



GUIDE

Elected Member Use of Social Media

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1 INTRODUCTION

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

This guideline is designed to assist Shire of Esperance Council Members in understanding their obligations when using Social Media in a personal and professional capacity.

2 WHAT IS SOCIAL MEDIA?

Social media are forms of media that allow people to communicate and share information using the internet or mobile phones. 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 Fortnite.
- 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.

3 THINK BEFORE YOU POST

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.

- Could my comments cause the Shire of Esperance, 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 a Council Member of the Shire of Esperance to operate and behave?
- Could my comments lower or undermine the reputation of the Shire of Esperance?

- 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 1995*?
- 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 article of the West Australian?

4 WHAT IS PUBLIC AND WHAT IS 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 a Council 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 Council Member. If the comments made privately were inappropriate and they become public, you will be accountable under the Shire's 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 Council 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 impacts to their personal lives, well-being and reputation.

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

5 WHAT'S THE CODE OF CONDUCT REQUIREMENTS?

The Code of Conduct include behaviour requirements which help to inform Elected Members when considering their public profiles and engaging with the community.

Recommended Reading:

Make sure you are familiar with the **Shire of Esperance Code of Conduct.**

The following clauses are extracted from the Shire of Esperance Code of Conduct: Council Members, Committee Members and Candidates.

1.2 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.*

1.3 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.*

2.2 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.

The Code of Conduct also requires Council 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.

Recommended Reading:

The Local Government (Rules of Conduct) Regulations 2007.

6 COUNCIL MEMBERS EXPRESSING PERSONAL OPINION

The Shire of Esperance Elected Member Social Media Policy makes clear that Council Members have a right to make public comment in their personal capacity. Council members may not however, make any public comment which is or may be perceived as being a statement made on behalf of the Shire of Esperance. **Remember the Shire President and the CEO are the official spokespersons for the Shire; any statements on behalf of the Council should only be made with specific authority.**

It is recommended that Council 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 of Esperance Councillor, the views expressed here are my personal views only, and should not be taken to represent the decisions and opinions of either the Council as a whole or its staff.

Also, liking, sharing or reacting to a post on social media is generally taken to be an endorsement of that material, as if you had created it yourself, and may be seen by a wider audience than intended.

7 RECEIVING WORKS REQUESTS OR COMMUNITY FEEDBACK

Council 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.

It is not the Council Member's role to find the answers or become involved in resolving the community member's request. That is the role of the Shire of Esperance Administration. Where misinformation or factually incorrect information is posted, encourage the original poster to contact the Shire for clarification.

The Council Member's role is only to receive the community member's communication and ensure that it is directed to the Shire of Esperance CEO for action.

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

- forward any service requests to the CEO for action; and
- ensures that they are regularly reviewing their social media and forwarding the community requests to the CEO in a timely manner.

Council 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 information. It has been forwarded to the Shire of Esperance to respond directly to you. You can lodge a service request <https://www.esperance.wa.gov.au/submit-service-request> or contact the Shire of Esperance on 9071 0666 or shire@esperance.wa.gov.au for more information.

8 WHAT HAPPENS IF I HAVE BREACHED THE REQUIREMENTS?

If a breach by a Council Member has been reported to or identified by the Shire of Esperance, 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 Code 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 Code 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 guide 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.

9 LEGISLATION

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

- *Local Government Act 1995*
 - Code of Conduct, as adopted by each Local Government
- *Local Government (Model Code of Conduct) Regulations 2021*
- *Local Government (Elections) Regulations 1996*
- *State Records Act 2000*
- *Freedom of Information Act 1988*
- Elected Member Social Media Policy
- Code of Conduct Behaviour Complaints Management
- Electoral Caretaker Period

10 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 that you find their comment / content offensive. Remember though, regardless of the severity of the content to which you are responding, an offensive response by you may still constitute a breach of the law.

- Always be respectful and model behaviours that align with the Local Government (*Model Code of Conduct Regulations 2021*).
- Posts which are threatening or imply unlawful activity should always be reported to Police.
- Read the more detailed advice provided below under the heading “**Guidance on Cyber Abuse**”

11 GUIDANCE OF CYBER ABUSE

The Office of the eSafety Commissioner website (www.esafety.gov.au) has a range of resources that can assist with regards to cyberbullying and or cyber abuse.

In particular, there are tips and advice that are relevant to local government in the areas listed below. Despite the titles, the majority of advice applies to both male and female.

- Cyber abuse and ways to deal with it
- eSafety for Women
- Image Based Abuse
- Women Influencing Tech Spaces.

Referring Cyber Abuse to Police

The Office of the eSafety Commissioner provides advice on the materials and evidence needed to help the police to best deal with the cyber abuse. It recommends that victims of cyber abuse take some or all of the following steps:

- Record a chronological timeline of events.
- Screenshots of the cyber abuse.
- The URLs of the social media site when viewing the posts (you can obtain the URLs by viewing the posts on a desktop computer and copying the address from the browser address bar.
- Any details on the person believed to be behind the posts.

Elected Members or Local Government employees who experience cyber abuse, should lodge a report via the eSafety Commissioner’s website at www.esafety.gov.au/report/forms.

Victims of serious and ongoing cyber abuse should also report the matter to Police, however the Police will only be able to deal with the most serious of cases, as law enforcement actions to obtain IP addresses from social media companies are a lengthy and complex process due to privacy legislation.

Local Government Elected Members and Employees who are victims of cyber abuse and have followed the steps recommended by the Office of the eSafety Commissioner without successfully stopping the abuse, may contact Mr Brad Deacon, Senior Investigations Officer at the Commonwealth Office of the eSafety Commissioner on 03 9963 6932, for more information and advice.

12 RISK FACTORS

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

It is important for Council Members to recognise that many of the following risk factors relate to all forms of Council Member communications and we encourage you to apply the thinking forward.

Does it criticise the work of the Shire of Esperance?

Publicly criticising the work, the Administration, the Council, Council Members, Employees or Contractors of the Shire of Esperance is almost always going to be seen as a breach of the Code of Conduct. As a Council 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 Council Member or an Employee, there are proper ways to report these. Posting on social media is not the answer.

As a Council 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 Shire of Esperance. The following principles for Council Member personal communications should:

- (1) Clearly state that the comment or content is a personal view only, which does not necessarily represent the views of the Shire of Esperance (suggested wording in Council Members Expressing Personal Opinion section of this guide).
- (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 Shire of Esperance;
- (6) Not reflect adversely on a decision of the Council;
- (7) Not reflect adversely on the character or actions of another Council Member or Employee;

- (8) Maintain a respectful and positive tone and not use offensive or objectionable expressions in reference to any Council 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 a Council Member representing their Shire of Esperance 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 Code of Conduct.

Bullying and Harassment

Employees have a right to work in a safe, hazard-free work environment. Workplace bullying should be treated as any other hazard at the workplace and as such 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.

Council Members cannot engage in bullying or harassment of the Shire of Esperance employees.

If, however a Council 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 Council Members are not employees (workers as defined under the OSH Act) of the Local Government

Personal criticism, or policy debate?

Council Members may participate in public debates about important public issues, subject to the restrictions explained in this Guideline and the Code of Conduct.

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 Council Members or Employees, you immediately raise the risk that you have breached the Code 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 Shire of Esperance CEO and Shire President. Councillors should not make public statements expressing their opinion on matters before the Council that would indicate a predetermined voting position.

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:

- Replicating, re-tweeting or sharing content without acknowledgement to the original author.
- Posting photos on 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 other Government, business or private site content on social media sites, be mindful of the potential conflict between the source 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.

13 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 Council Member 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 the Shire of Esperance - whether you intend it or not.

What if I've posted after hours?

Your capacity to affect the reputation of the Shire of Esperance does not stop when you leave the Council Chamber. The comments you make at any time can make people question your ability to be impartial, respectful and professional when you are acting as a Council Member.

The community expects Local Government Council Members to uphold the Code 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 Shire of Esperance IT resources provided to Council 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 devices provided by the Shire of Esperance 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 Council 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 Shire of Esperance equipment must be in line with the Code 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 Council Members, this right is subject to limitations imposed by the Code 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.

If you need assistance to set up your privacy settings, please make an appointment with the Shire Media Team.

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 Code 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.

Will I breach the Code if I send content in a private email to a friend?

Potentially, 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 Code 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 Code of Conduct would not come from the person making the post. It would come from how you reacted to it.

Can I delete comments made on my page?

Short answer, yes. When creating your social media page, you are creating a two-way conversation, allowing people to communicate and share information. However, it is wise to know when you can “hide” or “delete” a comment that is not healthy to the conversation.

The Shire Media Team has a Social Media User Guideline that can be added to your page. This sets out very basic, easy to understand rules, that people accept when they start following you. This guide also helps you to make well-rounded decisions on how to manage comments on your page.

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.

If a Council Member has been actively involved in a petition or has been a signatory to the petition, the Council 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, Council 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.