



# Guidelines for mayors and chief executive officers for dealing with complaints about councillor conduct

**May 2018**



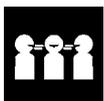
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## Introduction

These guidelines have been produced by the Department of Local Government, Racing and Multicultural Affairs (the department) for Mayors and Chief Executive Officers (CEO) of local government to assist them when dealing with complaints about the conduct of councillors.

The guidelines are based upon the processes for dealing with complaints about the conduct of councillors set out in the *Local Government Act 2009* (the LGA).

For further information on any of the issues covered in the guidelines please contact the department.

## Chief Executive Officers

The primary role of CEOs in dealing with complaints about the conduct of councillors is the assessment and categorisation of complaints to determine the appropriate entity to refer the complaint to for determination.

CEOs also have a role in recording all complaints and making sure the public can access the records of complaints and ensuring that the annual report contains the relevant details of complaints made during the year.

### Preliminary assessment

CEOs are responsible for conducting a preliminary assessment of all complaints made against councillors except for complaints made by a Mayor or CEO themselves.

Where a complaint is made by the Mayor or the CEO, the complaint must be referred to the Director-General of the department to undertake the preliminary assessment.

#### *Note*

*In some cases, the CEO may be involved, either directly or indirectly, in the events that led to the complaint about the conduct of a councillor. In those cases, it is recommended the CEO delegate responsibility for conducting the preliminary assessment to a suitably qualified employee under section 259 of the LGA.*

### Complaints about former councillors<sup>1</sup>

A complaint can be made about the conduct of a person who is no longer a councillor if the alleged conduct occurred when the person was a councillor.

Such complaints must be made within 2 years after the person stopped being a councillor. However, when conducting the preliminary assessment of a complaint made about a former councillor, the CEO may decide to take no further action in relation to the complaint if the CEO considers the decision is in the public interest.

When deciding whether to take no further action, it is recommended CEOs consider some of the issues set out below in relation to frivolous, vexatious and lacking in substance complaints.

Where the CEO decides to take no further action, the CEO must give the complainant and the accused person a written notice of the decision that states the reasons why it was in the public interest to take no further action.

### Frivolous, vexatious and lacking in substance complaints<sup>2</sup>

The CEO may decide to take no further action in relation to a complaint about the conduct of a councillor if the CEO in conducting a preliminary assessment, decides that the complaint is frivolous, vexatious or lacking in substance.

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<sup>1</sup> See section 176A of the LGA

<sup>2</sup> See section 176C(2) of the LGA

### **Frivolous complaints**

A complaint will be frivolous if—

- it does not disclose conduct involving alleged misconduct or inappropriate conduct under section 176 of the LGA, or
- it is not serious or sensible and is of such a nature that a reasonable person could not treat the complaint as being genuine.

### **Vexatious complaints**

A complaint will be vexatious if—

- it is made with the intention of annoying or embarrassing the person against whom the complaint was made, or
- it is made for a purpose other than determining whether the councillor's conduct was misconduct or inappropriate conduct

Notwithstanding the motives of the complainant, a complaint may not necessarily be vexatious unless the complaint is also frivolous.

### **Lacking in substance complaints**

A complaint will be lacking in substance if—

- the complaint relies on a flawed view of the law or facts, or
- the particulars of the allegation do not support the elements of a breach involving misconduct or inappropriate conduct.

### **Anonymous complaints**

The CEO is required to undertake a preliminary assessment of an anonymous complaint.

However, in some cases anonymous complaints may be considered as frivolous, vexatious or lacking in substance because without the identity of the complainant it is not possible to investigate the matter further.

Each anonymous complaint needs to be assessed on its merits to determine whether further action should be taken. Where a complaint against a councillor involves serious allegations that are not frivolous, vexatious or lacking in substance and do not require the identity of the complainant in order to investigate, the CEO should refer the complaint to the appropriate entity to deal with.

### **Public Interest Disclosures**

The CEO is required under the *Public Interest Disclosure Act 2010* to identify complaints about the conduct of councillors that are public interest disclosures (PIDs).

It is a PID where a complaint is made by another councillor or by a local government employee, and the complaint is about—

- alleged corrupt conduct (see below)
- the substantial misuse of public resources
- maladministration that adversely impacts on someone's interests in a substantial way.

Where the CEO has identified a complaint involves a PID, the local government must ensure the complainant is protected from reprisals and must also maintain the confidentiality of the complaint unless authorised to disclose information under the *Public Interest Disclosure Act 2010*.

For more information on PIDs please visit the Queensland Ombudsman website at [www.ombudsman.qld.gov.au](http://www.ombudsman.qld.gov.au).

## **Categorisation of complaints (other than complaints assessed as frivolous, vexatious or lacking in substance)**

The CEO is required to assess each allegation in the complaint to determine the category of the allegation. The categorisation of the complaint will determine which entity the CEO must refer the complaint to for determination.

If the CEO concludes that a complaint contains allegations which can be categorised into more than one category of conduct, the entire matter should be sent to the entity that is tasked with dealing with the most serious category in the first instance.

In order of seriousness from most to least, the categories of complaint are corrupt conduct, then misconduct and then inappropriate conduct.

Examples of how typical complaints about the conduct of councillors should be categorised are set out in the Appendix.

### **Alleged corrupt conduct**

Corrupt conduct<sup>3</sup> by a councillor is alleged conduct that—

- adversely affects or could adversely affect the performance of the councillors responsibilities, and
- involves the performance of the councillors responsibilities in a way that—
  - is not honest or impartial, or
  - involves a breach of the trust placed in the councillor, or
  - involves the misuse of information acquired by the councillor, and
- is engaged in for the purpose of providing a benefit or a detriment to a person, and
- if proven would be a criminal offence.

Allegations of corrupt conduct must be referred to the Crime and Corruption Commission (the CCC).

For more information on corrupt conduct, please visit the CCC website at [www.ccc.qld.gov.au](http://www.ccc.qld.gov.au).

### **Alleged misconduct**

Misconduct<sup>4</sup> by a councillor is alleged conduct including—

- the performance of the councillor's responsibilities in a way that is not honest or impartial
- a breach of the trust placed in the councillor
- a misuse of information acquired by the councillor
- a failure to comply with a direction to leave a meeting from the chairperson of the meeting
- a refusal to comply with an order from a regional conduct review panel (a Panel) or the Local Government Remuneration and Discipline Tribunal (the Tribunal)
- repeated inappropriate conduct
- the release of confidential information
- failing to report a suspicion or belief held about another councillor's material personal interest or conflict of interest at a local government meeting.

Allegations of misconduct must be referred to the Director-General of the department for action.

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<sup>3</sup> See section 15 of the *Crime and Corruption Act 2001*

<sup>4</sup> See section 176(3) of the LGA

### **Alleged inappropriate conduct**

Inappropriate conduct<sup>5</sup> by a councillor is conduct that is not appropriate for an elected representative including for example—

- failing to comply with a policy or procedure
- behaving in an offensive or disorderly way in a meeting, or in other situations including interaction with the public or with staff of councils.

Allegations of inappropriate conduct by a councillor other than the Mayor or the Deputy Mayor must be referred the Mayor to deal with. Allegations of inappropriate conduct by the Mayor or the Deputy Mayor must be referred to the Director-General of the department for determination.

### **Allegations about some other matter**

Some complaints made against councillors may not specifically meet the definitions of inappropriate conduct or misconduct under the Act or more generally, do not relate to their broad role as an elected representative.

Allegations about other matters must be dealt with by the CEO in an appropriate way.

### **Notification of decisions**

If the CEO has determined the complaint is frivolous, vexatious or lacking in substance then it is necessary to give written notice to the complainant and the accused councillor advising them of the determination and that no further action will be taken in relation to the complaint. In the notice to the complainant, the CEO must advise that it is an offence for the complainant to make a complaint that is substantially the same as a complaint that the person previously made.

In all other cases, the CEO must advise the complainant and the accused councillor of how they have categorised the complaint and where the complaint has been referred to for further action.

## **Reporting**

### **Ensuring that a penalty has been carried out**

Where a complaint about misconduct is sustained, a Panel or the Tribunal can make orders that impose a penalty on a councillor.

The CEO is required to report to the Panel or the Tribunal that the penalty imposed has been carried out.

If a councillor fails to comply with an order made by a Panel or the Tribunal, this failure may constitute misconduct which must be reported to the Director-General.<sup>6</sup>

### **Records about complaints**

The CEO is required to assess each allegation in the complaint to determine the category of the allegation. The categorisation of the complaint will determine which entity the CEO must refer the complaint to for determination.

The CEO is required to keep a record of all complaints about the conduct of councillors. The record of complaints must include the outcome of each complaint including any disciplinary action or other action that was taken in relation to the complaint.<sup>7</sup>

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<sup>5</sup> See section 176(4) of the LGA

<sup>6</sup> See section 176(3)(b)(v) of the LGA

<sup>7</sup> See section 181A of the LGA

The outcome can be defined as a description of the complaint, whether it has been sustained or not sustained and any orders made by the relevant decision maker i.e. a Mayor or the department's Director-General or a Panel or the Tribunal

The CEO must ensure that the outcomes of complaints about the conduct of councillors can be accessed by the public by either publishing the record on the local government's website and/or making the record available for inspection at the local government's public office.

As only the outcomes of complaints need to be made available to the public, the CEO must not include any references or details of any unfinalised complaints in the publicly available record of complaints.

Additionally, the CEO does not need to include complaints that have been determined to be frivolous, vexatious or lacking in substance or public interest disclosures under the Public Interest Disclosure Act 2010 in the information that is available to the public.

### **Annual report**

The Local Government Regulation 2012 (the LGR) sets out a number of matters that must be reported in the local government's annual report.

The annual report must set out the details of each sustained complaint against a councillor including the name of the councillor, a description of the misconduct or inappropriate conduct engaged in and a summary of the penalty imposed on the councillor during the year.<sup>8</sup>

In addition, the annual report must record each of the following matters for the year—<sup>9</sup>

- the number of complaints where no further action was taken
- the number of complaints of inappropriate conduct referred to the Mayor for determination
- the number of complaints of inappropriate conduct by the Mayor or Deputy Mayor referred to the Director-General for determination
- the number of complaints of misconduct referred to the Director-General
- the number of complaints of official misconduct referred to the CCC
- the number of complaints heard by a Panel
- the number of complaints heard by the Tribunal
- the number of complaints dealt with in another way.

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<sup>8</sup> See section 186(e) of the LGR

<sup>9</sup> See section 186(f) of the LGR

## Mayors

The primary role of Mayors in dealing with complaints against councillors is to determine whether councillors (other than themselves and Deputy Mayors) have engaged in inappropriate conduct.

Mayors will receive complaints about alleged inappropriate conduct from a range of different sources. Except for alleged inappropriate conduct by councillors in meetings where the Mayor is the chairperson, the Mayor must refer any allegations about the conduct of councillors to the CEO, unless the Mayor or the CEO is the person making the complaint, in which case, the allegations are referred to the Director-General for preliminary assessment.

This section sets out how Mayors should deal with allegations of inappropriate conduct by councillors that occur in meetings or that have been preliminarily assessed by the CEO or the Director-General.

### Inappropriate conduct in meetings

The Mayor is responsible for leading and managing meetings at which they are the chairperson. One aspect of this role is to manage the conduct of the councillors at the meeting.<sup>10</sup> Where another councillor is the chairperson of a local government meeting, that councillor is responsible for managing the conduct of the councillors.

A councillor has engaged in inappropriate conduct at a meeting if they behave in an offensive or disorderly way or if the councillor fails to comply with a local government policy or procedure.

The chairperson of the meeting is responsible for deciding whether the conduct of a councillor at the meeting is inappropriate conduct for an elected representative.

#### Note

*Some local governments have adopted Standing Orders that provide guidance to chairpersons on what conduct is considered inappropriate during meetings and the processes that must be followed in dealing with inappropriate conduct.*

For more information on meeting procedures please see the departmental publication: *Making the most of council meetings*.

### Penalties

If the chairperson of a meeting decides that a councillor has engaged in inappropriate conduct, the chairperson may make 1 or more of the following orders—<sup>11</sup>

- order that the councillor's inappropriate conduct be recorded in the minutes of the meeting
- order that the councillor leave the meeting and stay away for the rest of the meeting
- if a councillor who is ordered to leave a meeting refuses to leave, order the councillor to be removed from the meeting.

A councillor who fails to comply with a direction from a chairperson to leave a meeting may have engaged in misconduct.<sup>12</sup>

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<sup>10</sup> See section 12(4)(a) of the LGA

<sup>11</sup> See section 181(5) of the LGA

<sup>12</sup> See section 176(3)(b)(iv) of the LGA

## Complaints of inappropriate conduct

Mayors are required to determine whether allegations of inappropriate conduct by councillors that are referred by the CEO or Director-General are substantiated on the balance of probabilities. The balance of probabilities means that it was more likely than not that the councillor engaged in inappropriate conduct.

### Natural justice

When determining an allegation of inappropriate conduct against a councillor, Mayors must adhere to the principles of natural justice. Most notably, Mayors must ensure—

- they have no bias, real or perceived, that would impact on their ability to make a determination of the allegation
- the accused councillor must be given a fair opportunity to put forward their case in relation to the allegation.

### Avoiding bias

All complaints made by Mayors about the inappropriate conduct of another councillor will be dealt with by the Director-General. However, there may still be some complaints that have not been made by the Mayor where a Mayor has a conflict of interest for particular reasons. In those cases, the Mayor is able to delegate responsibility to deal with the complaint to another councillor under section 258 of the LGA.

### Fair hearing

The Mayor must ensure that the accused councillor is advised of the nature of the allegation made against them and given an opportunity to present their side of the story in relation to the allegation.

### Determination

The Mayor must ensure that he/she has enough information to make a fair and proper consideration of the allegation of inappropriate conduct. In some cases, the Mayor may need to conduct an investigation of the complaint in order to obtain the evidence necessary to determine whether the complaint is sustained or not.

The Mayor is responsible for making the determination of whether the alleged conduct is inappropriate and the decision is not subject to appeal under the LGA.

#### *Note*

*Some local governments have adopted a Code of Conduct that sets out appropriate standards of behaviour for councillors. A councillor who breaches a Code of Conduct may have committed inappropriate conduct.*

## Penalties

If the Mayor decides that a complaint of inappropriate conduct by a councillor is sustained, then the Mayor may make either or both of the following—<sup>13</sup>

- order a reprimand for the councillor
- order that any future repeat of the inappropriate conduct by the councillor be referred to a regional conduct review panel as misconduct

In addition, if the Mayor has sustained 3 complaints of inappropriate conduct in 1 year against the same councillor, the Mayor must refer the complaint to the Director-General to be dealt with by a Panel or the Tribunal.

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<sup>13</sup> See section 181(2) of the LGA

## Appendix – Examples of complaints

### Corrupt conduct

Examples of corrupt conduct by a councillor include—

- Use of information acquired by a councillor to gain a financial benefit for the councillor or someone else<sup>14</sup>
- Use of information acquired by a councillor to cause detriment to a local government<sup>15</sup>
- The sale or purchase of an asset where the councillor has access to information not publicly known which would be likely to influence a person deciding whether to buy or sell the asset<sup>16</sup>
- Intentionally failing to update a register of interests in order to hide an interest that could gain a benefit or a loss to the person<sup>17</sup>
- Failing to properly disclose a material personal interest in a matter under discussion in a local government meeting and leave the meeting<sup>18</sup>
- Failing to properly disclose a conflict of interest in a matter under discussion in a local government meeting<sup>19</sup>
- Failing to comply with a decision made under s175E(4) of the LGA to leave a local government meeting<sup>20</sup>
- Taking retaliatory action against another councillor for reporting a suspicion or belief held about a councillor's personal interests in a local government meeting<sup>21</sup>
- Influencing, or attempting to influence, a decision or action of another councillor, local government employee or contractor authorised to decide or otherwise deal with a matter in which the councillor has a material personal interest or conflict of interest<sup>22</sup>
- Providing false or misleading information to an official under the LGA where the information is knowingly given to obtain a benefit or avoid a loss to a person<sup>23</sup>
- Directing a local government employee to gain a benefit for or cause a detriment to the councillor or another person<sup>24</sup>
- A councillor that engages in fraud against the local government<sup>25</sup>
- A councillor that engages in the act of stealing against the local government<sup>26</sup>

### Misconduct

Examples of misconduct by a councillor include—

- Making a decision outside of a council meeting (either by delegation or as part of an employment panel) where the councillor may have a conflict of interest in the outcome of the decision<sup>27</sup>
- Knowingly providing false or misleading advice during a meeting of the local government in order to affect a decision<sup>28</sup>

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<sup>14</sup> See section 171(1)(a) of the LGA

<sup>15</sup> See section 171(1)(b) of the LGA

<sup>16</sup> See section 171A of the LGA

<sup>17</sup> See section 171B(2) of the LGA

<sup>18</sup> See section 175C(2) of the LGA

<sup>19</sup> See section 175E(2) of the LGA

<sup>20</sup> See section 175E(5) of the LGA

<sup>21</sup> See section 175H of the LGA

<sup>22</sup> See section 175I(2) and 175I(3) of the LGA

<sup>23</sup> See section 234 of the LGA

<sup>24</sup> See section 92A of the *Criminal Code Act 1899*

<sup>25</sup> See section 408C of the *Criminal Code Act 1899*

<sup>26</sup> See section 391 of the *Criminal Code Act 1899 – Definition of Stealing*

<sup>27</sup> See section 176(3)(b)(i) of the LGA

<sup>28</sup> See section 176(3)(b)(i) of the LGA

- Committing an offence under the LGA which is not corrupt conduct (say for example inadvertently failing to update a register of interests)<sup>29</sup>
- Directing a local government employee (other than the Mayor directing the CEO or other senior executive employee)<sup>30</sup>
- Failing to comply with the local government principles<sup>31</sup>
- Releasing private information about a member of the community or an employee of the local government acquired as a councillor<sup>32</sup>
- Failing to leave a local government meeting when directed to do so by the chairperson<sup>33</sup>
- Failing to comply with a direction or order of a regional conduct review panel or the Local Government Remuneration and Discipline Tribunal<sup>34</sup>
- Being issued with 3 or more reprimands by the Mayor or Director-General for inappropriate conduct within 1 year<sup>35</sup>
- Engaging in inappropriate conduct being the same conduct which the Mayor or Director-General has previously ordered that any future repetition of the conduct would amount to misconduct<sup>36</sup>
- 
- Failing to report a suspicion or belief held about another councillor's material personal interest or conflict of interest at a local government meeting<sup>37</sup>
- Release of confidential information.<sup>38</sup>

### Inappropriate conduct

Examples of inappropriate conduct by a councillor include—

- Failing to comply with the standing orders of a local government
- Failing to comply with the requirements of a procedure or policy of a local government
- Behaving in a way that intimidates, bullies or harasses a member of the community, another councillor or a council employee.

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<sup>29</sup> If this is not prosecuted by the department it can be dealt with as misconduct, as breach of trust - see section 176(3)(b)(ii) of the LGA

<sup>30</sup> This is a breach of the trust placed in a councillor - see section 176(3)(b)(ii) of the LGA

<sup>31</sup> This is a breach of the trust placed in a councillor – see section 176(3)(b)(ii) of the LGA

<sup>32</sup> See section 176(3)(b)(iii) of the LGA

<sup>33</sup> See section 176(3)(b)(iv) of the LGA

<sup>34</sup> See section 176(3)(b)(v) of the LGA

<sup>35</sup> See section 181(3) of the LGA

<sup>36</sup> See section 176(3)(c) of the LGA

<sup>37</sup> See section 175G(2) of the LGA

<sup>38</sup> See section 176(3)(d) of the LGA

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