



COUNCIL POLICY 4.1

Elected Member (Councillor)

Complaints Policy

Version: V1 – 24/6/18

PURPOSE

To set out the requirements and processes as applied to complaints about elected members and to ensure statutory compliance.

Section 186 of the Local Government Regulation 2012 requires that the Local Government reports in the Annual Report for every financial year on the following:

186 Councillors

- (1) *The annual report for a financial year must contain particulars of—*
- (d) *the total number of the following during the financial year—*
 - (i) *orders made under section 150I(2) of the Act;*
 - (ii) *orders made under section 150IA(2)(b) of the Act;*
 - (iii) *orders made under section 150AH(1) of the Act;*
 - (iv) *decisions, orders and recommendations made under section 150AR(1) of the Act; and*
 - (e) *each of the following during the financial year—*
 - (i) *the name of each councillor for whom a decision, order or recommendation mentioned in paragraph (d) was made;*
 - (ii) *a description of the unsuitable meeting conduct, conduct breach or misconduct engaged in by each of the councillors;*
 - (iii) *a summary of the decision, order or recommendation made for each councillor; and*
 - (f) *the number of each of the following during the financial year—*
 - (i) *complaints referred to the assessor under section 150P(2)(a) of the Act by local government entities for the local government;*
 - (ii) *matters, mentioned in section 150P(3) of the Act, notified to the Crime and Corruption Commission;*
 - (iii) *notices given under section 150R(2) of the Act; [s 186]*
 - (iv) *notices given under section 150S(2)(a) of the Act;*
 - (v) *occasions information was given under section 150AF(3)(a) of the Act;*
 - (vi) *occasions the local government asked another entity to investigate, under chapter 5A, part 3, division 5 of the Act for the local government, the suspected conduct breach of a councillor;*
 - (vii) *applications heard by the conduct tribunal under chapter 5A, part 3, division 6 of the Act about whether a councillor engaged in misconduct or a conduct breach; and*
 - (g) *the total number of referral notices given to the local government under section 150AC(1) of the Act during the financial year; and*
 - (h) *for suspected conduct breaches the subject of a referral notice mentioned in paragraph*
 - (i) *the total number of suspected conduct breaches; and*
 - (ii) *the total number of suspected conduct breaches for which an investigation was not started or was discontinued under section 150AEA of the Act; and*

- (i) the number of decisions made by the local government under section 150AG(1) of the Act during the financial year; and*
- (j) the number of matters not decided by the end of the financial year under section 150AG(1) of the Act; and*
- (k) the average time taken by the local government in making a decision under section 150AG(1) of the Act.*

(2) In this section— local government entity, for a local government, means the following—

- (a) the local government;*
- (b) a councillor of the local government; (c) the chief executive officer of the local government*

In accordance with the Queensland Government's model advisory regarding Councillor Complaints, the following policy and procedures apply:

COMPLIANCE

Mayors and councillors must comply with, the Local Government Act 2009 (LGA), the Local Government Regulation 2010 (LGR), the Local Government Electoral Act 2011 (LGEA), the Crime and Corruption Act 2001 (CC Act) and the Code of Conduct for Councillors in Queensland (Code of Conduct).

The local government legislation prescribes how to manage matters including registers of interests (ROI), declarable and prescribed conflicts of interest (COI), and how councillors use information obtained as part of their role.

The councillor conduct complaints system applies to conduct relating to official duties of a councillor and does not apply to conduct engaged in by a councillor in a personal capacity (e.g., candidacy in election, conduct at a private social event, personal affairs).

There are four categories of conduct in the local government legislation:

- unsuitable meeting conduct
- conduct breach
- misconduct
- corrupt conduct

BEHAVIOR CONTRARY TO THE CODE OF CONDUCT THAT OCCURS WITHIN A COUNCIL OR COMMITTEE MEETING.

Examples include:

- A councillor intimidates, bullies, or harasses a member of the community, another councillor, or a local government employee during a meeting
- A councillor continually interrupts or disrupts a speaker
- A councillor behaves in an offensive or disorderly manner
- A chairperson behaves in an offensive or disorderly manner

CONDUCT BREACH

Under the LGA, any conduct by a councillor that is contrary to the standards of behaviour in the Code of Conduct or a policy, procedure, or resolution of a council, and is not unsuitable meeting conduct, misconduct or corrupt conduct is dealt with as conduct breach.

The conduct of a councillor is also a conduct breach if it contravenes an order by the chairperson of a council meeting for the councillor to leave the meeting or is a series of conduct at council meetings that leads to orders for the councillor's unsuitable meeting conduct being made on three occasions within a period of one year. The local government is not required to notify the OIA of these matters and may deal with the conduct under section 150AG of the LGA.

Examples include:

- A councillor makes derogatory comments about staff publicly;
- A councillor speaks to the media on behalf of council when not properly authorised under a council policy;
- Contravening an order from a chairperson to leave the meeting and stay away from the place at which the meeting is being held including the public gallery, for the remainder of the meeting;
- Three occasions of unsuitable meeting conduct leading to orders being made within a period of one year in relation to a councillor or chairperson.

MISCONDUCT

The conduct of a councillor is misconduct if the conduct:

- Adversely affects, directly or indirectly, the honest and impartial performance of the councillor's functions, or exercise of powers
- Is non-compliance with an Act by a councillor
- Is a misuse of information or material acquired in, or in connection with, the performance of a councillor's functions, whether the misuse is for the benefit or detriment of the councillor, or to the detriment of another person
- Contravenes an order of the local government or the Councillor Conduct Tribunal (CCT)
- Is a failure to comply with the council's reimbursement of expenses policy
- Is a failure to notify the Independent Assessor that a councillor may have engaged in conduct breach or misconduct
- Is participating in a decision on a matter that a councillor has a prescribed COI
- Is a failure to inform a meeting of the particulars of a councillor's prescribed or declarable COI
- Is a failure to report a suspicion of another councillor's prescribed or declarable COI at a meeting
- Influences or attempts to influence, direct, or discuss a matter with another person, who is participating in a decision, when a councillor has a prescribed or declarable COI in the matter
- Gives a direction to a council employee (except where the employee is providing administrative support to the councillor or the mayor directing the chief executive officer as prescribed in the LGA
- Is a release of information confidential to the council that the councillor knows is confidential, or reasonably should know
- Is a failure to inform the CEO of particulars of interests at the start of the term, or appointment of a councillor, or to correct the ROI, or update the ROI annually
- Is repeated conduct breach that has led to a councillor being disciplined on three occasions within a year, or if a councillor re-engages in conduct following a previous order of council for the same type of conduct. Examples include:
 - A councillor knowingly provides confidential information acquired as a councillor to a member of the public in order to give that person a benefit
 - A councillor releases private information about a member of the community acquired as a councillor

Misconduct does not apply to former councillors or councillors who have vacated office.

If the office of the councillor is vacated during the investigation, the assessor must discontinue the investigation unless the assessor is satisfied the conduct is suspected corrupt conduct.

If a councillor is re-elected or appointed to an office of councillor within 12 months of the complaint being dismissed, then the complaint process must recommence.

CORRUPT CONDUCT

Corrupt Conduct is defined under section 15 of the CC Act as conduct that:

- Adversely affects, or could adversely affect, directly or indirectly, the performance of a councillor's responsibilities or the performance of the council and
- Involves the performance of responsibilities in a way that is not honest or impartial, or
- Involves a breach of the trust placed in a councillor either knowingly or recklessly, or
- Involves the misuse of information or material acquired in connection with the councillor's responsibilities; and
- If proven would be a criminal offence.

Corrupt Conduct also means:

- The conduct of a person that impairs, or could impair, public confidence in the administration and involves; collusive tendering, fraud in relation to an application for a license or permit with a purpose of protecting health or safety of persons, protecting the environment, protecting use of natural, cultural, mining or energy resources
- Dishonestly obtaining, or helping someone to dishonestly obtain a benefit from the payment or application of public funds or disposition of assets
- Evading tax
- Fraudulently obtaining or retaining an appointment that if proved would be a criminal offence or lead to termination of the person's services.

The following matters can be corrupt conduct, depending on the circumstances:

- Dishonest conduct of councillors or councillor's advisors
- Providing false or misleading information to the Minister for Local Government, the CEO of the department responsible for local government, the Independent Assessor, or a member of the Office of the Independent Assessor (OIA), the CCT, the Change Commission, an investigator or authorised person
- Engaging in fraud against the council or stealing from the council
- Bribery

MAKING A COMPLAINT

The most appropriate way of making a complaint will depend on the type of conduct.

UNSUITABLE MEETING CONDUCT

Raise a point of order with the meeting chairperson, who will deal with the matter in the meeting and may make an order against the councillor. If a councillor believes a chairperson has engaged in unsuitable meeting conduct, the councillors at the meeting will decide by resolution if this is the case and may make an order for reprimand of the chairperson.

MAKING A COMPLAINT TO THE OAI

Misconduct

Make a complaint to the OIA

Corrupt conduct

Make a complaint to the Crime and Corruption Commission (CCC)

If the OIA receives a complaint about a mayor or councillor, a preliminary assessment will be made to decide if the complaint should be investigated or dismissed.

A complaint about the suspected conduct of a councillor must be reported to the Office of the Independent Assessor (OIA) within one year from when the conduct occurred, or within six months after the conduct comes to the knowledge of the complainant but within two years after the conduct occurred.

A preliminary assessment process must be undertaken by the Independent Assessor before progressing conduct matters. After the preliminary assessment, the Independent Assessor must decide either to:

- Dismiss a complaint, notice or information
- Take no further action in certain circumstances
- Refer a suspected conduct breach to a council for investigation
- Investigate the conduct of the councillor
- Not deal with the complaint and give the councillor advice or counselling or recommend training or mediation.

After the preliminary assessment, the Independent Assessor refers the complaint to the appropriate entity to deal with it depending on the category of the conduct complaint (unsuitable meeting conduct, conduct breach, misconduct, and corrupt conduct).

The Independent Assessor may take no further action about the conduct of a councillor, following an investigation, if satisfied that taking further action would not be in the public interest.

The Independent Assessor must dismiss the complaint or take no further action if satisfied that:

- Dealing with the complaint would not be in the public interest; or was not made or given within the period required under section 150SB of the LGA, unless the conduct is suspected corrupt conduct or because of exceptional circumstances
- The conduct occurred because the councillor complied honestly with a guideline made by the department's chief executive
- It relates solely to a councillor's behaviour in a personal capacity and is not an offence under a law
- Clearly is not a conduct breach or misconduct
- The councillor's office becomes vacant, and the complaint is not suspected corrupt conduct
- The complainant is a vexatious complainant and the person who made the complaint is the subject of a declaration (unless the complainant has permission to make the complaint)

The Independent Assessor (IA) must dismiss the complaint or take no further action if satisfied:

- The matter has or is being dealt with by another entity
- The complaint is frivolous or vexatious or was not made in good faith or maliciously made or lacks substance or credibility
- Dealing with the complaint would be an unjustifiable use of resources
- For suspected conduct breach, at least six months has elapsed since the conduct occurred and it would not be in the public interest to take further action
- The complaint was not made within the time period required
- There is insufficient information to properly make a preliminary assessment of the complaint, notice or information.

In making a decision the IA must consider any reasons for, or factors relevant to, the conduct:

- Any steps taken by the councillor in relation to the conduct after the conduct was engaged in to mitigate or remedy the effects the conduct
- Any training completed by the councillor in relation to the conduct
- The Aboriginal traditions or Island customs of the councillor

- The financial and nonfinancial consequences resulting from the conduct
- The circumstances in which the conduct was engaged

The IA must give a notice of preliminary assessment about the decision to:

- The person who made the complaint; or
- The local government official who gave the notice
- The subject councillor
- The local government

If the councillor the subject of the complaint, notice or information does not receive a notice under this section:

- The councillor may ask the assessor for a copy of the notice; and
- The assessor may give the councillor a copy of the notice if the assessor considers it would be appropriate to do so.

The notice must summarise the date the complaint was made, the conduct and state the decision and the reasons for the decision.

If the complaint was dismissed because it was frivolous, advise the complainant that if they make the same or similar complaint again, they are committing an offence.

The IA may make a preliminary assessment on their own initiative under Division 3A if:

- The assessor is aware of information indicating that a councillor may have engaged in a conduct breach or misconduct
- A media report makes allegations of a conduct breach
- While investigating a misconduct matter the assessor receives information about another councillor who has engaged in the same conduct.
- The IA has not received the complaint notice
- It is in the public interest to make an assessment
- The conduct is not corrupt conduct.

After making the preliminary assessment, the IA may take any further action in relation to the conduct including investigating the conduct. If the IA is considering making a decision under section 150W of the LGA, to apply to the CCT about a councillor's conduct, before making the decision, the assessor must give a notice to the councillor.

INVESTIGATION

LOCAL GOVERNMENT INVESTIGATION OF CONDUCT BREACH REFRAHS FROM OIA

The Local Government must adopt an Investigation policy that is compliant with the provisions of the LGA.

The CCT will not undertake investigations into conduct breach matters for local governments.

Local government investigations must provide an investigation report to assist the councillors in making a decision about the outcome.

Local government meetings may be closed to discuss investigation reports (summary report to be provided to the public with redacted information).

The decision about the outcome must be made by resolution in an open council meeting (full investigation report must be publicly available with redactions within 10 business days of the decision).

Local governments may decide not to start, or to discontinue, investigation if:

- The complainant withdraws the complaint or consents to the investigation not being started or being discontinued
- The complainant does not comply with a request by the local government for further information
- There is insufficient information to investigate the conduct.
- Complaints can be made to the OIA or the CCC anonymously.

ACTION BY OIA

Conduct breach

The OIA must refer the complaint to the council to deal with it

Misconduct

The OIA will investigate suspected misconduct.

At the conclusion of the investigation the OIA may make an application to the CCT or dismiss the complaint.

Corrupt conduct

The OIA will refer corrupt conduct to the CCC.

REPRISAL ACTION

It is an offence for a mayor or councillor to take reprisal action against a complainant. The penalty for which is a fine or up to 2 years imprisonment.

FRIVOLOUS AND VEXATIOUS COMPLAINTS

It is an offence for a complaint to be made vexatiously or not made in good faith. A complainant who has made repeating vexatious complaints may be declared a 'vexatious complainant' for a period of up to four years by the OIA and will not be able to make further complaints unless the complainant applies for permission to make a complaint and the OIA approves it. It is also an offence for a person to counsel or procure someone else to make a complaint not in good faith or vexatiously. If a complaint is dismissed as being frivolous or vexatious or made other than in good faith, it is an offence for the person to make the same or a similar complaint again.

RELEVANT LEGISLATION

- *Local Government Act 2009 (Qld)*
- *Local Government Regulation 2012*
- *Local government Electoral Act 2011*
- *Crime and Corruption Act 2001*

DOCUMENT CONTROL

| . | Resolution Date | Resolution No. | Policy Author |
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| V1 | 18 June 2024 | 24/6/18 | CEO |
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This Policy is to remain in force until otherwise amended/replaced by resolution of the Council.

Review Frequency: 2 yearly