



EDO NQ FACTSHEET SERIES

Duties and Liabilities of Local Government Representatives

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1. Introduction

The conduct of local government representatives – including councillors and council staff – are the frequent subject of complaint by local citizens. Yet members of the public often are unaware of the processes for airing their grievances about such conduct. The Local Government Act 2009 (“LGA”) and its implementing regulations, contains detailed provisions spelling out the principles that govern local council action, as well as actions that amount to either misconduct or inappropriate conduct. The LGA also provides processes and procedures for resolving complaints about councillors or staff.

2. Duties And Obligations Of Local Government Representatives Under The Local Government Act 2009

2.1. Duty to Act in Accordance with Local Government Principles

Section 4 of the *Local Government Act 2009* (Qld) (“LGA”) places certain responsibilities upon representatives of local government in order to ensure the system of government remains accountable, effective, efficient and sustainable. LGA s 4(1) requires that:

- anyone who is performing a responsibility under the LGA do so in accordance with the local government principles; and
- any action taken under the LGA :
 - (i) is consistent with the local government principles; and
 - (ii) provides results that are consistent with the local government principles, in as far as the results are within the control of the person who is taking the action.

Local government principles

LGA s 4(2) identifies the local government principles governing local government representatives as follows:

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

2.2. Specific Responsibilities of Mayors and Councillors

Responsibilities

In addition to the responsibility to uphold the local government principles set forth in LGA s 4(2), the Local Government Act provides that councillors, including the Mayor, are bound by the responsibilities set out in LGA s 12. Section 12 provides that all councillors must:

- represent the current and future interests of the residents of the local government area (s 12(1))
- ensure the local government discharges its responsibilities under the Act (s12(3)(a)(i))
- ensure the local government achieves its corporate and community plans (s12(3)(a)(ii))
- comply with all laws that apply to local governments (s12(3)(a)(iii))
- provide high quality leadership to the local government and community (s12(3)(b))
- participate in council meetings, policy development, and decision making, for the benefit of the local government area (s12(3)(c))
- be accountable to the community for the local government's performance (s12(3)(d))
- Comply with the Queensland Contact with Lobbyists Code (s12(3)(e))

In addition, LGA s 12(6) requires councillors to serve the overall public interest of the whole local government area when performing their responsibilities.

Mayor's additional responsibilities

In addition to the responsibilities set forth in LGA s12 (3), the Mayor has additional duties contained in s 12(4) of the legislation. These include, among other things leading and managing meetings, and ensuring the local government promptly provides the Minister with information about the local government area.

Prohibited activities

The LGA also prohibits councillors from engaging in certain behaviour. Under these provisions, a councillor:

- Must not gain a financial advantage or harm the local government though using information acquired in the course of their role as councillor (s 171(1))
- Must not release confidential information (s 171(2))

- In the event a councillor has a material personal interest in a matter of the council, the councillor must inform the meeting of their material personal interest and leave the meeting room for the duration of the meeting and vote (s 172)
- In the event a councillor has a conflict of interest in a matter of the council, the councillor must inform the meeting of their interest in the matter, and upon a decision of the members in the meeting to that effect, leave the meeting room for the duration of the meeting and vote (s 173)
- In the event a councillor has knowledge of another councillor's conflict of interest or material personal interest, they must inform the person presiding over the meeting (s 174)
- In the event a councillor has knowledge of another councillor having engaged in misconduct, they must inform the CEO as soon as practicable (s 174)

Financial responsibilities

Section 102 of the LGA requires local governments to ensure that they remain financially sustainable and, to fulfil this responsibility, councillors in the execution of this responsibility, must:

- manage financial risks prudently
- formulate and abide by financial policies
- provide the public with full, accurate and timely information about the local government's finances and infrastructure, and make such information publically available on the government's website (including a financial report specified in LGA s 104(7))

Finally, the Local Government (Operations) Regulation 2010 outlines the requirements and procedures which must be followed by councillors when conducting meetings and running committees.

2.3. Responsibilities of Council Staff and Council's CEO

The Local Government Act also sets out certain responsibilities for council staff, and additional responsibilities of the council's Chief Executive Officer ("CEO"). Staff's duties relate to implementing the strategic direction set by the council and ensuring administrative functions are undertaken according to council policy. Accordingly, local government employees must:

- Implement the policies and priorities of the local government in a way that promotes (s13(2)(a):

- (i) The effective, efficient and economical management of public resources; and
- (ii) Excellence in service delivery; and
- (iii) Continual improvement
- Carry out their duties in a way that ensures the local government (s13(2)(b):
 - (i) Discharges its responsibilities under this act; and
 - (ii) Complies with all laws that apply to local governments; and
 - (iii) Achieves its corporate and community plans
- Provide sound and impartial advice to local government (s13(2)(c))
- Carry out their duties impartially and with integrity (s13(2)(d))
- Ensure their personal conduct does not reflect adversely on the reputation of the local government (s13(2)(e))
- Seek to improve all aspects of their work performance (s13(2)(f))
- Observe all laws relating to their employment (s13(2)(g))
- Observe the ethics principles under the *Public Sector Ethics Act 1994*, section 4 (s13(2)(h))
- Comply with a code of conduct under the *Public Sector Ethics Act 1994* (s13(2)(i))

CEO's additional responsibilities

LGA s 13(3) imposes additional responsibilities on council's CEO regarding the CEO's management of council administrative staff and implementation of appropriate policies across the local government.

2.4. Compliance with Community and Corporate Plans

Council Community Plan

Section 126 of the *Local Government (Finance, Plans and Reporting) Regulation 2010* requires local councils to prepare and implement a Community Plan. According to LGA s 105(4), a Community Plan "outlines the local government's goals, strategies and policies for implementing the local government's vision for the future of the local government area during the period covered by the plan." Community Plans should express the community's vision, its aspirations and key priorities, and the tasks necessary to achieve these.¹

Council Corporate Plan

¹ Queensland Government, 'Community Planning by Local Governments in Queensland', December 2010, accessed at <http://www.dlgp.qld.gov.au/resources/guideline/local---government/community---planning---guide.pdf> on 12 June 2012

Section 120 of the *Local Government (Finance, Plans and Reporting) Regulation 2010* specifies that local governments must prepare and adopt a 5-year Corporate Plan. The council's Corporate Plan sets out broad strategies and vision for all aspects of council's operation for the 5-year period specified in the plan.² According to s 121 of the 2010 Regulation, the Corporate Plans must:

- outline the strategic direction of the local government
- state the performance indicators for measuring local government's progress in achieving its vision as expressed in the community plan
- state how the community plan will be implemented

Councillors and staff must achieve the community and corporate plans

As stated above, LGA s 12(3)(a)(ii) makes councillors responsible for ensuring the local council "achieves its corporate and community plans." Section 13(2)(b) of the LGA states that all employees of a local government have a responsibility to "carry out their duties in a way that ensures the local government achieves its corporate and community plans." Section 120(5) of the 2010 Regulations also states that "The local government must discharge their responsibilities in a way that is consistent with the 5-year Corporate Plan."

3. Misconduct And Inappropriate Conduct

The Local Government Act also prohibits councillors from engaging in (i) misconduct or (ii) inappropriate conduct.

Misconduct

Misconduct is defined in LGA s 176(3) as conduct, or attempted conduct that:

- adversely affects, or could adversely affect, (either directly or indirectly) the honest and impartial performance of the councillor's responsibilities or exercise of powers; or
- breaches the trust placed in the councillor; or
- involves a misuse of information or material acquired in or in connection with the performance of the councillor's responsibilities, whether the misuse is for the benefit of the councillor or someone else; or
- involves failure to report knowledge of another councillor's material personal interest, conflict of interest or misconduct in accordance with s 174(2); or
- involves any conduct referred to the department's Chief Executive under s 181

² Accessed at <http://www.dlgp.qld.gov.au/so-you-want-to-be-a-councillor/what-is-a-corporate-plan.html> on 12 June 2012

Inappropriate conduct

Inappropriate conduct is defined in LGA s 176(4) as any conduct which, while not being misconduct, is not appropriate for a local government representative, examples of which include:

- failure to comply with the local government's procedures
- engaging in offensive or disorderly conduct at a council or committee meeting.

4. Consequences Of Failing To Uphold Responsibilities Or Engaging In Misconduct

There are several mechanisms under the *Local Government Act* for resolving complaints about local council staff and councilor conduct. The Local Government Act and implementing regulations outline multiple procedures for challenging local government conduct, as well as disciplinary action for councillors and employees who have failed to uphold their responsibilities, local government principles, or engaged in some form of unacceptable conduct contrary to the Act.

4.1. Administrative Action Complaints

LGA s 268(1) requires local governments to adopt a process for resolving administrative action complaints. An "administrative action complaint" is a complaint about an administrative action of a local government and is made by an "affected person" (s 268(2)). Section 268 provides examples of such complaints, namely:

- a decision, or a failure to make a decision, including a failure to provide a written statement of reasons for a decision
- an act, or a failure to do an act
- the formulation of a proposal or intention
- the making of a recommendation

The LGA also defines an "affected person" as a person who is apparently directly affected by an administrative action of a local government (s 268(3)).

The *Local Government (Operations) Regulations 2010* detail the minimum requirements which a local government's complaint management process must include and provide that the process must:

- effectively manage all complaints from receipt to resolution, and have supporting policies and procedures for this process (r 119(2))
- cover all administrative action complaints made to the local government (r 119(3)(a))
- require the local government to quickly and efficiently respond to complaints in a fair and objective way (r 119(3)(b))
- specify criteria to be considered when assessing whether to investigate a complaint (r 119(3)(c))
- include a requirement for local government to inform an affected person of the decision about a complaint, and the reasons for the decision, unless the complaint was made anonymously (r 119(3)(d))
- ensure all complaints are recorded, and ensure the public is able to inspect the complaints management process, including related policies and procedures both at the local government's public office and on its website (r 119(4)(b))
- contain mechanisms to monitor the effectiveness of the complaints management process and identify, analyse and respond to trends in complaints being made to the Local Government (r 119(4)(d))

The LGA essentially provides councils with flexibility to determine the specifics of their complaints management process so long as they adopt the requirements specified in the regulations.

Where a person wishes to make an administrative action complaint, they should refer to the relevant local government website to determine the process established in their local government area.

4.2. Disciplinary Action Against Local Government Employees

Division 1 of the *Local Government (Operations) Regulations 2010* details the circumstances in which the council CEO may take disciplinary action against council employees.

Regulation 76 states that the CEO may take disciplinary action if satisfied that the employee has done one or more of the following:

- failed to perform their responsibilities under the LGA
- failed to perform a responsibility under the LGA in accordance with the local government principles

- taken action under the LGA in a way that is not consistent with the local government principles.

The CEO may impose one or more of the following disciplinary actions (r 77(1)):

- dismissal
- demotion
- a deduction from salary or wages of an amount of not more than 2 penalty units;
- a written reprimand or warning
- suspension (r 79)

4.3. Disciplinary Action Against Councillors: The Remuneration and Discipline Tribunal and Regional Conduct Review Panels

Misconduct

The LGA provides for the creation of a Remuneration and Discipline Tribunal (LGA ss 176(8) & 183) and Regional Conduct Review Panels (LGA ss 176(7) & 189). These bodies are responsible for reviewing complaints of councilor misconduct, with the Tribunal hearing the “most serious complaints” of such nature (LGA ss 176(6)–(8)). The severity of the misconduct will determine whether the complaint is heard by the Tribunal or the Review Panel, since the Review Panels are required to refer “serious misconduct” complaints to the Tribunal (LGA ss 176(8) & 180(3)).

The Tribunal and Review Panels have the power to investigate complaints, hold hearings, decide liability and penalties, and implement their decisions. Among other things, either the Tribunal or the Review Panels may recommend to the State department for local government that a councilor, or even the council, should be “monitored” for compliance with the Local Government Act and implementing regulations (LGA ss 180(2)(d) & (5)(d)). Such recommendations presumably may lead to the local government Minister taking action to remove a councilor (LGA s 122), dissolve a council entirely (LGA s 123) or to “remove unsound decisions” of a council (LGA s 121). Most importantly, the Tribunal has the power, when necessary, to make recommendations to the Minister about dismissal of councillors or dissolution of council.

There are no costs to the complainant in either the Tribunal or the Review Panel – the local government must pay the costs of the Tribunal and Review Panel in relation to a complaint (LGA ss 186 and 191).

Inappropriate conduct

Complaints of councillor “inappropriate conduct”, in contrast, are resolved either by the Mayor after the fact (*i.e.*, after a complaint is referred from the CEO) or by the chairperson of a council meeting at the time (*i.e.*, where the conduct occurs during the course of a meeting).

4.4. Remedial Action by the Minister

The Minister also has powers under the Local Government Act that may be exercised to make direct orders in certain circumstances where:

- a local councillor has engaged in such serious misconduct that the councillor should be removed (LGA s 122)
- local councils have made “unsound decisions” – that is, decisions that are contrary to any law or inconsistent with their local government principles --- allowing suspension or revocation of the decision (LGA s 121), or
- misconduct of councillors is so widespread or serious that dissolution of the entire council is warranted (LGA s 123).

Removal of unsound local council decisions

For purposes of LGA s 121, a “decision of local government” is defined in s 121(2) as all, or part of, the following:

- a resolution, or order giving effect to a resolution
- an interim development control provision
- a local law
- a planning scheme

This power of revocation and suspension (not merely a *recommendation* for such action) is an important power encouraging local government to act in accordance with its responsibilities.

Removal of councillors or dissolution of councils

In the event that the Minister reasonably believes that a local government or councillor is **incapable of performing its responsibilities**, or that they have **seriously or continuously breached the local government principles**, or if the Minister receives a recommendation from the Tribunal to this effect under s 180, the Minister may recommend to the Governor in Council that:

- the councillor be suspended or dismissed,
- the local government be dissolved and an interim administrator be appointed to act until the conclusion of fresh council elections.

The governor in council may then give effect to the Minister's recommendation under a regulation.

Procedural requirements for exercise of Ministerial powers

Before making any order under ss 121, 122 or 123, section 120 states that the Minister must provide the local government with written notice of the proposal to exercise the power, and consider any submission received in response from the councillor or local government. The Notice must state, among other things:

- the Minister's reasons for exercising the power
- any remedial action that the local government or councillor should take
- a reasonable time within which the local government or councillor may make submissions on the proposed exercise of the power.

5. Process For Assessing Complaints About Conduct Of Councillors

Complaints about the performance of local councillors are assessed as follows:

- Person makes complaint to local government
- Member of local government or the department's chief executive must give written notice to the CEO (s 177(2))
- CEO will assess each complaint and determine whether it is a frivolous or vexatious matter which should not proceed to a hearing, or whether it is a legitimate complaint as to inappropriate conduct, misconduct, or any other matter (including a general complaint against the local government) (s 177(3))
- Where a legitimate complaint exists, and the complaint does not relate to misconduct or inappropriate conduct, the CEO must deal with the complaint "an appropriate way" (s 177(8)). From the provisions of the Act, this may involve following the local government's complaint management process, undertaking disciplinary action, engaging the Tribunal or Council, or bringing the complaint to the Minister's attention for exercise of their power of revocation, suspension and dismissal.

- The relevant councillor is notified by the department's chief executive of legitimate complaints (s 178)
- The Tribunal or the Review Panel hears the complaint and determines whether there has been misconduct, and if so, the appropriate disciplinary action.
- Disciplinary action is then taken by the Review Panel, the Tribunal, or the Minister – depending on the severity of the misconduct.
- CEO provides a written notice to the person who made the complaint stating the classification and proposed action to be taken (s 175(9))

The CEO must keep a record of all written complaints and the outcome of each (s 177(11)), which must be made publically available (s 177(12)).

6. Review Of Decisions

Section 177(10) of the LGA states that a decision of any of the following people is not subject to an appeal:

- a Review Panel;
- the Tribunal;
- the CEO;
- a mayor;
- a deputy mayor; or
- the chairperson of a meeting.

This non-reviewability provision is a significant drawback to the administrative complaint process.

7. Further Information

If you have any further questions or concerns about any of these matters, then please contact us on the details below. While we have limited resources, often we can give you quick advice over the phone or direct you to someone who may help on a free or reduced rate basis.

Stay in contact with your local Environmental Defenders Office.

8. Useful Contacts

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Suite 1, Level 1

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To become a member of the Environmental Defenders Office of Northern Queensland, or for more information about factsheets and legal advice, please contact us at edong@edo.org.au or on 07 4031 4766. Our web address is www.edo.org.au/edong