-tweeting or sharing content without acknowledgement to the original author.
- Posting photos on Flickr or Facebook without consent from participants or the photographer.
- Copying work such as songs, articles, movies or software, from a source without being authorised to do so;
- Posting Government content on social media sites whose terms of service do not comply with Government Policy.

To avoid intellectual property infringement:

- Produce content specifically for social media sites. If choosing to post Government content on social media sites, be mindful of the potential conflict between the site’s terms of use and the intellectual property requirements.
- Do not post third party information without permission or licence – where the third party has provided permission, check the permission is broad enough to cover posting to social media.

### ***Defamation***

Defamation laws apply to online comments and content and in fact may increase the risk as content broadcast on social media may have far greater reach.

Australia’s first social media defamation case recently resulted in a former student being ordered to pay more than \$100,000 in damages over a series of defamatory tweets about a teacher at their school.

Defamation occurs when a person intentionally spreads information about another person, group of people or small company that damages their reputation or can make others think less of them, specifically if the information constitutes a hurtful and untrue statement of fact about them. Even if you didn’t create the defamatory material, but only shared it, you could also be found liable for defamation.

## *Frequently Asked Questions*

### ***Why can't I say what I want if I post anonymously?***

Are you sure you're anonymous? You may not have identified yourself as a Councillor but many of us now have a digital footprint that makes it easy to find out who we are. Posting material anonymously or using a pseudonym doesn't guarantee your identity will stay hidden. Even if you don't identify yourself you can still be identified by someone else.

It is simply common sense to assume that anything you write or post can be linked to you and your Local Government - whether you intend it or not.

### ***What if I've posted after hours?***

Your capacity to affect the reputation of your Local Government does not stop when you leave the Council Chamber. The comments you make after hours can make people question your ability to be impartial, respectful and professional when you are acting as an Elected Member.

The community expects Local Government Elected Members to uphold the Rules of Conduct behaviours at all times.

### ***But what if I posted material from my private computer/tablet/phone?***

Posting material from your private equipment means that you don't have to worry about whether or not you've properly used the Local Government ICT resources provided to Elected Members. It doesn't however, affect whether what you've said is OK or not. In the same way that posting material after hours won't always protect you, neither will using your own equipment.

Having said that, remember that any material posted or sent from ICT devices provided by your Local Government may be accessed by the Local Government. This right to access any material received or created by you when performing your duties as a Local Government Elected Member is established in law through the Local Government's obligations under the following legislation:

- *Local Government Act 1995*
- *State Records Act 2000*
- *Freedom of Information Act 1992*
- *Occupational Safety and Health Act 1984*
- *Equal Opportunity Act 1984*

Use of your Local Government's ICT equipment must be in line with the Rules of Conduct and your Local Government's policies and procedures.

### ***What about my right to freedom of speech?***

The common law recognises an individual right to freedom of expression. For Elected Members, this right is subject to limitations imposed by the Rules of Conduct.

***Why can't I rely on privacy settings on my social media platforms?***

It's prudent to restrict the publication of your comments to those people who you actually want to see the comments.

You can set the privacy settings as high as you like. But it's not a complete protection, and it's a bad idea to rely on it. It won't stop a friend of yours deciding that something you wrote is particularly funny or insightful, taking a screenshot, and making it available for everyone to see.

***What about 'liking', sharing and reposting?***

If you 'like' something on a social media platform, it will generally be taken to be an endorsement of that material as though you'd created that material yourself.

'Sharing' a post has much the same effect. If, however, you're sharing something because you disagree with it and want to draw it someone else's attention, make sure that you make that clear at the time in a way that doesn't breach the Rules of Conduct. It may not be enough to select the 'angry face' icon, especially if you're one of thousands that have done so.

***If my social media pages are locked to friends only but one of my friends reposts one of my posts, could this be a breach?***

Yes. The breach occurs at the time you made your post. The fact that one of your friends chose to repost it doesn't create the breach—it just makes it easier to identify and investigate.

Public comment includes anything that you say in public or which ends up in public. This can include something you've said or written to one person. If your comment has an audience, or a recipient, it's a public comment.

***Can I breach the Rules through content in a private email that I send to a friend?***

Yes. There's nothing to stop your friend forwarding the email or taking a screenshot of it, including your personal details, and sending it to other people or posting it all over the internet. Again, the breach of the Rules of Conduct is not in their subsequent publication of your material, but in your emailing that material in the first place.

***Am I responsible for nasty comments made by someone else on my social media pages?***

Doing nothing about objectionable material that someone else has posted on your page can reasonably be seen in some circumstances as your endorsement of that material. If someone does post material of this kind, it may be sensible to delete it or make it plain that you don't agree with it or support it.

Any breach of the Rules of Conduct would not come from the person making the post. It would come from how you reacted to it.

***Is it OK to share a petition about a political topic?***

It depends. The factors affecting this judgment might include the subject of the petition, or the terms in which it's expressed. The principles set out elsewhere in this guide and the WALGA Template Council Policy – Communications and Social Media may help you come to a view in each case.

In any case, if an Elected Member has been actively involved in a petition or has been a signatory to the petition, the Elected Member will have a conflict of interest to disclose when the petition is presented to the Council for consideration.

***Is posting to a closed mailing list making a public comment?***

Yes. The same principles apply in this case as posting to locked social media pages or sending private emails.

***What about just joining a Facebook group (or similar)?***

People will draw conclusions about you from a range of factors. This can include the nature of any online communities that you join.

***Can I post comments about politics, issues and events in other Local Government Districts?***

Usually, yes, but the same concerns still apply. For example, Elected Members may be seen to be commenting on behalf of their Local Government and need to exercise sensible care in their comments.

You should think carefully before making comments about politics, issues and events in other Local Government Districts that might lead others to thinking less of your Local Government.