



Queensland Government

Department of Local Government,
Sport and Recreation

Guide to the model code of conduct for councillors

Local Government Act 1993

May 2008

GUIDE TO THE MODEL CODE OF CONDUCT FOR LOCAL GOVERNMENT COUNCILLORS

INTRODUCTION

Local governments are required by the *Local Government Act 1993* (the Act) to adopt a code of conduct for local government councillors (code of conduct), and may choose to adopt the model code of conduct for councillors as gazetted by the Minister for Local Government. If a local government has not adopted a code of conduct within 6 months of each quadrennial election (s.250C) ¹, then the model code of conduct applies to councillors of the local government.

Local governments may choose to adopt their own code of conduct, provided it is consistent with the requirements of the Act (s.250F). A local government code of conduct must include the statutory obligations for councillors and information about whether a penalty applies, a statement of what constitutes a "repeat breach", the ethics principles outlined in the Act, and information about making a complaint. The model code of conduct contains these minimum requirements. In addition, a local government code of conduct may include additional ethical and behavioural obligations for councillors that are consistent with the ethics principles in the Act.

The model code of conduct and this Guide provide general information only. It is important that councillors be familiar with the relevant provisions of the Act, which are noted in both documents for ease of reference.

On 29 February 2008 the Minister for Local Government gazetted a revised model code of conduct. A minor amendment has since been made to the version of the model code of conduct that was gazetted in February 2008. This amended version of the model code of conduct was gazetted on Friday 23 May 2008 and replaces the model code of conduct that was gazetted in February.

New Local Governments² after 15 March 2008

The *Local Government Reform Implementation Regulation 2008* (the Regulation) provided that all new local governments following the 15 March 2008 elections were taken to have adopted the model code of conduct that was current on changeover day. Attachment 1 lists these local governments.

If a new local government has not yet adopted a new code of conduct, the code of conduct that currently applies to the councillors of the local government is the model code of conduct that was gazetted on 29 February 2008.

Continuing or Adjusted Local Governments after 15 March 2008

For those continuing or adjusted local governments, the current code of conduct will continue to apply for six months unless the local government adopts a new code (including the model code) in that period. If a continuing or adjusted local government does not adopt a code during

¹ References in brackets are to section numbers of the *Local Government Act 1993*, Reprint 11C, as in force on 1 September 2007.

² The term "new local government" refers to those local governments that are new as the result of the amalgamation of pre-existing local governments as defined under the *Local Government Act 1993*.



this period, then at the end of the six month period, the local government will be taken to have adopted the model code of conduct.

WHO THE CODE OF CONDUCT APPLIES TO

The code of conduct applies to councillors, including the mayor, in performing their duties of office (s.250E). Councillors must comply with the obligations in the code of conduct. Once elected or appointed a councillor must sign a declaration of office which includes the councillor's agreement to comply with the code of conduct (s.242 (4B)).

PROCEDURE FOR MAKING A CODE OF CONDUCT OR ADOPTING THE MODEL CODE OF CONDUCT

The Act requires local governments to notify the public and councillors of its intention to make a code of conduct and to invite and consider comments on a draft code of conduct (ss250J and 250K).

A local government must publish a notice about the draft code of conduct in a newspaper circulating in the area and at the council's public office. The notice must be published at least 6 weeks before the council meeting that is to consider the draft code of conduct. The notice must:

- state that the draft code of conduct has been prepared
- state where copies may be obtained
- invite comments on the draft and specify the closing date for comments.

The notice must allow at least 21 days from when it is published in a newspaper until the closing date for comments. When preparing a final version of a code of conduct, local governments must consider the comments made on a draft code of conduct.

The code of conduct which is adopted by council must be available for members of the public to view, and copies must be available for purchase at no more than the cost of printing and, if relevant, postage.

New Local Governments

A new local government may, after 15 March 2008 and before the 2012 quadrennial election, adopt a different code of conduct for its councillors. The regulation also provides that a new local government may adopt a former local government's code of conduct without the public notification processes in s250J and s250K of the Act. If the local government does not make a code of conduct, the model code of conduct that was gazetted in February 2008, will continue to apply.

ADDITIONAL ETHICAL AND BEHAVIOURAL OBLIGATIONS

Local governments may include additional obligations in the code of conduct, provided they are consistent with the ethical principles stated in Schedule 1 of the Act and reproduced in the model code of conduct.

The model code of conduct includes some additional ethical and behavioural obligations, and local governments may include others in their code of conduct.

DEALING WITH ALLEGED BREACHES OF THE CODE OF CONDUCT

The action or penalty that may result from a breach of a code of conduct varies according to the seriousness of the breach. A local government may take the actions shown in the **table at Attachment 2**. In addition, a statutory breach (where the Act specifies a fine) may be prosecuted in the courts.

REPORTING – PUBLIC ACCOUNTABILITY

Local governments are required by the Act (s.533) to include information about complaints and breaches of the code of conduct in their annual reports. The information required is:

- number of breaches of the code of conduct;
- name of each councillor who breached the code of conduct, a description of the breach (eg. misuse of confidential information) and the penalty imposed by the council;
- number of complaints referred to the conduct review panel (excluding frivolous or vexatious complaints);
- number of conduct review panel recommendations that were adopted, and not adopted;
- number of complaints resolved under the general complaints process, and the number of those complaints which alleged a breach of the code of conduct; and
- number of complaints made to the ombudsman (and notified to the local government) about decisions by the local government relating to enforcement of its code of conduct.



Attachment 1

New local governments to which model code of conduct will apply from 15 March 2008

- Barcaldine Regional Council
- Blackall-Tambo Regional Council
- Bundaberg Regional Council
- Cairns Regional Council
- Cassowary Coast Regional Council
- Central Highlands Regional Council
- Charters Towers Regional Council
- Dalby Regional Council
- Fraser Coast Regional Council
- Gladstone Regional Council
- Goondiwindi Regional Council
- Gympie Regional Council
- Isaac Regional Council
- Lockyer Valley Regional Council
- Longreach Regional Council
- Mackay Regional Council
- Moreton Bay Regional Council
- North Burnett Regional Council
- Northern Peninsula Area Regional Council
- Rockhampton Regional Council
- Roma Regional Council
- Scenic Rim Regional Council
- Somerset Regional Council
- South Burnett Regional Council
- Southern Downs Regional Council
- Sunshine Coast Regional Council
- Tablelands Regional Council
- Toowoomba Regional Council
- Torres Strait Island Regional Council
- Townsville City Council
- Whitsunday Regional Council



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ATTACHMENT 2

Summary of Procedures, Decisions & Penalties for Breaches of the Code of Conduct	
Local Government Process	Local Government Action or Penalty
<i>Meeting breach</i>	
<p><i>At a council meeting</i></p> <ul style="list-style-type: none"> • The behaviour may be dealt with under the council's local law / standing orders etc. • The councillor has an opportunity to withdraw a comment, apologise or take some other appropriate step. • Council decides whether it is necessary to continue considering the alleged breach. • If council considers the alleged breach, it decides whether or not a meeting breach has occurred. • If a breach has occurred, council decides whether it may also be a repeat breach or a statutory breach. • If council proposes to reprimand or suspend the councillor, the councillor should be given an opportunity to make a submission to the meeting on the proposed action. 	<ul style="list-style-type: none"> • Council acts in accordance with the relevant standing orders etc. • If the complaint is frivolous or made vexatiously, council takes no action. • If council decides that a breach has occurred, council may: <ul style="list-style-type: none"> ○ take no further action; ○ impose 1 or more of the following penalties by resolution: <ul style="list-style-type: none"> ○ written reprimand, ○ suspend councillor from the remainder of the meeting, ○ suspend councillor from 1 future meeting of council, ○ suspend councillor from future committee meetings. • If council decides the breach may be a repeat breach or a statutory breach, refer it to the conduct review panel.
<p><i>At a committee meeting</i></p> <ul style="list-style-type: none"> • Chairperson of the meeting must notify the Chief Executive Officer (CEO) of the complaint as soon as practicable. • The CEO must refer the complaint to council as soon as practicable. • The behaviour may be dealt with under the council's local law / standing orders etc. • The councillor has an opportunity to withdraw a comment, apologise or take some other appropriate step. • Council decides whether it is necessary to continue considering the alleged breach. • If council considers the alleged breach, it decides whether or not a meeting breach has occurred. • If a breach has occurred, council decides whether it may also be a repeat breach or a statutory breach. • If council proposes to reprimand or suspend the councillor, the councillor should be given an opportunity to make a submission to the meeting on the proposed action. 	<ul style="list-style-type: none"> • Action or penalty, if any, is decided at the next council meeting. • If the complaint is frivolous or made vexatiously, council takes no action. • If council decides that a breach has occurred, council may: <ul style="list-style-type: none"> ○ take no further action; ○ impose 1 or more of the following penalties by resolution: <ul style="list-style-type: none"> ○ written reprimand, ○ suspend councillor from the remainder of the meeting, ○ suspend councillor from 1 future meeting of council, ○ suspend councillor from future committee meetings. • If council decides the breach may be a repeat breach or a statutory breach, refer it to the conduct review panel.

Summary of Procedures, Decisions & Penalties for Breaches of the Code of Conduct

Local Government Process	Local Government Action or Penalty
<i>Minor breach</i>	
<p>Complaints are dealt with under the council's general complaints process:</p> <ul style="list-style-type: none"> • Complaints officer decides whether to investigate the complaint; reasons for not investigating should be recorded. • Where practical, attempt to resolve complaint informally before commencing the formal stage of the investigation; <ul style="list-style-type: none"> ○ if resolution is not possible, record the reasons; ○ complaints resolved informally are not recorded as a breach. • If a complaint is not resolved informally, an impartial external investigator should generally be appointed. • Investigation is conducted and report prepared, allowing adequate time according to the complexity of the investigation. The report should specify which part of the code is alleged to have been breached. • Before council considers the investigation report, a councillor about whom adverse comment or an adverse finding is made in the report should be given a copy of the draft report and a reasonable opportunity to respond to the findings. • If a councillor makes a written response to an investigation report, the councillor's response should be provided to council along with the final investigation report. • The investigation report and any response from a councillor about whom there is adverse comment or adverse findings are provided to council. • Council must decide: <ul style="list-style-type: none"> ○ whether the councillor has committed the alleged minor breach; ○ if a breach has occurred, decide whether it is also a repeat breach. • The councillor who is alleged to have breached the code should not be in room during deliberation and voting. • If council decides a breach has occurred, the councillor should be given an opportunity to make a submission on the proposed action before council makes a final decision. 	<ul style="list-style-type: none"> • If the complaint is frivolous or made vexatiously, council takes no action. • If council decides that a breach has occurred, council may: <ul style="list-style-type: none"> ○ take no further action; ○ impose 1 or more of the following penalties by resolution: <ul style="list-style-type: none"> ○ written reprimand, ○ suspend councillor from the remainder of the meeting, ○ suspend councillor from 1 future meeting of council, ○ suspend councillor from future committee meetings. • If council decides the breach may be a repeat breach or a statutory breach, refer it to the conduct review panel.

Summary of Procedures, Decisions & Penalties for Breaches of the Code of Conduct

Local Government Process	Local Government Action or Penalty
<i>Repeat breach</i>	
<ul style="list-style-type: none"> • Council decides whether a meeting breach or a minor breach may be a repeat breach as outlined in the code of conduct. 	<ul style="list-style-type: none"> • If Council decides it is a repeat breach, the complaint is referred to the conduct review panel.
<i>Statutory breach</i>	
<ul style="list-style-type: none"> • Alleged breaches of councillors' statutory obligations where a fine is specified in the Act may also be "official misconduct" under the <i>Crime and Misconduct Act 2001</i> (CM Act). • The Chief Executive Officer (CEO) must consider whether s/he is obliged under the CM Act to notify the Crime and Misconduct Commission (CMC) about the complaint. • The CEO must notify the councillor as soon as practicable if the complaint has been referred to the conduct review panel. • If the complaint is referred to the conduct review panel, council considers the panel's report and recommendations and decides whether the councillor has committed the breach. 	<ul style="list-style-type: none"> • CEO notifies the CMC if required by the CM Act. • CEO refers the complaint to the conduct review panel if the CEO is not required to notify the CMC of the complaint, or if the CEO has been notified by the CMC or the Ombudsman that they have decided not to take action, or have decided to discontinue action on the complaint. • If council decides that a breach has occurred, council may: <ul style="list-style-type: none"> ○ take no further action; ○ impose 1 or more of the following penalties by resolution: <ul style="list-style-type: none"> ○ provide a written reprimand, ○ suspend councillor from the remainder of the meeting, ○ suspend councillor from up to 2 future meetings of council, ○ suspend councillor from future committee meetings. • If council decides that a statutory breach has occurred, it may decide to initiate prosecution in the courts.