



Department of Local Government and Planning



# **Conduct guidelines under the *Local Government Act 2009***

June 2011

Guidelines

**Looking forward and delivering now**—integrated planning, strong local government and development for a growing state.

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# 1. Background

## 1.1 Introduction

The *Local Government Act 2009* (the Act) is the principal legislation governing the establishment, constitution and operation of local governments in Queensland.

The Act includes processes for dealing with allegations regarding councillors' conduct that is not in accordance with the principles and obligations it sets out. Specifically, the Act has provisions to ensure that appropriate standards of councillor conduct and performance are maintained and that a councillor who engages in misconduct or inappropriate conduct is disciplined.

These guidelines are designed to provide guidance to the various stakeholders on the policy intent, roles and responsibilities that may arise from specific councillor conduct.

These guidelines may assist reviewing officers in the determination of complaints.

## 1.2 Context

The Act provides a point of reference for the conduct, performance and behaviour of councillors. In particular, it sets out the expectations for councillor conduct, both in terms of the principles themselves and councillor responsibilities and obligations as well as disciplinary provisions.

The local government principles apply to anyone performing responsibilities and all processes carried out under the Act. They are defined in section 4 of the Act and are:

- transparent and effective processes, and decision-making in the public interest
- sustainable development and management of assets and infrastructure, and delivery of effective services
- democratic representation, social inclusion and meaningful community engagement
- good governance of, and by, local government
- ethical and legal behaviour of councillors and local government employees.

Councillors are, by virtue of being elected and holding the office of councillor, individually and collectively bound by the:

- purpose and principles for local government
- responsibilities and powers of councillors
- financial sustainability criteria, and
- any other obligations under the Act.



Councillor conduct that is not in accordance with the principles and obligations may represent inappropriate conduct, misconduct or official misconduct.

Inappropriate conduct is conduct of a councillor that is not appropriate conduct for an elected representative of a local government but is not misconduct. The types of conduct that comprise inappropriate conduct include failing to comply with council procedures and behaving in an offensive or disorderly manner.

Misconduct is conduct of a councillor that has characteristics that meet any of the following:

- adversely affects the honest and impartial performance of the councillor's responsibilities
- is a breach of the trust placed in the councillor
- is a misuse of information or material acquired by the councillor
- involves a failure by the councillor to notify council of alleged misconduct, material personal interest or conflict of interest of another councillor
- repeat cases of inappropriate conduct.

Serious misconduct is misconduct that has the potential to be an offence against the Act or represent conduct sufficiently serious that it may lead to the dismissal of a Councillor. Conduct resulting in the dismissal of a councillor or a criminal penalty being imposed is captured under the *Crime and Misconduct Act 2001* as possible official misconduct.

Official misconduct is conduct associated with the professional conduct of a Councillor that could, if proved, represent either of the following:

- a criminal offence
- a disciplinary breach where dismissal is within the range of penalties available.

In the context of any act of misconduct, should the conduct meet either of the two above mentioned criteria, the conduct will be dealt with as possible official misconduct. Additionally, if during the assessment of a complaint the assessor forms the opinion that the allegation may constitute official misconduct, the complaint will be referred to the Crime and Misconduct Commission (CMC).



## 2. Criteria for escalation

The response to complaints and allegations against the conduct and performance of Councillors will vary from case to case depending on the nature and seriousness of the allegations and the possible outcomes.

The Act allows for allegations that are captured within the parameter of inappropriate conduct and misconduct to be escalated in severity. For example, repeated inappropriate conduct can be deemed misconduct and determined by a panel rather than the Mayor. In deciding to escalate a complaint, the following criteria will be considered:

- repetition
- public interest
- severity
- motivation
- breach of the *Local Government Act 2009* or the *Crime and Misconduct Act 2001*.

### 2.1 Repetition

Repeated occurrences of the same conduct by a councillor are considered to show a greater disregard for the principles underpinning the Act. In this regard, previous breaches of the same conduct may require that any future breach of a similar nature be escalated.

### 2.2 Public interest

Conduct that impacts upon public confidence or diminishes public confidence in the councillor, council or the local government system is considered more serious and therefore may be escalated.

### 2.3 Severity

Breaches that result in a negative impact on the health and wellbeing of others, a significant financial loss, a lingering impact upon the community or are of a cruel, brutal or relentless nature are considered more serious and therefore may be escalated.

### 2.4 Motivation

The motivation that underpins the councillor's conduct may determine whether particular conduct is merely a technical breach or a deliberate attempt to disregard



the principles of the Act. In the latter case, this conduct is considered more serious and can lead to the matter being escalated.

## 2.5 Breach of the Act

Councillor conduct that represents a specific breach of the Act, including possible offences, is considered to be of a more serious nature and may be escalated.

Additionally, an offence against the Act which, if proven, would result in a criminal offence has the ability to undermine public trust not only for the councillor but also the local government system. Accordingly, any complaint which, if proven, would represent offences against the Act will be escalated and considered as acts of possible official misconduct.



## 3. Conduct complaints

This section provides working definitions and examples to assist the various stakeholders to categorise complaints regarding inappropriate conduct and misconduct under the Act and official misconduct under the *Crime and Misconduct Act 2001*.

Additionally, Appendix 1 provides more detailed examples of common inappropriate actions. Further examples may be added over time.

### 3.1 Inappropriate conduct

#### 3.1.1 Definition and policy intent

Inappropriate conduct, in the context of councillor behaviour, is conduct that is not acceptable conduct for an elected representative but is not misconduct. The types of conduct that comprise inappropriate conduct include failing to comply with council procedures and behaving in an offensive or disorderly manner.

It is the intention of the Act that councils educate councillors in order to prevent poor conduct and performance as well as addressing any complaints of inappropriate conduct locally.

Importantly, under the Act only actions committed while a councillor was exercising their responsibilities as a councillor may be considered to constitute inappropriate conduct. For example:

- If a Councillor attends a party with friends in a private capacity and uses vulgar language by referring to a fellow Councillor as ‘a crook’ he or she is not engaging in inappropriate conduct.

It is important to note that while this conduct is not inappropriate conduct, it may result in other action being taken such as, defamation of character by the aggravated individual. Examples of inappropriate conduct include:

#### **Behaving in an offensive or disorderly manner**

Offensive or disorderly conduct by a councillor could include, but is not limited to, use of offensive language or conduct that is unbecoming or unacceptable, while the councillor is acting in an official capacity. Examples could include:

- Using inappropriate language or profanity during a council function by stating, “*This is a <expletive> stupid resolution*”, may be found to have behaved in an inappropriate manner.
- Driving past a council works crew and yelling, “*Get up you lazy <expletive> and get back to work or I’ll get you fire*”, may be found to be bullying of a Council officer, which would be inappropriate behaviour.



- Interrupting the Mayor or another councillor during a council meeting by speaking over the top of councillors engaged in a debate may be found to have behaved in an inappropriate manner.
- Making disparaging comments towards or about another Councillor in a Council meeting such as *“Don’t listen to Councillor A, we all know she doesn’t really care about the residents of this community”* may be found to have behaved in an inappropriate manner.

### **Failure to comply with Council policies and procedures**

Procedural breaches occur in instances when a councillor fails to follow an adopted Council policy or procedure. All breaches of council procedures, if proven, may be considered inappropriate conduct. Examples of these types of breaches include:

- Council has in place a policy stating that councillors are to submit any proposed motions at least one week before a council meeting. In this context, if a councillor, intentional and knowingly, and repeatedly, raised a motion from the floor during a council meeting that was not on the agenda it may be considered in breach of council’s policy and deemed inappropriate conduct.
- Council has in place a media policy that states only the Mayor may provide official council comment to the press on any matter. In this context, should a councillor make a comment to the press that is not clearly identified as the councillor’s independent and personal opinion (and not that of the council) it may be considered a breach of the policy and deemed inappropriate conduct.
- Council has in place an information technology policy that identifies that council computers are for council related business only. In this context, a councillor who used a council computer and printer to create invitations to his son’s birthday party may be considered to have breached council’s policy and have acted in an inappropriate manner.
- Council has in place a vehicle booking policy that requires the user of the vehicle to return the vehicle with no less than half a tank of fuel. In this context, a councillor who returns the vehicle with a quarter of a tank of fuel may be found to have breached council’s policy and have acted in an inappropriate manner.

### **Serious complaints of repeated inappropriate conduct**

Some cases of alleged inappropriate conduct are considered sufficiently serious to be escalated and dealt with as misconduct. As mentioned previously, escalation will occur in cases where the alleged conduct is consistent with one or more of the criteria for escalation. Examples that may justify escalation include:

- Repeated cases of inappropriate conduct could; in certain circumstances, be escalated and dealt with as misconduct. For example, a councillor who over a period of two years engaged in bullying and harassment of numerous council officers and has previously been reprimanded and counselled about his



behaviour could have future allegations escalated and dealt with as misconduct.

- In order for a repeated breach to be escalated it is necessary that previous decisions made by the Mayor have been documented in writing and it has been stated that *'any repeat of the inappropriate conduct be referred to the department's chief executive as misconduct'*.
- Cases that are likely to result in diminished public confidence would be escalated and dealt with as misconduct. For example, council has an information technology policy that prohibits users from accessing pornography on the internet. While a breach of any policy represents inappropriate conduct, a complaint that alleges a Councillor accessed pornographic material on a Council computer may be escalated and dealt with as misconduct due to the capacity for the allegation, if proven, to substantially diminish public confidence.
- Where an act of inappropriate conduct is also a breach of a specific provision of the Act the allegation may be escalated. For example, council may have a policy developed by the chief executive officer that outlines the requirements for councillor and council staff interaction. A councillor who seeks to direct a council officer may be in breach of the policy. As the Act specifically requires that councillors do not direct staff, this allegation would be considered to be more serious and would be escalated for consideration as misconduct.

## 3.2 Misconduct

### 3.2.1 Definition and policy intent

Misconduct, in the context of councillor behaviour and actions, is conduct or a conspiracy or attempt that could, if proved:

- adversely affect the honest and impartial performance of the councillor's powers or responsibilities
- be a breach of the trust placed in the councillor
- be a misuse of information or material acquired by the councillor
- involve a failure by the councillor to notify council of alleged misconduct, material personal interest or conflict of interest of another councillor
- be a repeat case of inappropriate conduct.

Unlike inappropriate conduct or official misconduct, councillor conduct in a private capacity can be considered misconduct.

Any breach of the Act by a Councillor would constitute misconduct. Examples of misconduct could include but are not limited to:

#### **Failure by a Councillor to perform a responsibility under the Act in accordance with the local government principles**



Section 4 of the Act sets out the five Local Government principles to which all Councillors must adhere. An example situation that could be considered misconduct if proven is:

- A councillor meets with an unregistered lobbyist as prohibited under the *Integrity Act 2009*. If the councillor attended the meeting knowing the lobbyist was unregistered this may represent a breach of the principle requiring 'ethical and legal behaviour of councillors and local government employees'.

#### **The direction of council staff by a councillor**

No councillor, including the Mayor, may give a direction to a local government employee under the Act.

An example situation that could be considered misconduct if proven is:

- As part of the annual road maintenance schedule a council works crew has been sent to grade five kilometres of a rural road. A councillor approaches the works crew foreman and after ascertaining the length of road to be graded, directs the foreman to grade an extra half kilometre of road.

#### **The use or release of information or seeking to gain from the use or release of Council information by a councillor**

An example situation that could be considered misconduct if proven is:

- The release of a draft report to the media prior to the document being formally approved by council.

#### **Repeat cases of inappropriate conduct that have been escalated to be dealt with as misconduct**

An example situation that could be considered misconduct if proven is:

- A councillor has been the subject of a number of bullying and harassment allegations made by staff over a two year period and has been cautioned and counselled about his behaviour. The Mayor in his previous findings recorded that '*future allegations of similar behaviour will be dealt with as misconduct*'. A new allegation of bullying and harassment against the same councillor would be considered misconduct.

#### **Failure by a councillor to report a breach of the Act by a fellow Councillor is itself considered to constitute an act of misconduct**

An example situation that could be considered misconduct if proven is:

- Councillor A and Councillor B are members of the same community organisation. During a council meeting the allocation of grant funding, for which the community organisation has applied, is to be discussed. Councillor A discloses the conflict of interest and excuses from the meeting. Councillor B remains in the meeting and participates in the discussion and council resolution process. Councillor A may be found to have committed an act of



misconduct by failing to report Councillor B's failure to disclose the conflict of interest.

### **3.2.2 Escalation of misconduct complaints**

Complaints of serious misconduct have the potential to be offences against the Act or represent conduct sufficiently serious that it may lead to the dismissal of a councillor. Conduct resulting in the dismissal of a councillor or a criminal penalty being imposed is captured under the *Crime and Misconduct Act 2001* as possible official misconduct.

All complaints pertaining to possible official misconduct must be referred to the CMC for consideration in the first instance. In some cases the CMC may authorise the complaint to be considered by the tribunal.

Some examples of misconduct that may be appropriately escalated to serious misconduct could include:

#### **Serious misuse or release of information**

The use or release of Council information or seeking to gain from using or releasing Council information represents misconduct. If the release of information was deliberately and mischievously done to give a financial benefit to an individual the matter may be considered serious misconduct as it has the potential to negatively impact on the community.

- For example, council has commissioned a report which outlines options and associated costs for increasing the town water supply. A councillor released the report to a school friend who owns land adjacent to the existing town reservoir. This allows the councillor's friend to sell the land before council's intention is made public. The councillor's friend receives a financial gain. This may, if proven, be considered an act of serious misconduct.

#### **Serious breaches of the Act**

Failure by a councillor to report a criminal offence or an act of official misconduct committed by a fellow councillor is itself an act of serious misconduct.

- For example, if a local government is considering tenders for provision of machinery and Councillor A is aware that Councillor B owns shares in one of the tendering companies and does not bring it to council's attention. In this instance Councillor A may be found to have committed an act of serious misconduct by failing to report Councillor B.

#### **Offences against the Act**

Under the criteria of escalation, offences against the Act are escalated and dealt with as official misconduct. Examples include:

- Releasing confidential council information by a councillor. For example, a councillor who releases confidential legal advice to the media has committed



an act of serious misconduct and has committed a possible offence under the Act.

- Failure by a councillor to declare a material personal interest or a conflict of interest. For example, a councillor fails to disclose that his spouse owns shares in a company that is tendering for a council contract. Council considers the tenders and votes to award the contract to the company for which the councillor's spouse is a shareholder. As a result of council's decision the councillor may receive a financial gain. Failure to disclose a possible material personal interest represents an offence under the Act.
- The provision of false or misleading information by a councillor when required to under the Act is an offence and therefore serious misconduct. For example, during the investigation of an alleged misconduct complaint, a panel interviewed a councillor regarding a conversation he witnessed between two fellow councillors. The councillor provided misleading information to the panel in an attempt to influence their findings and protect one of the councillors from disciplinary action. If proven, providing false or misleading information represents an offence under the Act.
- The failure by a councillor to ensure accurate registers of interest for the Councillor and his family members are completed. For example, a councillor fails to record an investment property he jointly owns on his register of interest. This may, if proven, represent an act of official misconduct.

## 3.3 Official misconduct

### 3.3.1 Definition and policy intent

Official misconduct is conduct associated with the professional conduct of a Councillor that could, if proved, represent either a criminal offence or a disciplinary breach where dismissal is within the range of penalties available.

As all offences against the Act are criminal offences—in addition to representing possible serious misconduct—such breaches are also official misconduct.

Official misconduct can only relate to a councillor's performance of official duties or the exercise of powers. Councillor conduct in a private capacity can only be official misconduct in instances when a councillor, acting in a private capacity, attempts to improperly influence another public official either at the council level or in other level of Government.

Some of the disciplinary offences under the Act that may be considered as official misconduct include:

- failure of a councillor to declare a material personal interest or a conflict of interest in a matter being considered by council



- threatening or taking any action against a person because that person or someone else complied with the requirement to report a material personal interest, conflict of interest or misconduct
- unlawfully releasing confidential council information
- providing false or misleading information to the Minister, Chief Executive of Department (Director-General), Chief Executive Office of Council, Change Commission, Regional Conduct Review Panel, the Local Government Remuneration and Discipline Tribunal or the Queensland Local Government Grants Commission
- failure to complete or update a register of interest
- misconduct that has been escalated to serious misconduct.



# Appendix 1 Conduct complaint examples

## Bullying and harassment

### Inappropriate conduct

- Bullying of a council officer by a councillor would be considered inappropriate conduct. For example a councillor who while driving past a council works crew yelled “*Get up you lazy <explanative> and get back to work or I’ll have you fired*”.

### Misconduct

- Repeat cases of inappropriate conduct which have been escalated to be dealt with as misconduct. For example, a councillor has been the subject of a number of bullying and harassment allegations made by staff over a two year period and has been cautioned and counselled about his/her behaviour. The Mayor in his previous findings recorded that ‘*future allegations of similar behaviour will be dealt with as misconduct*’. A new allegation of bullying and harassment against the same councillor would be considered misconduct.

### Serious misconduct

- A councillor who deliberately victimised a council officer by making jokes, references and innuendos of a sexual nature over a period of time may be considered as serious misconduct due to the potential harm to the victim as well as the serious, vicious and ongoing nature of the actions.

## Direction of council officers

### Misconduct

- The direction of council staff by a councillor. No councillor, including the Mayor, may give a direction to a local government employee. For example, as part of the annual road maintenance schedule a council works crew has been sent to grade five kilometres of a rural road. A councillor approaches the works crew foreman and after ascertaining the length of road to be graded, directs the foreman to grade an extra half kilometre of road. If proven, this may represent misconduct by the councillor.

### Serious misconduct

- The direction of council staff by a councillor represents misconduct. However, if the action was captured under one of the criteria for escalation, the matter may be escalated and be dealt with as serious misconduct. For example, if a councillor directed an officer to change a recommendation with regard to a development application submitted by the councillor’s brother the action would be considered more serious and dealt with as serious misconduct.



## Conflict of interest or material personal interest

### **Serious misconduct**

- The failure by a councillor to declare a material personal interest or a conflict of interest. For example, a councillor fails to disclose that his wife owns shares in a company that is tendering for a council contract. Council considers the tenders and votes to award the contract to the company for which the councillor's wife is a shareholder. As a result of council's decision the councillor may experience a financial gain. Failure to disclose a possible material personal interest represents an offence under the Act. Under the criteria of escalation, offences are escalated and dealt with as official misconduct.

