



# **Councillor responsibilities under the *Local Government Act 2009***

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An electronic copy of this document is available on the Department of Local Government, Racing and Multicultural Affairs' website at [www.dlgrma.qld.gov.au](http://www.dlgrma.qld.gov.au).

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## Preface

This resource provides an introduction to the roles of all elected councillors and an overview of the key important responsibilities of councillors once they have taken up their role—including managing conflicts of interest and material personal interests, disclosure of election gifts and prohibited donations, ethical behavior and decision-making, making of local laws, planning, reporting and financial management.

## Disclaimer

This is not a comprehensive guide to the responsibilities of mayors, councillors and employees of local government, but rather an overview of the key provisions of the *Local Government Act 2009* (LGA09), the *Local Government Regulation 2012* (LGR12) and the *Local Government Electoral Act 2011* (LGEL2011).

It is strongly recommended that mayors, councillors and local government employees familiarise themselves with the provisions of the LGA09, LGR12 and LGEL2011 and refer to that legislation for authoritative guidance on their roles, functions, powers and responsibilities.

The local government legislation can be accessed through the Department of Local Government, Racing and Multicultural Affairs (the department) website at [www.dlgrma.qld.gov.au](http://www.dlgrma.qld.gov.au).

Elected representatives and council employees should not rely on this document as the basis for their official actions or decisions.

## Additional information

The department's website provides up to date information and resources for local governments on a range of topics.

The department also provides and facilitates training for councillors and local government employees to assist them develop the knowledge, skills and understanding necessary to undertake their roles and responsibilities effectively and in the best interests of their communities.

Contact your regional office of the department for more information. See the department website at <http://dilgp.qld.gov.au/local-government> for contact details.

# 1. Local Government in Queensland

## 1.1 Legislation

### **Local Government Act 2009**

The *Local Government Act 2009* (LGA09) came into operation from 1 July 2010 and was significantly amended in 2012 and 2018.

This legislation recognises the diversity of local governments across Queensland and applies to all local governments—urban, rural remote, Aboriginal and Torres Strait Island, regional and city councils excluding Brisbane City Council.

The LGA09 is the principal piece of legislation governing the establishment, constitution and operation of local governments in Queensland, with the exception of Brisbane City Council, which is governed by separate legislation being the *City of Brisbane Act 2010* (COB10).

The LGA09 is principle-based legislation, which provides local governments with greater flexibility and allows them to focus on required outcomes and to decide on the appropriate way to achieve those outcomes in a way that suits their particular and unique situations—as long as the processes are rational, justifiable and transparent.

Flexibility is balanced by clear consequences and penalties for failure to meet the behavioural standards, responsibilities and obligations in LGA09. Anyone—mayor, councillor, chief executive officer (CEO) or council officer—performing a responsibility under the LGA09 must consider the application of the local government principles to the process and the outcomes. More information is provided in chapter 2.

The LGA09 is supported by the LGR12. The LGR12 expands on the provisions contained in the LGA09 and provides councils with further guidance on statutory requirements.

### **City of Brisbane Act 2010**

The *COB10* commenced on 1 July 2010 and provides governance arrangements exclusively for Brisbane City Council.

### **Local Government Electoral Act 2011**

The *LGEA11* commenced on 1 September 2011 and provides for the transparent conduct of elections of councillors to Queensland's local governments. It was amended in 2018.

### **Other legislation**

While the LGA09 is the principal 'head of power' for the governance of local governments, councils are also bound by the provisions of the following Acts:

- *Animal Management (Cats and Dogs) Act 2008*
- *Building Act 1975*
- *Disaster Management Act 2003*
- *Environmental Protection Act 1994*
- *Food Act 2006*
- *Health Act 1937*
- *Information Privacy Act 2009*
- *Integrity Act 2009*
- *Land Act 1994*
- *Liquor Act 1992*

- *Planning Act 2016*
- *Plumbing and Drainage Act 2002*
- *Public Health Act 2005*
- *Public Sector Ethics Act 1994*
- *Queensland Reconstruction Act 2011*
- *Right to Information Act 2009*
- 
- *Transport Infrastructure Act 1994*
- *Water Act 2000.*

Please note: This is an indicative and not an exhaustive list of Acts which apply to local governments.

## 2. Roles and responsibilities

### 2.1 Role of local government

Local government is not recognised in the Australian Constitution. Each state has its own system of local government, which is typically recognised in its state constitution.

Section 70 of the Constitution of Queensland 2001 states there must be a 'system of local government in Queensland'. While section 71 provides that 'a local government is an elected body that is charged with the good rule and government of a part of Queensland'.

As such, local governments are created, and possess only those powers which have been delegated to them, by the Queensland Legislative Assembly (i.e. Parliament) through state legislation.

#### Authority

The statutory 'head of power' for local government in Queensland is provided in the LGA09 and the supporting LGR12.

#### Principles

The LGA09 (section 4) is founded on five local government principles:

- Transparent and effective processes and decision-making in the public interest.
- Sustainable development and management of assets and infrastructure, and delivery of services.
- Democratic representation, social inclusion and meaningful community engagement.
- Good governance of, and by, local government.
- Ethical and legal behaviour of local government employees.

These principles apply to anyone—including mayors, councillors, CEOs and all council employees performing a responsibility under the LGA09.

They allow local governments to focus on their desired outcomes and determine the exact processes to achieve these outcomes in a way that suits their particular and unique situations, as long as the processes are rational, justifiable and transparent. Local governments make decisions about policies, processes and procedures to suit their size, location and administrative circumstances.

The LGA09 specifically provides that a local government has a law-making role. It empowers local governments to make local laws that are suitable to their particular needs and resources, and that achieve the purpose and principles of local government.

Local governments make local laws using a process (section 29 of the LGA09) that is determined by local governments themselves, including negotiating directly with the state for their state interest checks to ensure local laws do not conflict with or replicate provisions of state laws. Local laws are discussed in more detail later in this chapter.

#### Executive and administrative arms of local government

The LGA09 defines the responsibilities and powers of councillors, including the mayor, local government staff, and the CEO.

The LGA09 clearly distinguishes between the roles and responsibilities of the executive (the elected mayors and councillors) and administrative (the CEO and other council employees) arms of local governments.



### Executive arm

As the executive arm, the mayor and councillors make local laws and determine policy and other matters at a strategic level. They are responsible for determining and setting the overall direction of the local government. The executive arm determines the way the council achieves the purpose and principles of local government. Ultimately, the executive arm is directly responsible to the community for its performance.

Matters of potential significance to the executive arm of local governments include:

### Body corporate status

Under section 11 of the LGA09, a local government:

- is a body corporate with perpetual succession
- has a common seal
- may sue or be sued in its name.

### Joint local governments

Chapter 2A (sections 25B–25J) of the LGA09 provides for the constitution, establishment, body corporate status and powers of joint local governments.

Joint local governments are established to exercise a jurisdiction of local government that could go beyond the boundaries of a single local government area. In this respect, local government functions could be conducted on a regional basis enabling a greater level of co-ordination to occur in providing services to the community (i.e. a joint local government could be established to perform functions for component local governments).

### Administrative arm

Under section 194 of the LGA09, each local government must appoint a qualified person as its CEO. The role of the CEO includes implementing the decisions of the executive arm. In fulfilling this role, the CEO manages the day-to-day operations of the local government in accordance with

the plans and policies determined by the executive arm.

Section 196 of the LGA09 provides that (other) senior executive employees are to be appointed by a panel constituted by the mayor, CEO and either the chairperson of a committee (if the senior executive employee reports to a single committee) or the deputy mayor (if the employee reports to more than one committee).

## **2.2 Role of councillors**

The LGA09 empowers mayors and councillors and clearly puts them in charge of their councils.

The fundamental role of each councillor is to represent the interests of their local government area. In being elected, councillors are, individually and collectively, bound by:

- the purpose and principles of local government
- the statutory responsibilities of councillors
- any other obligations under the LGA09.

Section 12, subsections (1), (2), (3), (5) and (6) of the LGA09 detail the responsibilities of councillors, including some limitations on their role.

### **Strategic direction and planning**

Councillors should adopt a strategic approach and focus on the policy directions of the local government and delivery of services in the public interest.

The LGA09 recognises that the primary accountability of a local government is to its community, and that the decisions of the local government must be made with regard to the benefit of the entire local government area.

Councillors are responsible for planning for the future of their communities, and developing strategies and policies to achieve those plans. Councillors need to demonstrate strategic vision and leadership by putting in place principles, policies and local laws. A strategic focus helps ensure that the council can plan for and meet the future needs of its community.

### **Council decision-making**

As elected representatives, councillors are required to attend council meetings. It is in meetings that councillors participate in discussion and debate on a wide variety of issues to make decisions representing the overall public interest of the local government area. Chapter 3 provides more information on council meetings.

While an individual councillor's role and responsibilities are significant, it is important to note that council decisions are taken by a majority vote of elected members (i.e. at council and committee meetings).

The collective will and decision-making of the council is paramount and an individual councillor's views and responsibilities are secondary to the majority view of council. Even the mayor, while possessing some additional responsibilities (see section 12(4) of the LGA09), has a single vote at council meetings and, when presiding over the meeting as chairperson, only has a 'casting vote' when votes on a matter are equal or tied.

### **Delegation of powers**

Section 257 of the LGA09 provides for a wide range of council powers to be delegated.

A local government may, by resolution, delegate a power to the mayor, the CEO, a standing committee, the chairperson of a standing committee, or another local government (for the purpose of a joint local government activity). In such instances, council resolves to devolve the 'decision-making responsibility' by delegated authority.

Section 257 of the LGA09 requires that a delegation to the CEO must be reviewed annually by the local government to ensure that the delegation remains consistent with the local government's policy direction and intent.

Section 257A provides that a joint local government may delegate its powers about a component local government and clarifies that a joint local government must not delegate a power that an Act states must be exercised by resolution.

Under section 260 of the LGA09, the CEO must establish a register of delegations. The CEO must record all delegations by the local government, mayor or CEO in the register. Section 305 of the LGR12 prescribes the particulars to be provided in the register of delegations, which may be inspected by the public.

The Local Government Association of Queensland Delegation Register Service demonstrates the wide range of possible delegations by councils under state Acts and regulations commonly used by local governments.

The judicious use of delegations, with appropriate policy and accountability frameworks, contributes to good governance by allowing the council to focus on strategic rather than operational issues. A local government, however, cannot delegate a power that the LGA09 states must be exercised by resolution (e.g. adoption of its five-year corporate plan or annual budget).

### **Councillor requests for assistance or information**

Section 170A of the LGA09 provides that a councillor may ask a local government employee for advice help the councillor carry out his or her responsibilities under the LGA09.

Section 170A(2) also provides that a councillor may, subject to any limits prescribed under a regulation, request the CEO to provide information, which the local government has access to, relating to the local government. This section permits councillors to seek access to information from council officers, irrespective of whether the information relates to their own ward or division. However, a regulation can set limits on requests for information; for example, a maximum cost to the local government of providing information to a councillor.

It is important to note that a request has no effect if it does not comply with the council's acceptable request guidelines. Section 170A(6) requires that acceptable request guidelines are to be adopted by the resolution of the local government (i.e. not by the CEO).

Acceptable request guidelines establish the rules about how a councillor asks a local government employee for advice to assist the councillor carry out their responsibilities under the LGA09 and the reasonable limits on requests that a councillor may make. Local governments have broad discretion and a high level of autonomy in determining the content of their guidelines.

## **2.3 Role of the mayor**

The additional roles of the mayor are prescribed in section 12(4) of the LGA09.

In addition to chairing and presiding over council meetings (other than at Brisbane City Council, which is governed by the provisions of the *City of Brisbane Act 2010*), the mayor has some extra responsibilities under the LGA09. These include the responsibility of 'preparing a budget to present

to the local government' under section 12(4)(b).

Under section 107A of the LGA09, the mayor must provide a copy of the budget, as proposed to be presented to the local government, to each councillor at least two weeks before the local government is to consider adopting the budget. The local government must adopt a budget before 1 August in the year to which the budget relates.

Section 12(4) of the LGA09 also provides that the mayor is responsible for directing the CEO and other senior executive employees.

## **2.4 Role of the chief executive officer**

The CEO's role is defined in section 13(3) of the LGA09.

Section 194 of the LGA09 provides that each local government must appoint a qualified person as its CEO. A 'person is qualified to be the chief executive officer if the person has the ability, experience, knowledge and skills that the local government considers appropriate, having regard to the responsibilities of the chief executive officer'.

In essence, the CEO is the senior (i.e. general) manager of the council and is responsible for implementing the policies and decisions of the local government and managing the council's day-to-day business and operation.

The CEO appoints local government employees (other than senior executive employees) under section 196(3) of the LGA09.

Councillors have the right to be involved in the appointment of other senior council staff. In particular, section 196(4) provides that senior executive employees are to be appointed by a panel comprising the mayor, the CEO, and either the chairperson of a committee (if the senior employee reports to a single committee) or the deputy mayor (if the senior executive employee reports to more than one committee).

Section 196(6) clarifies that a senior executive employee is one who reports to the CEO and whose position ordinarily would be considered to be a senior position in the local government's corporate structure.

Section 197 provides for the CEO's power to take disciplinary action against a local government employee. Sections 278–283 of the LGR12 provide detail and clarity about the type of disciplinary action that may be taken against a local government employee.

The CEO may delegate powers to any other employee or contractor of the local government (section 259 of the LGA09).

There are, however, some powers which the CEO cannot delegate—such as the power to keep a register of interests. The local government may also delegate a power to the CEO and direct that the power not be further delegated by the CEO.

## **2.5 Role of other employees**

Section 196(1) of the LGA09 requires each local government to adopt an organisational structure that is appropriate to the performance of its responsibilities. The size, structure and number of positions within a council will vary depending on its size, revenue base and operational responsibilities.

The responsibilities of all local government employees are contained in section 13(1) and (2) of the LGA09.

## 2.6 Councillor entitlements

### Remuneration

The Local Government Remuneration and Discipline Tribunal (the tribunal) is established under chapter 6, part 3 of the LGA09. The tribunal is an independent body that makes an annual determination about the maximum amounts of remuneration payable to mayors, deputy mayors and councillors in each category of local government.

The tribunal must make its decision before 1 December about the level of remuneration payable from 1 July of the following year.

The tribunal reviews local government categories every four years to ensure the categories are relevant and up-to-date for each new local government term. It must complete its review before 1 December of the year before the year in which the next quadrennial election is to be held (sections 243–244, LGR12).

The LGA09 provides the tribunal with jurisdiction for local government remuneration matters for all Queensland local governments, except the Brisbane City Council. As a general rule, local governments must pay their councillors the maximum remuneration determined by the tribunal. However, a local government may decide, by resolution, to pay all its councillors a lesser amount.

Local governments cannot decide to pay more than the maximum set by the tribunal. Councils can also decide to pay councillors superannuation. Local governments can make a submission to the tribunal for a specific ruling on their council if they believe exceptional circumstances exist.

To obtain further information about the category to which a particular local government has been assigned, and the accompanying remuneration levels, visit the department's website at [www.dlgrma.qld.gov.au](http://www.dlgrma.qld.gov.au) and view the 'Remuneration and Discipline Tribunal' section; refer also to the LGR12, chapter 8, part 1.

The tribunal is also responsible for hearing and deciding the most serious complaints of misconduct by local government councillors. More information on the complaints management process is available in chapter 3.

### Reimbursement of expenses and provision of facilities (Sections 249–252, LGR12)

Councillors are eligible for a range of entitlements and remunerations associated with their role. However, councillors can only claim expenses and facilities that are expressly catered for in their council's Expenses Reimbursement Policy consistent with the local government principles (section 4(2) of the LGA09). As soon as possible after adopting an expenses reimbursement policy, a local government must publish the policy on the local government's website (section 251, LGR12).

Although each local government's policy will vary to some extent, reasonable expenses incurred by councillors for discharging their duties and responsibilities may include:

- travel allowances
- meal allowances
- accommodation allowances.

Claims for reimbursement in excess of actual expenses, or for expenses of a private or political nature, and unrelated to council business are not acceptable and may constitute fraud. Councillors have access to a range of resources to assist in carrying out official duties. This may include assets (office equipment or vehicle), facilities (an office space), services or consumables.

It is important to note that these resources are paid for or provided by the council and should not be misused. In some cases it is clearly evident that the resources are available for use by councillors (such as access to a photocopier) however in other cases express permission may need to be sought or provided (such as using a council vehicle).

Official resources must not be used for private purposes unless approved under specific circumstances and authorised under the Expenses Reimbursement Policy.

## 2.7 Local laws

Chapter 3, part 1 of the LGA09 deals with local laws.

The LGA09 specifically provides that a local government has a law making role. Section 28 provides the power for a local government to make and enforce a local law that is necessary or convenient for the good rule and local government of its local government area. It empowers local governments to make local laws that are suitable to their particular needs and resources, and that achieve the purpose and principles of local government.

The LGA09 establishes a number of types of local law:

- Local law—developed independently by a local government.
- Interim local law—effective for up to six months while making the permanent local law.
- Subordinate local law—developed to inform operational policy, similar to a regulation or an Act of Parliament.
- Model local law—incorporating a local law as approved by the Minister for Local Government under section 26(7).

### Local law making process

Section 29 clarifies that a local government has the power to decide its own process for making local laws, subject to certain provisions in the LGA09, including negotiating directly with the State for their state interest checks. Local laws must be drafted in accordance with guidelines issued by the Parliamentary Counsel under the *Legislative Standards Act 1992*, section 9, and may only be made for an area where the council has jurisdiction.

A local law cannot be inconsistent with a state or federal law. If there is any inconsistency between a local law and a law made by the state, the law made by the state prevails to the extent of the inconsistency. Any inconsistencies in a local law should be reviewed and amended or repealed by the local government.

Section 29 also clarifies that local laws are made by passing a resolution. While there is no statutory requirement for local governments to regularly review the provisions of their local laws as a matter of 'best practice' it is expected that local governments will regularly review, and if required

update, their local laws.

### **State interest check**

Section 29A of the LGA09 requires local governments to consult with relevant government entities about the overall state interest in the proposed local law before making the local law.

Section 29A clarifies that this section does not apply:

- to a subordinate local law
- to a local law that incorporates a model local law, or a part of a model local law
- to any amendment or repeal of an existing local law that would be inconsistent with the model local law.

### **Interim local laws**

Under section 26 an interim local law has effect for six months or less. The policy intent is for interim local laws to be implemented quickly, allowing either a quick regulatory response to an issue that might cause risk to health or safety or regulation of an issue while community engagement is undertaken to prevent potential transgressions against the proposed local law.

Section 29 provides certainty about the duration of an interim local law by requiring the interim local law to state when it expires and clarifies that public consultation is not mandatory before making an interim local law.

Nevertheless, a local government may choose to consult the community before it makes the interim local law.

### **Model local laws**

As discussed above sections 29 and 29A of the LGA09 set out the local law making process. In particular sections 29(6) and 29A(1) and (2) clarify the process that applies where a local government decides to make a local law based on a model local law or part of a model local law. In this circumstance, the local government may make the new local law by resolution, to the extent that the local law 'incorporates' the whole or part of the model local law.

The process for making the new local law is the same as for making any other local law. The local government has the flexibility to incorporate all or part of a model local law in the new local law, but a state-interest check/public consultation will be required on the part or parts of the new local law that are not model local law provisions, and/or any amendment/repeal of an existing local law that would be inconsistent with the model local law.

Section 29(6)(b) clarifies that public consultation is not mandatory before making a local law to the extent it incorporates a model local law and does not contain an anti-competitive provision (see section 38 of the LGA09).

Section 29 also clarifies that if a local government proposes to make a local law about a matter, and there is an existing local law about the matter that would be inconsistent with the new local law, the local government must amend or repeal that existing local law. The amendment or repeal may be in the same instrument as the new local law. A state interest check will not be required on the amending/repealing provisions.

### **Development processes**

Section 37 of the LGA09 provides that a local government must not make a local law that establishes an alternative development process.

It also provides that if a local law already contains a provision that establishes an alternative development process, a local government may amend or repeal the provision at any time. In any

implementation of this provision, a local government will need to ensure that relevant local laws comply with existing requirements under the legislation on the need for consistency with any law made by the state (refer section 27).

Section 37 does not apply to local laws about advertising devices, gates and grids, levees and roadside dining, if these matters are not already dealt with in a planning scheme, the *Planning Act 2016* or another instrument under that Act which provides that the jurisdiction of local laws is complementary to, and does not replicate, the controls and management that already exist under Queensland legislation.

### **Ministerial power**

Although ministerial approval is not part of the local law-making process, section 38AB provides the Minister responsible for Local Government with the power to suspend or revoke particular local laws if the minister reasonably believes a local law:

- is contrary to any other law
- is inconsistent with the local government principles
- does not satisfactorily deal with the overall state interest.

### **Community awareness of local laws**

#### **Publication of local laws**

Section 29B of the LGA09 stipulates that a local government must let the public know that a local law has been made by publishing a notice in the gazette and on the council website.

The gazette notice must state the:

- name of the local government
- date when the local government made the resolution to make the local law
- name of the local law
- name of any existing local law that was amended or repealed by the new local law.

The local government must give the minister a copy of the gazette notice and the local law in electronic form within 14 days of its publication.

### **Local law register**

Section 31 of the LGA09 requires each local government to keep a register of its local laws which must be able to be inspected by the public at the council's public office.

In addition, the department must keep a database of all Queensland local governments' local laws and ensure that a copy is publicly accessible on the department's website.

Maintenance of a central repository of local laws facilitates transparency, scrutiny and ease of access to local laws and is in line with 'leading practice' as identified by the Productivity Commission in its July 2012 study into local government regulation.

### 3. Ethical behaviour and decision making

As discussed in chapters 1 and 2, councillors are bound at all times by the provisions of the LGA09 which sets out the following local government principles (see section 4(2) of the LGA09):

- 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 purposes and principles of local government, responsibilities and powers of councillors (section 12 of the LGA09), and any other obligations under the LGA09.

#### 3.1 Primacy of the public interest

The fundamental role of councillors is to serve and represent the interests of their community (i.e. local government area) as a whole, rather than those of any particular section or interest group.

Council decisions are taken by the majority vote of elected members i.e. at full council and committee meetings. The collective will and decision-making of the council is paramount and individual councillors' views and responsibilities are secondary to the majority view of council.

In particular, councils need to be mindful of serving and representing the overall public interest when making decisions for the benefit of their communities. In the event of a conflict between the public and private interests of a councillor and/or their associates or 'related persons', the overall public interest must prevail.

Local Government Association of Queensland's independent Local Government Ethics Advisor is available to all elected mayors and councillors (and CEOs) to provide confidential advice on ethical dilemmas that may arise in the course of their decision-making roles in local government.

Councillors have a particular responsibility to ensure they maintain accurate registers of interest and take specific safeguards and actions where questions of conflict of interest or material personal interests arise in council deliberations or decision making processes.

#### 3.2 Register of interests

The Local Government Regulation 2012 (LGR12) requires the CEO to maintain a register of the financial and nonfinancial interests of each councillor and person related to each councillor (Chapter 8, part 5, sections 289—297).

The approach is based on that used by the Queensland Parliament. These registers are kept to enhance the transparency of council's decision making—so that councillors, CEOs and the community can have confidence that decisions are being made in the overall public interest and are not made for the benefit of councillors or any related persons.

A person is related to the councillor if they are:

- the spouse of the councillor
- someone who is totally or substantially dependent on the councillor including:
  - the councillor's children

- someone whose affairs are so closely connected with the affairs of the councillor that a benefit derived by that person, or a substantial part of it, could pass to the councillor (e.g. a councillor's parent or a ward of the councillor).

The mayor must maintain a register of interests of the CEO and any person related to the CEO (as defined above).

### Lodgement

Each councillor is required to complete the prescribed form for themselves and for each related person and lodge their register of interests with the CEO within 30 days of the commencement of the councillor's term of office.

A councillor's term of office commences if:

- elected—the day after the conclusion of the council's election
- appointed—the day on which the councillor is appointed.

### Updates or changes

It is the responsibility of councillors to ensure that their register of interests—as well as the registers of their related persons—is correct and up-to-date. Should a councillor become aware that their register of interests, or the register of interests of a related person, no longer contains the correct particulars, they need to ensure that the register is updated within 30 days after they become aware of the correct particulars. This includes removing interests which are no longer relevant.

### Penalties

Failure to update a register of interests can give rise to an offence, with associated penalties to a maximum of 85 penalty units, or 100 penalty units, if a councillor fails to complete or update their register of interest intentionally.. It is an integrity offence and if charged and convicted the councillor is disqualified from holding office as a councillor for four years from the date of conviction.

### Access to and inspection of registers

See sections 293 and 294, LGR12.

Councillors' registers of interest are open to inspection by any member of the public. The local government must ensure that a copy of the register of interests of councillors may be inspected by the public:

- at the local government's public office
- on its website.

Registers of the interests of related persons, CEOs and senior council employees are not open to inspection except by councillors, the CEO and other persons permitted by some specific law to have access to the information in the register. Although a register of interests of related persons does not need to be published, a member of the public may request access to the register of related persons, the CEO and senior employees via section 294 of the LGR12.

### Prescribed forms

The prescribed register of interests forms, approved by the Director-General of the department are available on the department's website at [www.dilgp.qld.gov.au](http://www.dilgp.qld.gov.au):

- *Local Government Act 2009*: form 2—Register of interests of a councillor or related person to a councillor.
- *City of Brisbane Act 2010* (for Brisbane City councillors only): form 3—Register of interests of a councillor or related person to a councillor.

These forms include guidance notes to assist in their completion.

### 3.3 Material personal interest

A councillor is required to disclose personal interests which may influence their voting at council and committee meetings (see section 175A of the LGA09). This includes interests that may result in a benefit or suffer a loss to the councillor (directly or indirectly) or any related person including a spouse, a parent, child or sibling, a person in partnership with the councillor, an employer of the councillor, an entity of which the councillor is a member and any entity prescribed by regulation and (see section 175B of the LGA09),

Section 175C of the LGA09 sets out what action a councillor dealing with a material personal interest (MPI) must take. If the matter being considered is an ordinary business matter of the council as defined in Schedule 4 (dictionary) of the LGA09 (e.g. the making or levying of rates and charges by the local government, or a resolution required for the adoption of a budget for the council), the councillors involved do not have a material interest and section 175C does not apply.

A MPI is defined in section 175C. It is important to note that an interest involving a loss must be identified just as much as an interest involving a benefit. However section 175B(2), LGA09, provides that a councillor does not have a material personal interest if the councillor's interest in a matter, or another person or entity mentioned in section 175B(1),LGA09, stands to gain a benefit or suffer a loss that is no greater than that of other persons in the local government area. This permits a councillor to continue to represent their community, especially in matters which affect a significant number of electors or ratepayers

A similar exemption applies to Queensland Members of Parliament in relation to proceedings in the Parliament and to ministers during Cabinet discussion of matters of general public policy or where the minister has no greater interest than that of other classes of people in the community or within the Cabinet generally.<sup>1</sup>

..

Each councillor will need to assess whether he or she has a MPI and, if so, how it compares to the interests of other persons in the local government area. As always, councillors must remain mindful of the importance of adhering to the local government principles as outlined in section 4(2) of the LGA09.

Section 175B(3)acknowledges that a councillor may not be aware of all the interests of his or her immediate family (i.e.parents,children and siblings). It provides that subsection 1(c ) applies to a councillor only if the councillor knows, or ought reasonably to know, that their parent, child or sibling stands to gain a benefit or suffer a loss related to the matter before council.

#### Disclosing a material personal interest

In the past the management of councillor's MPI has been problematic with local governments adopting a variety of procedures that have led to problems and confusion with the conflict of interest COI procedures. In order to clarify the required procedures under the LGA09 the following meeting procedure is to be followed.

In the event that a councillor has a MPI or a perceived MPI in a matter to be discussed at a council meeting or a committee meeting, it is the responsibility of the councillor to disclose the

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<sup>1</sup> Queensland Ministerial Code of Ethics

situation as prescribed in section 175C(2) of the LGA09. When dealing with a MPI councillors must abide by particular procedures.

A councillor must inform the meeting of the local government of their MPI and set out the nature of the interest, including:

- the name of the person or other entity who stands to gain a benefit, or suffer a loss depending on the outcome of the consideration of the matter at the meeting
- how a person or other entity stands to gain the benefit or suffer the loss
- if the person or other entity who stands to gain the benefit or suffer the loss is not the councillor, the nature of the councillor's relationship to the person or entity.

Following the making of a MPI declaration, the councillor must leave the place of the meeting including any public gallery or other area set aside for the public, and stay away while the matter is being discussed and voted on by the other councillors.

After a councillor with the MPI has left the place where the meeting is being held, the local government can then continue discussing and deciding on the matter at hand. The chairperson is responsible for ensuring that the minutes contain the councillor's declaration in addition to the following information:

- the name of the councillor who has an MPI in the matter
- the MPI including the particulars mentioned by the councillor regarding the MPI
- whether the councillor participated in the meeting, or was present during the meeting under an approval granted by the Minister of Local Government.

When a councillor discloses the MPI it must be recorded in the meeting minutes and published on the local government's website as required by the LGA09.

If the majority of councillors in a meeting declare that they have a MPI in a matter, the council must **delegate** deciding the matter unless it cannot be delegated. Councillors may remain in the meeting while the matter is being discussed and voted on, if their presence is for the purpose of **delegating deciding of the matter**, or they have **ministerial approval** to remain and are complying with the conditions of that approval.

The Minister may give, by signed notice, an approval for a councillor subject to a MPI to participate in a meeting because of the number of councillors who are subject to the MPI, or the majority of councillors are subject to MPI, or deciding the matter cannot be delegated because an Act states the decision must be exercised by resolution. This is an unusual situation and would not occur on a regular basis.

Failure to disclose a MPI or leave the meeting is an offence carrying significant penalties. If a councillor votes on the matter with the intent to gain a benefit or avoid a loss for themselves or another person or entity, they are engaging in conduct that has a serious consequence. If a councillor votes inadvertently on a matter without the intent to gain a benefit or avoid a loss, then the conduct has lesser consequences namely:

- if the offence was committed with an intent to benefit, or avoid a loss, for the councillor or someone else—the maximum penalty is 200 penalty units or two years imprisonment
- otherwise—the maximum penalty is 85 penalty units.

Failure to declare and deal with a MPI, and leave the meeting place, is **corrupt conduct** and is

referred to the CCC to be dealt with. If convicted of an integrity offence a person is disqualified as a councillor for four years. A person is automatically suspended as a councillor when the person is charged with this offence.

A councillor must not influence or attempt to influence other councillors prior to the meeting, at premeeting briefings, or during the meeting, to vote on a matter in a particular way if they have an MPI. They must not influence or attempt to influence a council employee or a contractor of the council who is authorized to decide or deal with the matter, to do so in a particular way. Any attempt to do this is **corrupt conduct** and is referred to the CCC to be dealt with. If charged it attracts a maximum of 200 penalty units or 2 years in prison and disqualification from being a councillor for four years as prescribed in section 175I of the LGA09. A person is automatically suspended as a councillor when the person is charged with this offence.

Any councillor at a meeting who believes or suspects on reasonable grounds that another councillor at the meeting has not informed the meeting of their personal interest, must report to the chairperson their belief that a MPI exists as prescribed in section 175G of the LGA09.

A councillor who takes any retaliatory action against another councillor for complying with their obligation to report another councillor's MPI at a meeting may be guilty of an offence which carries a maximum penalty of 167 penalty units or two years imprisonment and disqualification from being a councillor for four years as prescribed in section 175H, LGA09. A person is automatically suspended as a councillor when the person is charged with this offence.

### 3.4 Conflict of interest

A (COI) is a conflict between a councillor's personal interests and the public interest that might lead to a decision in a council meeting that is contrary to the public interest. Section 175E of the LGA09 provides that the councillor can have a real COI or a perceived COI and that it must be declared at the council or committee meeting.

A councillor does not have a COI merely because of:

- an engagement with a community group, sporting club, or similar organisation as a councillor
  - Membership of a political party
  - Membership of a community group, sporting club, or similar organisation if the councillor is not an office bearer
  - The councillor's religious beliefs
  - The councillor being a past student of a school or involved with a school as a parent
- a councillor does not have a COI if the councillor has no greater personal interest in the matter than that of other persons in the local government area
- a councillor does not have a COI if the councillor has been nominated by the local government to represent the council on a board of a corporation or other association merely because of the nomination or appointment as a member
- a councillor does not have a COI if the matter to be discussed at the council meeting or committee meeting is an 'ordinary business matter' such as setting rates and charges or adopting the budget, as prescribed in section 175E LGA09

A councillor has a COI if:

- a matter is to be discussed at a council or committee meeting and
- the matter is not an 'ordinary business matter'
- there is a real or perceived COI.

## Declaring a conflict of interest

A councillor with a real or perceived COI must deal with the conflict in a transparent and accountable way and must inform the council of his or her personal interest.

The councillor must inform the meeting about the COI and provide the following particulars:

- the nature of the interest
- if the COI arises because of a relationship or receipt of a gift required to be recorded in a register of interests, from another person, then:
  - the name of the person
  - the nature of the relationship
  - the value and date of the receipt of gift
  - the nature of the other person's interest in the matter.

Failure by the councillor to declare the COI and the above details is corrupt conduct that is referred to the CCC to be dealt with and if charged attracts 100 penalty units or one year imprisonment and disqualification from being a councillor for four years. A person is automatically suspended as a councillor when the person is charged with this offence.

A councillor must not influence or attempt to influence other councillors prior to the meeting, at premeeting briefings or during the meeting to vote on a matter in a particular way if they have an COI. They must not influence or attempt to influence a council employee or a contractor of the council who is authorized to decide or deal with the matter, to do so in a particular way. Any attempt to do this is corrupt conduct and is referred to the CCC to be dealt with. If charged it attracts a maximum of 200 penalty units or 2 years in prison and disqualification from being a councillor for four years. A person is automatically suspended as a councillor when the person is charged with this offence

Should a councillor consider they have a perceived conflict of interest in a matter before council but they, or people close to them, derive no personal benefit from the matter, and they are able to deal with the matter in the public interest, the councillor must inform the meeting of his personal interest.

If the other councillors who are entitled to vote on a matter, are informed by the councillor, or someone else, about the COI, and the councillor has not informed the meeting and voluntarily left the meeting and stayed away during the discussion and vote, then the other councillors must decide, whether the councillor has a real or perceived COI in the matter. If they decide that the councillor has a real COI or perceived COI, then they must decide whether the councillor must leave the meeting, or may stay and participate, including voting on the matter. They must make their decision by resolution.

The councillor with the COI must comply with the decision of the other councillors to leave the meeting and stay away from the place including any public gallery area. Failure to comply is corrupt conduct and is referred to the CCC to deal with. If charged the offence attracts 100 penalty units or 1 year in prison and disqualification from being a councillor for four years. A person is automatically suspended as a councillor when the person is charged with this offence

If the majority of councillors have a COI in a matter at a meeting they must inform the meeting about the COI. The local government must delegate deciding of the matter in this instance unless deciding the matter cannot be delegated under the LGA09 because an Act says that the matter must be determined by resolution. Councillors may remain in the meeting while the matter is being discussed and voted on for the purpose of delegating the deciding of the matter, or they must have ministerial approval to remain and are complying with the conditions of that approval.

The Minister may, by signed notice, approve the councillor participating with a COI, subject to conditions stated in the notice, Section 175F, LGA09, if the matter could not otherwise be decided at the meeting because of;

- the number of councillors subject to the obligation to leave the meeting and stay away, or
- the majority of councillors inform the meeting of a personal interest in a matter (see section 175E(6)(b), LGA09) and are subject to the obligation to leave the meeting and stay away, and
- the matter cannot be delegated because an Act states that it must be exercised by resolution (see section 257 of the LGA09).

### Managing a conflict of interest

Councillors who have a real or perceived COI in a matter must manage the conflict in the public interest and in a way that maintains the integrity of council decision making.

Having declared the personal interest at a council meeting and provided the details of the COI to the meeting a councillor must decide the most appropriate action to take, bearing in mind the level and type of interest they have in the matter and their capacity for placing the public interest ahead of their own.

Failure to declare or appropriately deal with a conflict of interest in a transparent and accountable way is corrupt conduct and will be referred to the CCC to be dealt with. If convicted the offence carries a maximum penalty of 100 penalty units or one year imprisonment and disqualification from being a councillor for four years. A person is automatically suspended as a councillor when the person is charged with this offence.

All councillors are bound by the local government principles; not disclosing another councillor's known COI could breach these principles, in particular, the need for ethical and legal behaviour.

If a matter is to be discussed at a meeting, and it is not an 'ordinary business matter', and a councillor at the meeting reasonably believes or suspects that another councillor has a MPI, a COI or a perceived MPI or COI, and the other councillor has not informed the meeting about the personal interest, the councillor who believes one exists must raise the issue with the chairperson at the meeting as soon as practicable. The councillor must state the suspicion, or belief, and the facts and circumstances that form the basis of this. Failure to raise the matter when a councillor knows or suspects that another councillor has a MPI or COI is misconduct and could result in disciplinary action being taken against the councillor.

A person must not take retaliatory action because a councillor who complied with raising the personal interest of another councillor, with the chairperson of a meeting. The person must not:

- prejudice, or threaten to prejudice the safety or career of the councillor or another person
- intimidate or harass the councillor or another person
- threaten to intimidate or harass the councillor or another person
- take any action that is likely to be detrimental to the councillor or another person.

Retaliatory action is **corrupt conduct** and is referred to the CCC. If charged the offence attracts a maximum penalty of 167 penalty units or 2 years in prison and disqualification from being a councillor for four years.

## 3.5 Use of information by councillors

Section 171 of the LGA09 provides that a person who is, or has been, a councillor must not make use of information acquired as a councillor to:

- gain, directly or indirectly, a financial advantage for him or her or someone else
- cause detriment to the local government.

It is an offence for a person to use such information for a financial benefit unless the information is lawfully available to the public (e.g. to decide to purchase an asset at an advantageous price, based on information gained as a councillor when that information is not generally available in the public arena). A councillor convicted of this offence is liable to a maximum penalty of a fine of 100 penalty units or two years imprisonment and is disqualified from being a councillor for four years.

Section 171(3) of the LGA09 further provides that a councillor must not release information that the councillor knows, or should reasonably know, is information that is confidential to a local government. A breach of this provision represents misconduct, which must be referred to the tribunal.

Section 171A clarifies that a person who is, or was, a councillor (the insider) is prohibited from using inside information in such a way as to cause the sale or purchase of an asset by the insider or another person. Inside information is information acquired by a person while they are or were a councillor and that the insider (councillor or ex-councillor) knows, or should reasonably know, is not generally available to the public. This provision is similar to the insider trading provisions in the Corporations Act 2001 (Cwth).

Gaining a financial advantage or harming the local government through use of information that was acquired as a councillor constitutes an offence under section 171(1). The offence under section 171A differs. Under this provision it is an offence to:

- use inside information that would be likely to influence a reasonable person to decide whether or not to purchase or sell an asset
- provide, or cause inside information to be provided, to someone the insider knows, or should reasonably know, may use the information to decide whether or not to buy or sell an asset

Councillors are in a position of trust and are likely to have significant access to confidential information in circumstances that may not be limited to council and committee meetings. A councillor convicted of an offence under section 171A faces a maximum penalty of a fine of 1,000 penalty units or two years imprisonment and disqualification from being a councillor for four years.

As evidenced in a number of investigations by the former CMC, the mishandling of confidential information can lead to damaged reputations, jeopardised plans and a loss of public trust. Local governments therefore need to ensure that throughout their organisation there is a common understanding of such risks and how best to manage them. These risks can be minimised by establishing and implementing a clear policy about handling confidential information.

Such a policy should identify the types of information that councils wish to keep confidential and the procedures for managing such information. This will help individuals understand both the personal and the organisational responsibilities involved.

### Right to information

Right to information is the Queensland Government's approach to giving the community greater access to information.

The *Right to Information Act 2009* applies to local governments. It permits members of the public to make application under that Act for access to documents which are not open to inspection under the provisions of the regulation.

Each council should have established practices for dealing with right to information applications. For further information, visit the Right to Information website at [www.rti.qld.gov.au](http://www.rti.qld.gov.au).

### Information privacy

The *Information Privacy Act 2009* recognises the importance of protecting the personal information of individuals. The Act took effect on 1 July 2009 and Queensland local governments have been subject to information privacy laws since 1 July 2010. The Act concerns personal information only.

For further information, please refer to 'Councillors, the *Local Government Act 2009*, and the privacy principles' publication available on the Office of Information Commissioner's website at [www.oic.qld.gov.au](http://www.oic.qld.gov.au).

## 3.6 Councillor conduct

The LGA09 provides processes for dealing with councillor conduct that is not in accordance with the principles and obligations prescribed by the LGA09. Specifically, the LGA09 has provisions to ensure that appropriate standards of conduct and performance are maintained and that a councillor who engages in misconduct, inappropriate conduct or corrupt conduct is disciplined.

The behavioural expectations placed on councillors are complemented by a system which addresses complaints according to the seriousness of the alleged conduct (as outlined below). Councils are responsible for managing low level matters (inappropriate conduct) and for putting systems in place to educate and support councillors in order to prevent poor conduct or poor performance. More serious matters (misconduct) are dealt with by a regional conduct review panel (chapter 6, part 4 of the LGA09) or the tribunal (chapter 6, part 3 of the LGA09), while corrupt conduct is dealt with by the CCC under the *Crime and Corruption Act 2001*.

This division of the LGA09 also applies to a complaint made about the conduct of a person who is no longer a councillor, if that person was a councillor at the time of the alleged conduct and if the complaint is made within two years after the person stopped being a councillor. Nevertheless, section 176A provides a discretion to either deal with the complaint or to decide to take no further action if that decision is considered (on a range of factors) to be in the public interest.

### Inappropriate conduct

Inappropriate conduct (section 176(4) of the LGA09) is behaviour by a councillor that is not appropriate for an elected representative of a local government, but is not misconduct. Examples of inappropriate conduct (poor behaviour) include:

- failing to comply with council procedures and policies
- behaving in an offensive or disorderly manner.

Inappropriate behaviour is dealt with by the mayor or by the chairperson of the council or committee meeting in which the inappropriate behaviour occurs. If a complaint of alleged inappropriate conduct is made against the mayor or deputy mayor, or by the mayor, the matter is referred to the chief executive of the department.

### Misconduct

Misconduct (section 176(3) of the LGA09) is conduct or behaviour of a councillor that:

- could, or does, adversely affect the honest and impartial performance of the councillor's responsibilities or exercise of powers
- is, or involves:
  - a breach of trust placed in the councillor
  - misuse of information or material acquired by the councillor
  - failure by the councillor to leave a council or committee meeting when directed
  - refusal by the councillor to comply with a regional conduct review panel or tribunal direction or order
- is a repeat of inappropriate conduct referred by a mayor or the department's chief executive to a regional conduct review panel
- involves release of confidential information or conflict of interest in breach of section 171(3) or 173(4).

How allegations of misconduct are dealt with depends on who made the complaint and who assessed the complaint (sections 176B and 176C). If the preliminary assessment of misconduct was undertaken by a council's CEO, the complaint is referred to the department. If the department's chief executive undertook the preliminary assessment, the complaint is referred to a regional conduct review panel or the tribunal.

### **Corrupt conduct**

Corrupt conduct is defined by, and dealt with, under the CCA01. Corrupt conduct includes conduct that, if proved, could amount to a criminal offence (as defined under sections 14–19 of that Act). This includes conduct connected with the performance of a councillor's official duties that is dishonest or lacks impartiality, involves a breach of the trust placed in the councillor by virtue of their position including the following integrity offences:

- use of officially obtained information
- prohibited conduct by a councillor in possession of inside information
- failure by a councillor to declare an MPI or COI and deal with the matter in an appropriate and transparent way
- attempting to influence others
- an intentional failure to correct and update a register of interests by a councillor
- retaliatory action by a councillor
- providing false or misleading information.

If the preliminary assessment is that the complaint is about corrupt conduct under the CCA01, the complaint assessor (i.e. the council CEO or the department's chief executive) must deal with the complaint in accordance with that Act.

Section 38 of the CCA01 requires a CEO to report anything they suspect may be corrupt conduct to the CCC. This requirement overrides any other obligation, such as confidentiality.

## **3.7 Process for dealing with complaints about councillor conduct**

### **Assessing complaints**

Section 176B of the LGA09 provides for a preliminary assessment of complaints about the conduct or performance of a councillor by either the department's chief executive or the council's CEO, depending upon the nature and source of the complaint. This assessment is to decide whether the complaint is:

- about a frivolous matter or was vexatious
- about inappropriate conduct, misconduct, official misconduct or another matter
- lacking in substance.

The CEO of the relevant council undertakes the preliminary assessment unless the complaint is made by the mayor or the CEO, in which case it is referred to the department for preliminary assessment.

The preliminary assessment is the first step in dealing with complaints and what happens next depends of the outcome of that assessment, the complaint assessor and who made the complaint (section 176C). For example:

- if the complaint is deemed frivolous, vexatious, or lacking in substance, the complaint assessor may decide to take no further action
- if the complaint is assessed as inappropriate conduct, disciplinary action is taken under section 181:
  - by the mayor, in the case of a councillor (not the mayor or deputy mayor); or
  - by the department's chief executive, in the case of a complaint by a mayor or against a mayor or deputy mayor
- if the complaint is assessed as being about misconduct
  - the council CEO refers the complaint to the department for action under section 177; or
  - the department's chief executive refers the complaint to a regional conduct review panel or the tribunal
- if the preliminary assessment is one of corrupt conduct, the complaint assessor (whoever that is) must deal with the complaint in accordance with the CCA01
- if the complaint is about another matter, the complaint assessor must deal with it in an appropriate way

Under section 177 the department's chief executive may make a different finding about a complaint referred to him/her by a CEO after preliminary assessment and can take action as appropriate such as:

- dismiss the complaint on the basis that it is frivolous, vexatious, misconceived, lacking substance, or otherwise an abuse of process
- refer a complaint that he/she decides is about misconduct to a regional conduct review panel or the tribunal
- take disciplinary action under section 181 in relation to a complaint that he/she decides is inappropriate conduct.

The complaint assessor must give both the complainant and the accused councillor a written notice that states how the complaint has been assessed (i.e. what type of complaint) and what action (if any) is proposed. If the complaint is deemed to be about a frivolous matter, made vexatiously or lacking in substance, the written notice must also state that it is an offence under section 176C(8) to make a complaint that is essentially the same as a complaint that a person has previously made.

## **Disciplinary action**

### **Inappropriate conduct**

Under section 181(2), the mayor or the department's chief executive may reprimand the councillor and/or order that any repeat of the conduct be referred to a regional conduct review panel as misconduct. Further, the chairperson of a council or committee meeting in which inappropriate behaviour occurs is empowered to order that the councillor's conduct be noted in the minutes or that the councillor leave the meeting and, if he or she refuses to do so, to order that they be removed from the place.

If a mayor or the department's chief executive makes three orders in relation to inappropriate conduct for the same councillor within one year they must, under section 181, refer the repeated inappropriate conduct to a regional conduct review panel or the tribunal where it must be treated as

a complaint about misconduct.

### **Misconduct**

Under section 180 of the LGA09, a regional conduct review panel or the tribunal may do one or more of the following:

- order that the councillor
  - be counselled
  - admit error or apologise
  - enter into mediation
  - reimburse the local government
  - pay the local government an amount not more than 50 penalty units.
- recommend that the department's chief executive monitor the councillor or the local government for compliance with the local government Acts
- recommend that the CCC or police further investigate the councillor's conduct.

If a regional conduct review panel considers that more serious disciplinary action is necessary it must refer the matter to the tribunal which, in addition to the above, may:

- order that the councillor forfeit an allowance, benefit, payment or privilege
- recommend that the minister suspend or dismiss the councillor

### **Automatic Suspension of Councillors on disqualifying charges**

The LGA09 Chapter 6 Sections 182A – 182E provides that a person is automatically suspended as a councillor when the person is charged with a disqualifying offence.

When a councillor is charged with a disqualifying offence or a proceeding for a disqualifying offence has been started at the time when the councillor is elected then councillors are disqualified from holding office as a councillor for certain offences prescribed under Section 153 of the LGA09. If a councillor is aware that they are not qualified to hold office under these provisions then the councillor must immediately give a notice stating why the councillor is not qualified to be a councillor and the date the councillor became disqualified, to:

- The Minister
- The Mayor of the local government
- The CEO of the local government.

Councillors who are elected while a proceeding for a disqualifying offence against the person has been started but not ended, are automatically suspended when their term as councillor begins.

A proceeding for a disqualifying offence is started against the person when the person is charged with the offence. A person is charged with a disqualifying offence when:

- a police officer arrests and charges the person
- the person is served with a notice to appear for the offence
- the person is served with a complaint under the *Justices Act 1886*
- a charge is made without a complaint under the *Justices Act 1886*
- an ex officio indictment is presented to the Supreme or District Courts.

The councillor must not act as a councillor during the suspension period. If the councillor is a deputy mayor or mayor the councillor is also suspended from these roles. The councillor is entitled to be paid remuneration as a councillor at their base rate (does not include any amount payable for performing particular responsibilities, including attending a meeting).

The suspension under section 182A, of the LGA09 ends when the earliest of the following happens:

- if the councillor is convicted of the offence and appeals the conviction and it is set aside or quashed on appeal
- if a councillor is convicted of the offence and does not appeal and the time limit for appeal has passed
- the proceeding for the offence ends
- the councillor's term ends
- the councillor's office becomes vacant under section 162, LGA09 because of
  - dismissal of the councillor
  - the councillor is found ineligible on Judicial Review
  - the councillor does not take the oath of office
  - the councillor is absent from 2 or more consecutive council meetings without leave
  - the councillor resigns, dies, or becomes a local government employee.

The Minister may ask the Police Commissioner for a written report about the criminal history of the councillor after receiving a notice from a councillor or if the minister suspects a councillor has been charged. The report includes a spent conviction and every charge made against a councillor for an offence in Queensland and elsewhere.

### **Action by the Minister**

The provisions of the legislation under section 122 and 123, LGA09 apply when there are circumstances that require ministerial action. These are in response to recommendations by the tribunal or when the minister reasonably believes that a councillor or local government has seriously or continuously breached the local government principles, is incapable of performing their responsibilities or otherwise believes it is in the public interest to take action. The Minister may recommend that the Governor in Council does one of the following in relation to a recommendation about a councillor:

- suspend or dismiss a councillor; or
- suspend a councillor for a period that is no longer than the stated period; or
- if the proposal was to dismiss the councillor or dissolve the local government—suspend or dismiss the councillor.

the Minister may recommend that the Governor in Council does one of the following with respect to a local government:

- suspend every councillor for a period that is no longer than the stated period; and
- appoint an interim administrator to act in place of the councillors until the stated period ends, or
- dissolve the local government; and
- appoint an interim administrator to act in place of the councillors until the conclusion of a fresh election of councillors.

### **Records about complaints**

Section 181A provides that the CEO must keep a record of all written complaints and the outcome

of each complaint, including any disciplinary or other action. The CEO must also ensure that the public may inspect that part of the record relating to the outcomes of written complaints at the local government's public office or on its website. This does not apply to complaints that were frivolous, vexatious, lacking in substance or that are a public interest disclosure under the *Public Disclosure Interest Act 2010*.

## 3.8 Council meetings

As elected representatives, councillors are required to attend council meetings. It is in meetings that councillors participate in discussion and debate on a wide variety of issues to make decisions representing the overall public interest of the local government's area.

Council meetings are the most visible activity of the work of local governments.

Councillors have an equal voice in council decisions and are required to attend meetings regularly and vote on matters before council.

Agendas, minutes and the actual decisions of councils are arguably the most important records of local governments. Well prepared agendas, orderly meetings and minutes that accurately reflect the proceedings of councils lead to an effective, efficient and accountable system of local government and ensure that the:

- council has acted within its authority under the LGA09
- council's decision-making process is properly documented, transparent and accountable.

The conduct of open, public and fair local government meetings is also important in helping comply with the local government principles under section 4(2) of the LGA09.

### Ordinary council meetings

#### Frequency and place of meetings

Section 257 of the LGR12 stipulates that all local governments must meet at least once in each month.

Council meetings are, as a rule, held in one of the public offices of the council. It is acceptable to conduct a meeting in a place other than a public office. To do this the council must pass a resolution to hold a particular meeting in another, specified meeting place under section 257(3) of the LGR12.

A local government may allow a councillor to take part in a meeting by teleconferencing. Where the local government has approved the teleconferencing arrangement, the councillor must be able to hear and be heard by each other person at the same time throughout the meeting (see section 276 of the LGR12 on teleconferencing).

#### Preparing for meetings

Under section 258 of the LGR12, written notice of each meeting or adjourned meeting of a local government must be provided to each councillor at least two days before the day of the meeting unless it is impracticable to do so. The written notice may be given by sending it electronically to a councillor.

Councillors of Indigenous regional councils, however, must receive written notice at least four clear days before the meeting unless it is impracticable to do so.

It is important that councillors allow adequate time to read all the agenda, reports and other

business papers for the meeting and identify:

- what the key matters on the agenda are for them
- if more information is needed to help inform their view, and contact the CEO or mayor for assistance before the meeting if required
- agenda items where questions of material personal interest or conflict of interest require action and remind themselves of their obligations.

Setting aside sufficient time to prepare for the meeting, obtaining additional information (where required) and consulting with stakeholders within the community are essential. It is recommended that for ordinary council meetings, councillors allocate specific preparation time in their diaries once meeting dates have been set.

Meetings are open to the public, except when council resolves that matters are inappropriate to be considered in a public meeting (see section 275 of the LGR12 on 'closed meetings'). The local government must let the community know when council meetings are to be held by displaying a notice of the meeting dates and times in its public office. Further, at least once a year, the council must publish a schedule of the dates and times of the ordinary meetings of council and its standing committee in a widely distributed newspaper and on the council website (see section 277, LGR12).

A meeting cannot proceed unless the local government has a quorum. A quorum of a government is a majority of its councillors. However, if the number of councillors is an even number, one half of the number is the quorum (see section 269, LGR12).

## **Amendment of the *Local Government Electoral Act 2011***

**Amendments to the *Electoral Act 1992* and the *Local Government Electoral Act 2011* have been passed in the House of Representatives but have not commenced as at 21 May 2018, the date on which the amendments to the *Local Government Act 2009* in relation to MPI and COI and immediate suspension of councillors charged with disqualifying offences, has commenced.**

The purposes of the LGEA2011 are to:

- ensure transparent conduct of elections of councillors
- ensure and reinforce integrity in Queensland's local governments by minimising the risk of corruption to the election of councillors and good governance of and by the local government.

## **Political donations from property developers**

The provisions of the legislation to be commenced on a date to be fixed, will have an impact on who a councillor can accept political donations from. Any donations received for political purposes such as election campaigns from a person who is a property developer or a representative of a property developer are prohibited donations under section 113(1)(a)(i) or (ii), LGEA2011. Property developers, or industry representative organisations whose majority of members are property developers, are prohibited donors under this legislation.

The following persons are identified as a property developer by the legislation:

- persons who a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the organisation;

- in connection with residential or commercial development of land
- with the ultimate purpose of the sale or lease of the land for profit

•a close associate of the corporation mentioned above includes the following;

- a related body corporate of the corporation
- a director or other officer of the corporation
- a person with more than 20% of the voting power in the corporation or body corporate,
- a spouse of the above person
- if the corporation is a stapled entity in relation to a stapled security, the other stapled entity in relation to the stapled security,
- if the corporation is a trustee, manager or responsible entity in relation to a unit trust, a person who holds more than 20% of the units in the trust
- if the corporation is a trustee, manager or responsible entity in relation to a discretionary trust, a beneficiary of the trust.

## Political Donation

Under the legislation a political donation includes a gift made to or for the benefit of a political party, a councillor or a group of candidates in an election.

In addition, any gift made to another entity to enable the entity to make a political donation or incur electoral expenditure, or reimburse the entity for the same, is a political donation. Any loan from an entity, other than a financial institution, that was a gift is a political donation and any amount over \$1,000 paid in one year to a political party, is a political donation.

If a gift is made by a person in a private capacity to an individual for their personal use and not an electoral purpose, then the gift is not a political donation. However, if any part of that gift is used for an electoral purpose then that part is a political donation. Using a gift for an electoral purpose is using the gift to incur electoral expenditure or for duties as a councillor of a local government.

A gift also includes an amount paid for attendance or participation in a fundraising activity, or an amount of interest that would have been payable on a loan if the loan terms require payment of interest at the prevailing interest rate and it had not been waived or capitalised.

## Determinations by the Electoral Commissioner

The Electoral Commissioner can determine that an entity is not a prohibited donor. A person may apply to the Electoral Commissioner for a determination that the person, or an entity, is not a prohibited donor (Section 113D, LGEA2011). The application must be in writing, and supported by enough information to enable a decision to be made. If the electoral commissioner is satisfied that the applicant is not a prohibited donor, then the Electoral Commissioner must make the determination sought by the applicant. Otherwise the electoral commissioner can decide not to make the determination and give the applicant a notice about the decision.

A determination remains in effect for one year unless it is revoked earlier. If at any time the Electoral Commissioner is not satisfied that the determination relates to an entity that is not a prohibited donor, then the determination can be revoked. A notice of revocation must be given to the entity and must be accompanied with an information notice about the decision.

The Electoral Commissioner must keep a register of determinations made under Section 113D and 113E, LGEA2011. The register must also include any revocations made under the legislation (see section 113E, LGEA2011).

A person who is entitled to be given an information notice about a decision has a right of appeal against the decision under the *Electoral Act 1992*.

A person must not give the electoral commissioner information under the legislation that the person knows is false or misleading. The maximum penalty is 400 penalty units or 2 years imprisonment and disqualification from being a councillor for four years. An offence against this section is a misdemeanour and is corrupt conduct dealt with by the CCC.

## Political donations by prohibited donors

Political donations from prohibited donors is illegal under the legislation. It is unlawful for:

- a prohibited donor to make a political donation
- a person to make a political donation on behalf of a prohibited donor
- a person to accept a political donation that was made by/on behalf of a prohibited donor
- a prohibited donor to solicit a person to make a political donation
- a person to solicit on behalf of a prohibited donor, another person to make a political donation.

A person must not participate directly or indirectly in a scheme to circumvent a prohibition about political donations. This includes a scheme to enable, aid or facilitate entry into, or the carrying out of a scheme, and organise or control a scheme. The maximum penalty is 1,500 penalty units or 10 years imprisonment.

A person must not act or make an omission that is unlawful if the person knows or ought to know that they are doing so. The maximum penalty is 400 penalty units or 2 years in prison. An offence against this section is a misdemeanour and therefore it is corrupt conduct dealt with by the CCC.

## Recovery of prohibited donations

Under the legislation it is unlawful to give or receive a donation from a prohibited donor. If a person accepts a prohibited donation, the following amount is payable by the person to the state:

- if the person knew it was unlawful to accept the prohibited donation – an amount equal to twice the amount or value of the donation
- otherwise an amount equal to the amount or value of the donation

The amount may be recovered by the State as a debt due to the state from;

- if the recipient is a registered political party that is not a corporation, the parties' agent
- if the recipient is a group of candidates, the members of the group or their agent
- if the recipient is a candidate, the candidate or their agent
- otherwise the recipient.

The payment of the donation amount to the State is not a punishment or sentence for an offence against section 194A, LGEA2011. A person must not do an act or make an omission that is unlawful if they knew, or ought reasonably to have known, that it is unlawful. An offence against 194A is a misdemeanour and the penalty is 400 penalty units or two years imprisonment.

Likewise, the payment of the donation amount to the State is not a matter which a court may have regard of in sentencing an offender for an offence against the legislation.

### **Obligation to repay particular donations**

During the transitional period ~~provisions~~ following the legislative amendments in 2018 it is a requirement for councillors to repay political donations received from prohibited donors from 12 October 2017 – a date to be fixed.

Under section 113B(3) of the LGEA2011, it would have been unlawful for a recipient to accept the donation if it had been made immediately after the commencement of the legislative amendment.

The recipient must pay an amount equal to the amount or value of the donation to the person who made the donation within 30 days of the commencement of the amendments to the *Electoral Act 1992* and *the Local Government Electoral Act 2011* (**commencement is on a date to be fixed**).

**Failure to make payment of these donations is a misdemeanour with a maximum penalty of 400 penalty units or two years imprisonment.**

## **4. Local government planning, accountability and reporting**

The LGA09 minimises the prescription and regulatory burden on local government relating to financial management and clearly separates the financial planning components from the accountability components of the legislation.

Chapter 4, part 3 (financial planning and accountability) of the LGA09 prescribes the financial documents local governments must use as the basis of their financial management system, in particular section 104.

The prescribed documents fall into three principal categories: strategic financial planning; operational financial planning; and financial accountability. These documents are to be supported by prescribed financial policies, regularly reviewed and updated as necessary, on investment, debt and revenue.

These document and policy requirements are discussed in more detail below.

### **4.1 Financial planning documents**

The required financial planning documents comprise:

- strategic financial planning documents:
  - five-year corporate plan, that incorporates community engagement
  - long-term asset management plan
  - long-term financial forecast.

- financial planning (operational) documents:
  - annual budget, including revenue statement
  - operational plan.

The Local Government Regulation 2012 (LGR12), made under the LGA09, provides more detail and clarity to councils about the preparation and content of its financial planning documents.

### **Five-year corporate plan**

A local government must prepare a five-year corporate plan for each period of five years. The local government must adopt the five-year corporate plan in sufficient time to allow a budget and annual operational plan that are consistent with the corporate plan to be adopted for the first financial year that is covered by the plan (section 165, LGR12).

The corporate plan must:

- outline the strategic direction of the local government
- state the performance indicators for measuring the local government's progress in achieving its vision for the future of the local government area.

It must also include an outline of the following information for each commercial business unit:

- the objectives of the commercial business unit
- the nature and extent of the significant business that the commercial business unit will conduct (section 166, LGR12).

In summary, the corporate plan is the council's 'business plan'. It drives and coordinates all strategic documents and policies, and forms the basis for all strategic decision making within council.

### **Long-term asset management plan**

A local government must prepare and adopt a long-term asset management plan that continues in force for a period of at least ten years stated in the plan or until the earlier adoption of a new long-term asset management plan (section 167, LGR12).

The long-term asset management plan must:

- provide strategies to ensure the sustainable management of the assets mentioned in the local government's asset register and the local government's infrastructure
- state the estimated capital expenditure for renewing, upgrading and extending the assets for the period covered by the plan
- be part of, and consistent with, the long-term financial forecast (section 168, LGR12).

### **Long-term financial forecast**

A long-term financial forecast is a forecast, covering a period of at least ten years, of each of the following for each year during the period of the forecast:

- income
- expenditure
- value of assets, liabilities and equity.

The long-term financial forecast must be reviewed annually. The local government must consider the long-term financial forecast before planning new borrowings (section 171, LGR12).

### **Annual budget**

A local government must prepare a budget for each financial year and the budget must be

prepared on an accrual basis (section 169, LGR12).

The mayor is responsible for 'preparing a budget to present to the local government' under section 12(4) of the LGA09. Under section 107A of the LGA09, the mayor must provide a copy of the budget 'as proposed to be presented to the local government, to each councillor at least two weeks before the local government is to consider the budget'. The local government must adopt a budget before 1 August in the financial year to which the budget relates.

Under section 169 of the LGR12, the budget must include statements for the financial year for which it is prepared and the next two financial years of the:

- financial position
- cash flow
- income and expenditure
- changes in equity.

The budget must also include:

- a long-term financial forecast
- a revenue statement
- a revenue policy
- a community financial report.

The **statement of income and expenditure** must state each of the following:

- rates and utility charges excluding discounts and rebates
- contributions from developers
- fees and charges
- interest
- grants and subsidies
- depreciation
- finance costs
- net result
- the estimated cost of the:
  - local government's significant business activities carried out using a full cost pricing basis
  - activities of the local government's commercial business units
  - local government's significant business activities.

The budget must also include each of the relevant **measures of financial sustainability** for the financial year for which it is prepared and the next nine financial years. The relevant measures of financial sustainability are:

- asset sustainability ratio
- net financial liabilities ratio
- operating surplus ratio.

The budget must be consistent with the local government's five-year corporate plan and annual operational plan.

A local government must adopt its budget for a financial year after 31 May in the year and before 1 August in the financial year or a later day decided by the minister (section 170, LGR12).

## Annual operational plan

Under section 174 of the LGR12, a local government must prepare and adopt an operational plan

for each financial year.

Under section 175 of the LGR12, the operational plan must:

- be consistent with the annual budget
- state how the local government will
  - progress the implementation of the five-year corporate plan during the period of the operational plan
  - manage operational risks
- include an annual performance plan for each commercial business unit
- written records of alleged and proven loss of a local government asset.

Typically, the annual operational plan will include specific initiatives (e.g. projects and activities) to help meet the strategic objectives of the corporate plan.

## 4.2 Financial accountability documents

The required financial accountability documents comprise:

- general purpose financial statements
- asset registers
- an annual report
- a report on the results of an annual review of the implementation of the operational plan.

### General purpose financial statements

For each financial year, a local government must prepare each of the following financial statements:

- a general purpose financial statement
- a current-year financial sustainability statement
- a long-term financial sustainability statement (section 178, LGR12).

The **general purpose financial statement** must be prepared in accordance with the following documents (each a prescribed accounting standard published by the Australian Accounting Standards Board):

- Australian accounting standards
- statements of accounting concepts
- Interpretations
- 'Framework for the Preparation and Presentation of Financial Statements' (section 177, LGR12).

Section 178 of the LGR12 specifies the requirements for both current-year and long-term financial sustainability statements.

A local government's general purpose financial statement and current-year financial sustainability statement for a financial year must be given to the Auditor-General for auditing. A local government's long-term financial sustainability statement for the financial year must also be given to the Auditor-General for information.

Under section 212 of the LGR12:

- the financial statements must be given to the Auditor-General by a date agreed between the CEO of the local government and the Auditor-General

- the date agreed must allow the audit of the financial statement, and the Auditor-General's audit report about the statements, to be completed no later than four months after the end of the financial year to which the statements relate
- the minister may, by notice given to the local government, extend the time by which the statements must be given.

### **Asset register**

A local government's asset register must record its non-current physical assets (section 180, LGR12).

### **Annual report**

A local government must prepare an annual report for each financial year.

It must adopt its annual report within one month after the day the Auditor-General provides the Auditor-General's report about the local government's financial statements for the financial year to the local government. However the minister may, by notice to the local government, extend the time by which the annual report must be adopted.

The local government must publish the annual report on its website within two weeks of adopting the annual report (section 182, LGR12).

The annual report for a financial year must contain the:

- general purpose financial statement for the financial year, audited by the Auditor-General
- current-year financial sustainability statement for the financial year, audited by the Auditor-General
- long-term financial sustainability statement for the financial year
- Auditor-General's reports about the general purpose financial statement and the current-year financial sustainability statement (section 183, LGR12)
- community financial report for the financial year (section 184, LGR12).

For further information in relation to the requirements for a local government's annual report, please refer to sections 185–190, LGR12.

In summary, the annual report is an integral component of the accountability cycle for local governments. It allows council to report on its performance and provides the community with an opportunity to assess this performance against the outcomes measures stated in the corporate and operational plans.

### **Recording and notifying loss of local government asset**

The Local Government Regulation, section 307A, provides the requirement that councils must keep written records of both alleged and proven losses of local government assets (including money). Councils must report, within 6 months, a material loss as a result of fraud to the Minister and the Auditor-General and in certain circumstances, to the Police or the Crime and Corruption. The following list indicates the types of prescribed losses.

Material Loss, for an asset belonging to a local governments means:

- for money – a loss of more than \$500
- for any other asset – a loss of an asset valued by the chief executive officer at more than \$1,000.

Reportable Loss, for an asset belonging to a local government, means a loss resulting from:

- the commission of an offence under the Criminal Code or another Act
- the corrupt conduct of a councillor, local government employee or local government worker
- conduct of a contractor of a local government that would be corrupt conduct if the contractor were a councillor, local government employee or local government worker.

### **GST certification**

Under section 215 of the LGR12 a local government must, no later than 15 September in each financial year, give the Minister for Local Government a notice stating that the local government has paid notional GST for the previous financial year.

### **Councillor’s financial accountability—discretionary funds**

Under section 109(2) of the LGA09 ‘discretionary funds are funds in the local government’s operating fund that are budgeted for community purposes and allocated by a councillor at the councillor’s discretion’.

Under section 202(4) of the LGR12, a councillor may allocate the councillor’s discretionary funds for capital works of the local government only with approval:

- If the councillor is the mayor—the deputy mayor and the CEO
- Otherwise—the mayor and the CEO

## **4.3 Financial policies**

A local government must prepare and adopt an investment policy, a debt policy and a revenue policy.

### **Investment policy**

An investment policy provides guidance for those undertaking an investment process. It must outline:

- the local government’s investment objectives and overall risk philosophy
- procedures for achieving the goals related to investment stated in the policy (section 191, LGR12).

The policy is a governing document that, in addition to the above, communicates:

- a local government’s investment policy and strategy
- identified roles for those involved in the investment process
- requirements for compliance with the policy’s goals and procedures.

### **Debt policy**

The debt policy must state the:

- new borrowings planned for the current financial year and the next nine financial years
- time over which the local government plans to repay existing and new borrowings (section 192, LGR12).

### **Revenue policy**

A local government’s revenue policy is prepared and adopted in advance of the budget and sets the broad strategy council plans to use to raise revenue. This will include principles for setting rates and charges, and the extent to which it employs a ‘user pays’ approach for the delivery of its services.

The revenue policy must state:

- the principles the local government intends to apply in the financial year for:

- levying rates and charges
- granting concessions for rates and charges
- recovering overdue rates and charges
- cost-recovery methods
- if the local government intends to grant concessions for rates and charges, the purpose of the concessions
- the extent to which physical and social infrastructure costs for a new development are to be funded by charges for the development.

The revenue policy may state guidelines that may be used for preparing the local government's revenue statement.

The local government must review the policy annually and in sufficient time to allow an annual budget that is consistent with the revenue policy to be adopted for the next financial year (section 193, LGR12).

### Sources of revenue

The main sources of local government revenue are:

- rates, which are a form of property tax (e.g. general rates, separate rates, special rates) and charges for the utility services
- fees, general administrative charges, and fines
- grants and subsidies
- commercial revenue from business activities.

### Revenue statement

Under section 172 of the LGR12 a local government is required to prepare and adopt a revenue statement each financial year. It must include if the local government:

- levies differential rates
  - the rating categories for rateable land in the local government area
  - a description of each rating category
- levies special rates or charges for a joint government activity—a summary of the terms of the joint activity
- fixes a cost-recovery fee—the criteria used to decide the amount of a cost-recovery fee
- conducts a business activity on a commercial basis—the criteria used to decide the amount of charges for the activity's goods and services.

The revenue statement must also include:

- an outline and explanation of the measure that the local government has adopted for raising revenue, including an outline and explanation of
  - the rates and charges to be levied in the financial year
  - the concessions for rates and charges to be granted in the financial year
- whether the local government has made a resolution limiting an increase of rates and charges.

## 4.4 Strategic procurement

Section 217 of the LGR12 allows a local government to take a strategic approach to contracting. 'A strategic approach is an approach that identifies potential opportunities, while managing adverse risks'. A local government may, by resolution, decide to apply this approach to its contracts (section 218, LGR12). However, the local government may do so only after it has:

- considered the costs and benefits of complying with the relevant part of the LGA09

- given the public notice of the proposed resolution.

The notice must:

- state the proposed resolution and the day and time of the meeting where the resolution is to be considered
- be published in a newspaper that circulates generally in the local government area at least four weeks before the meeting.

When entering into contracts, a local government must have regard to the sound contracting principles prescribed in section 104(3) of the LGA09. The sound contracting principles are:

- value for money
- open and effective competition
- the development of competitive local business and industry
- environmental protection
- ethical behaviour and fair dealing.

Each of the sound contracting principles does not have to be given equal weight when considering a contract for the supply of goods or services or the disposal of assets. Section 104 of the LGA09 also clarifies that a contract for the supply of goods and services includes a contract about carrying out work. The local government determines the appropriate weighting based on individual circumstances.

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