

Conduct and Performance of Councillors

1. Authorisation

- 1.1 Sections 176 to 182 of the Local Government Act 2009 (the Act) detail the requirements for dealing with complaints about the conduct and performance of councillors to ensure that appropriate standards of conduct and performance are maintained and a councillor who engages in misconduct is disciplined.

2. Scope and Purpose

- 2.1 This guideline has been established to describe the process for handling and resolving complaints made about councillors in accordance with the Conduct and Performance of Councillors Policy POL-3096.
- 2.2 It is irrelevant whether the conduct that constitutes misconduct was engaged in within Queensland or elsewhere, or when the councillor was not exercising the responsibilities of a councillor (Section 176[5] of the Act).
- 2.3 A councillor may be dealt with for an act or omission that constitutes misconduct under the Act, and also be dealt with for the same act or omission as the commission of an offence against the Act, or under the Crime and Misconduct Commission Act (Section 176[9] of the Local Government Act 2009).
- 2.4 This guideline applies only to complaints about a councillor's conduct and performance. It does not apply to complaints about:
- Council officers or the delivery of Council services (see the Complaints Management Process Guideline GL-3037-001); or
 - Complaints about decisions of Council, irrespective of whether or not the complaint is made against some or all councillors. This does not prevent the acceptance of complaints where it is alleged that a councillor has breached the Act in relation to making a decision; for example, by failing to disclose a conflict of interest in the matter being decided.

3. Definitions

Act: Local Government Act 2009

Administrative Action: Action of a local government about a matter of administration including each of the following:

- 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 failure to do an act;
- the formulation of a proposal or intention; and/or
- the making of a recommendation.

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(see the Complaints Management Process Guideline GL-3037-001);

Another Matter

A complaint made about a councillor that does not fall into the categories of inappropriate conduct, misconduct or official misconduct.

CEO:

Chief Executive Officer of Redland City Council (Senior Complaints Officer).

Complaint:

A statement by a person or persons alleging inappropriate conduct, misconduct or serious misconduct by one or more councillors.

A complaint is not the same as a request for service, a request for information or an inquiry seeking clarification of an issue. Examples of communications not classified as complaints under this policy include:

- an inquiry to seek clarification or further information about the amount of a rates bill;
- a request to Council to take action on a barking dog, a noisy pool filter, a leaking water pipe or any other services;
- an inquiry made to Council on a particular development or compliance matter that is processed in accordance with statutory or administrative timeframes established by Council;
- petitions to Council.

Council:

Redland City Council

Councillor:

Includes the mayor, deputy mayor, all currently elected councillors and any person who is no longer a councillor but who was a councillor when the misconduct is alleged to have occurred.

Department's Chief Executive:

The Director-General of the Queensland Department of Infrastructure and Planning.

Frivolous:

Trivial, superficial or senseless.

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General Complaints System: Database for recording complaints which contains details required for statutory reporting and other information for managing and reporting on complaints.

General Complaints Number: A number issued internally for use within the General Complaints System.

Inappropriate Conduct: Is conduct that is not appropriate conduct for a representative of a local government, but is not misconduct, including for example:

- a) A councillor failing to comply with the local government's procedures; or
- b) A councillor behaving in an offensive or disorderly way in a meeting of the local government or any of its committees.

Misconduct: Is conduct or a conspiracy or attempt to engage in conduct, of or by a councillor:

- a) that adversely affects, or could adversely affect, (either directly or indirectly) the honest and impartial performance of the councillor's responsibilities or exercise of the councillor's powers; or
- b) that is, or involves:
 - i. the performance of the councillor's responsibilities, or the exercise of the councillor's powers, in a way that is not honest or is not impartial; or
 - ii. a breach of the trust placed in the councillor; or
 - iii. 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
- c) that breaches Section 174(2) of the Act – duty to report another councillor's material personal interest, conflict of interest or misconduct; or
- d) that is referred to the department's chief executive as repeated inappropriate conduct.

Natural Justice: Making sure that:

- a person who is the subject of a complaint is fully informed of the allegations against them;
- a person against whom the complaint is made is given reasonable opportunity to put forward their case;

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- the allegations are properly investigated, all parties heard and relevant submissions considered;
- a person should not be a decision maker in a case in which they are involved;
- a person against whom an adverse decision may be made should be kept fully informed of all information provided about them and given an opportunity to respond to it;
- the investigator and decision maker act fairly and without bias;
- irrelevant matters are not taken into account and all relevant matters are considered; and
- decisions are made based on fact and evidence that logically shows the findings of fact.

Official Misconduct:

Official misconduct is conduct that could, if proved, be:

- (a) a criminal offence; or
- (b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment. (Section 15 *Crime and Misconduct Act 2001*)

Oral Complaints:

Complaints made in person or by telephone.

Public Interest Disclosure:

Is a protected disclosure which after initial review is confirmed as showing or tending to show that a public officer or public body:

- has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body; or
- has taken, is taking or proposes to take detrimental action contrary to the Act.

Regional Conduct Review Panel:

Is an independent body created under the Act that is responsible for hearing and deciding a complaint of misconduct by a councillor.

Senior Complaints Officer:

Chief Executive Officer of Redland City Council (CEO).

Social Media:

Is a term used to describe the type of media that is based on conversation and interaction between people on-line.

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Tribunal:

The Local Government Remuneration and Discipline Tribunal is an independent body created under the Act that is responsible (amongst other things) for hearing and deciding the most serious complaints of misconduct by a councillor.

Vexatious:

In relation to a complaint, this includes: unwarranted persistence in pursuing matters that are being or have been resolved; changing the substance of a complaint or continually raising new issues; unwillingness to accept documented evidence; failure to precisely identify the issues or provide any material to support the allegation; making threats to or harassing any person involved in the matter; a complaint intended for retaliation against a specific councillor for the purpose of harassment; or making unreasonable demands. A complaint that was not initially determined to be vexatious can be determined as such if any of the conditions above occur.

Written Complaints:

Complaints received in writing whether by letter, fax, or email, but not by social media.

4. General

- 4.1 The principles of natural justice apply to the handling, investigation and decision-making in relation to complaints that fall within this Guideline.

5. Receiving Complaints

- 5.1 A complainant should be advised to put his/her complaint in writing and address it to the CEO, including:
- a. the nature of the complaint clearly stated;
 - b. as much detail as possible;
 - c. detail of any loss or detriment they have suffered (if any);
 - d. list any other agencies or authorities they may have also reported the incident to;
 - e. their contact details;
 - f. an outline of the outcome they are seeking; and
 - g. any supporting information and documentation including names and contact details of any other persons who are able to support the complaint.
- 5.2 Oral complaints are discouraged due to the need for the CEO to record the details of the complaint and refer the matter to another authority. An oral complaint may be accepted if the information at 'a' to 'g' in paragraph 5.1 above is provided by the complainant.

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- 5.3 A complainant may supply additional information to support his/her complaint. Any such information will be registered by the Internal Audit Group; will be referred initially to the CEO; and then sent to the person who has responsibility for the management of the complaint at that time, e.g. the department's chief executive.
- 5.4 Complaints submitted by social media sites will not be accepted or acknowledged by Council. Examples of social media sites include: MySpace, Facebook, Twitter, internet forums, weblogs, social blogs, wikis, podcasts, etc.

6. Registering Complaints

- 6.1 All written and oral complaints are to be registered with the Internal Audit Group as soon as practicable. Written correspondence will be registered in Dataworks by staff in the Internal Audit Group.

7. Assessing Complaints

Initial Assessment:

- 7.1 The CEO must firstly assess each complaint to decide whether the complaint is a frivolous matter or was made vexatiously.
- 7.2 If it is neither of those, the CEO will then assess the complaint to decide if it is one alleging inappropriate conduct, misconduct, official misconduct or another matter.

Frivolous or Vexatious Complaints:

- 7.3 If the CEO decides that a complaint is frivolous or vexatious, he/she may decide to take no further action in relation to the matter. The CEO will provide the complainant with written advice of the decision and the reasons for it. That advice must contain a warning that it is an offence to make a further complaint about a matter that has previously been decided to have been frivolous or vexatious.

Inappropriate Conduct:

- 7.4 A complaint alleging inappropriate conduct of a councillor should preferably be a written complaint unless it is a complaint about a councillor's conduct at a meeting and the complaint is made orally at the time of that meeting to the meeting chairperson.
- 7.5 The CEO will send a written acknowledgement to the complainant of receipt of the complaint unless the notification at '7.8' below can occur within the required timeframe (see 'timeframes' below).
- 7.6 The CEO will, if the complaint is about the mayor or deputy mayor, refer the matter to the department's chief executive in writing. If the complaint is about another councillor, the CEO will refer the matter to the mayor in writing.

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- 7.7 If the alleged inappropriate conduct is a repeat of previous inappropriate conduct by the same councillor; and the mayor or department's chief executive has previously given an order in relation to that councillor that a repeat of that conduct will be referred to the department's chief executive as an allegation of misconduct, the chief executive officer will refer the complaint to the department's chief executive. If this occurs, the process for misconduct complaints (below) is to be followed from this point.
- 7.8 The CEO will advise the complainant: that he/she has assessed the complaint as one of inappropriate conduct; and to whom the complaint has been referred.
- 7.9 The CEO will notify the councillor in writing that a complaint of inappropriate conduct about him/her has been received and to whom the complaint has been referred.
- 7.10 The Mayor may seek the assistance of the chief executive officer in acquiring information relevant to assist the mayor in making a decision about a complaint of inappropriate conduct.
- 7.11 The Mayor, or the department's chief executive, may make either or both of the following orders that they consider to be appropriate in the circumstances:
- an order reprimanding the councillor for the inappropriate conduct; and/or
 - an order that any repeat of the inappropriate conduct be referred to the department's chief executive as misconduct.
- 7.12 The department's chief executive or the Mayor will notify the complainant and the councillor subject of the complaint of the outcome.
- 7.13 If inappropriate conduct happens in a meeting of Council or one of its committees, the chairperson of the meeting may make any one or more of the following orders that the chairperson considers appropriate in the circumstances:
- an order that the councillor's inappropriate conduct be noted in the minutes of the meeting;
 - an order that the councillor leave the place where the meeting is being held (including any area set aside for the public), and stay out of the place for the rest of the meeting; and/or
 - an order that a councillor who fails to leave the place where the meeting is being held when ordered to do so be removed from the place.

Misconduct:

- 7.14 A complaint alleging the misconduct of a councillor should be a written complaint.
- 7.15 The CEO will send a written acknowledgement to the complainant of receipt of the complaint unless the notification at '7.17' below can occur within the required timeframe (see 'timeframes' below).

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- 7.16 The CEO will refer the complaint in writing to the department's chief executive.
- 7.17 The CEO will notify the complainant in writing that the complaint has been assessed as one of misconduct and has been referred to the department's chief executive.
- 7.18 The CEO will notify the councillor in writing that a complaint of misconduct about him/her has been received and has been referred to the department's chief executive.
- 7.19 The department's chief executive will notify the councillor about the hearing of the complaint.
- 7.20 The regional conduct review panel or tribunal hears the complaint and decides whether or not the councillor engaged in misconduct, and if so, what is the appropriate disciplinary action.
- 7.21 Disciplinary action is taken against a councillor who has engaged in misconduct by the regional conduct review panel, the tribunal or the Minister, depending on the severity of the misconduct.
- 7.22 The department's chief executive will notify the complainant, the councillor subject of the complaint and the Council's CEO of the outcome.

Official Misconduct:

- 7.23 The CEO has a statutory obligation [Section 38(2)] under the Crime and Misconduct Act 2001 to report suspected official misconduct to the CMC. The threshold for "suspicion of official misconduct" is low, and the CEO has little or no discretion as to whether to report his/her suspicion. In addition, the CEO has no role or authority to investigate his/her suspicion before reporting it to the CMC.
- 7.24 A complaint alleging serious misconduct of a councillor should be a written complaint.
- 7.25 The CEO will send a written acknowledgement to the complainant of receipt of the complaint unless the notification at '7.28' below can occur within the required timeframe (see 'timeframes' below).
- 7.26 The CEO will refer the matter in writing to the CMC using the standard referral form. The referral will include a request for approval to notify the councillor subject of the complaint that the complaint has been made and referred.
- 7.27 The CEO will, at the same time, send a copy of the CMC referral to the department's chief executive.
- 7.28 The CEO will notify the complainant in writing that the complaint has been assessed as one of official misconduct and has been referred to the CMC and the department's chief executive.

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- 7.29 The CEO will delay notifying the councillor that a complaint of official misconduct has been made against him/her until written approval of the CMC has been received, and will only do so once that approval is given.
- 7.30 The CMC will either investigate the complaint or will refer it to the department's chief executive.
- 7.31 If the CMC investigates the matter, it will assume responsibility for communication with all parties to the complaint unless advice to the contrary is provided to the department's chief executive.
- 7.32 If the matter is referred to the department's chief executive, he/she will notify the councillor about the hearing of the complaint.
- 7.33 The regional conduct review panel or tribunal hears the complaint and decides whether or not the councillor engaged in official misconduct, and if so, what is the appropriate disciplinary action.
- 7.34 Disciplinary action is taken against a councillor who has engaged in official misconduct by the regional conduct review panel, the tribunal or the Minister, depending on the severity of the misconduct.
- 7.35 The department's chief executive will notify the complainant, the councillor subject of the complaint and Council's CEO of the outcome.

Anonymous Complaints:

- 7.36 Anonymous complaints will be assessed in the same way as any other complaint. If an anonymous complaint is determined by the CEO to be frivolous or vexatious, the CEO will record his/her decision and take no further action. If the CEO determines that the complaint is about inappropriate conduct, misconduct or official misconduct, the CEO will refer the matter accordingly.

Multiple Complaints Regarding the Same or Similar Issue:

- 7.37 The complaints process is not a tool to bring Council business to a halt, to delay or prevent Council from making decisions, or to interrupt Council's operations.
- 7.38 If multiple complaints are received about the same or similar issue, e.g. if several separate complaints are received about the conduct and performance of one or more councillors arising from the same or similar circumstances:
- The CEO may refer them collectively to the Mayor (for inappropriate conduct) or to the department's chief executive (for misconduct) as appropriate; and
 - a single general complaints number may be allocated to cover all the complaints.

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7.39 For matters referred to the department's chief executive, it will be for him/her to determine the most effective and efficient method for dealing with the complaints.

Multi-faceted Complaints:

7.40 Where a complaint is made about two or more matters which fall into different categories, the referral will be based upon the most serious of the allegations. For example, if a complaint is made about inappropriate conduct, misconduct and official misconduct, the whole complaint will be referred to the CMC as official misconduct and will be copied to the department's chief executive. This allows full consideration by the CMC, including an assessment of the relationship of the alleged lesser allegations to the more serious aspects of the complaint.

7.41 In that example, the CMC may ultimately refer any allegation of misconduct, official misconduct or inappropriate conduct to the department's chief executive. The department's chief executive may refer any allegations of inappropriate conduct via the CEO to the mayor.

Complaints Involving Councillors and Council Officers:

7.42 A single complaint which is made against both a councillor and a Council officer will be dealt with separately. The process for dealing with 'conduct and performance' complaints against councillors will apply in relation to the allegations made specifically against the councillor.

7.43 The process under the 'Complaints Management Process Guideline' (GL-3037-001) will apply to the allegations made against the officer.

7.44 A complaints officer appointed by the CEO to investigate a complaint against an officer, may work with members of another body (for example a regional conduct review panel) to share information to ensure the investigation processes are managed effectively and efficiently.

Complaint About Another Matter:

7.45 The CEO will deal with the matter at his/her sole discretion.

7.46 A complaint made against one or more councillors in relation to a decision of Council is not a complaint about the conduct and performance of a councillor. A person dissatisfied with a Council decision may take the matter up directly with the Mayor or one or more councillors.

8. Withdrawing a Complaint

8.1 A complainant may withdraw a complaint by writing to the Council's CEO. If the complaint has been referred to the department's chief executive, the CEO will refer the letter of withdrawal to that person.

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9. Information about Complaints

Recording Complaints:

- 9.1 Upon receipt of the complaint from the CEO, the officer responsible for the management of the general complaints system will ensure that:
- the complaint is recorded on a confidential register (general complaints system); and
 - a general complaint number is allocated to the complaint.
- 9.2 There is no requirement to record a complaint in the general complaints system that is assessed by the CEO as being about a frivolous matter or as having been made vexatiously, or is a public interest disclosure within the meaning of the Whistleblowers Protection Act 1994.

Access to Information and Confidentiality:

- 9.3 A register of all complaints made about the conduct and performance of councillors will be maintained by the person responsible for the general complaints system.
- 9.4 That register will be available for inspection by the public on request, usually by appointment. A written record will be kept of the name and address of anyone who inspects the register and the date on which the register was inspected. A copy of an extract from the register may be provided to any person at the time they inspect the register.
- 9.5 Summary information relating to complaints will be published in Council's annual report as required by the Local Government (Finance, Plans and Reporting) Regulation 2010.
- 9.6 The identity of a complainant and copies of all relevant documentation, including the original complaint, the investigation report and all correspondence between the complainant and the investigator, will be treated as confidential information and kept in accordance with Council policy.
- 9.7 This policy does not take precedence over state legislation that deals with information, e.g. Right to Information Act, 2009 and Information Privacy Act, 2009.
- 9.8 Should a complainant or councillor wish to obtain a copy of an investigation report relating to a complaint made by, or against him/her, the request should be made by that person to the department's chief executive. It is not the CEO's responsibility to determine such requests.

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10. Timeframes

- 10.1 With regard to sending written acknowledgements to complainants as described above, such letters will be sent within five business days of receipt of the written complaint and will advise the general complaint number and the name of a person who may be contacted about the handling of the complaint. This timeframe may be extended in unusual circumstances, e.g. if a large number of complaints are received about the same matter. If this occurs, written acknowledgements will be sent as soon as is practicable and will include an explanation for the delay.
- 10.2 It shall be the intention of all who handle complaints to deal with the matters without any undue delay. It is important that any person responsible for managing the handling of a complaint (CEO, mayor, meeting chairperson, regional conduct review panel chairperson, tribunal chairperson, CMC or department's chief executive) takes responsibility for keeping the complainant informed of the progress of the matter.

11. Appeals

- 11.1 Any decision made by the CEO, regional conduct review panel, tribunal, mayor, meeting chairperson or the department's chief executive in relation to the matters referred to in this guideline is not appealable (Section 176(10) of the Act). Any dissatisfied complainant may seek advice from the Queensland Ombudsman's Office.

12. Reporting and Reviewing

- 12.1 Public reporting of the handling of complaints will be through the Annual Report in accordance with the requirements of the Act. Additionally, the Internal Audit Group will submit a report twice a year to Council with data relating to complaints dealt with under this guideline.
- 12.2 The policy and guideline will be subject to review not less than once every two years. Amendments will be proposed at any time if improvements have been identified to achieve best practice.

13. Reference Documents

- 13.1 This Guideline has been developed to support the application of the Performance and Conduct of Councillors Policy POL-3096.

14. Associated Documents

- Local Government Act 2009;
- Local Government (Operations) Regulation 2010;
- Local Government (Finance, Plans and Reporting) Regulation 2010;
- Performance and Conduct of Councillors Policy POL-3037;
- Redland City Council's Councillor Code of Conduct;
- Complaints Management Process Policy POL-3037;

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- Complaints Management Process Guideline GL-3037-001;
- Confidential Information Policy POL-3095;
- Confidential Information Guideline GL-3095-001;
- Facing the Facts – Crime and Misconduct Commission.

15. Document Control

This guideline may only be amended by resolution of Council. Any requests to change the content of this document should be sent to the General Manager, Governance and the CEO.

Approved amended documents must be submitted to the Office of the Chief Executive Officer to place the document on the Policy, Guidelines and the Procedures Register.

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