

5.3. COUNCILLOR CODE OF CONDUCT

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RECOMMENDATION

That effective 3 December 2018, Councillors resolve to:

- 1) Rescind Council's 'Code of Conduct for Councillors General Policy' (adopted June 2015) and;**
- 2) Publish the Queensland Government's 'Code of Conduct for Councillors in Queensland' on Council's website with Council's adopted policies.**

EXECUTIVE SUMMARY

A new Councillor Code of Conduct spelling out the minimum behaviour required of Local Government elected representatives has been released by the Queensland Government. The Code of Conduct applies to all Councils, except Brisbane City Council which has a separate Code.

BACKGROUND

In April 2016, an independent Councillor Complaints Review Panel (the Panel) was appointed to review the arrangements for dealing with complaints about the conduct of local government councillors and provide a report and recommendations on its findings.

The Panel found that while some Councils had adopted their own Code of Conduct for Councillors, there was a need for a uniform, mandatory Code of Conduct to set out the standards of behaviour for Councillors in performing their functions.

It was determined that introducing a mandatory and uniform Code of Conduct would assist in efficiently making all Councillors aware of their obligations. In addition, Councils will share the same framework for appropriate conduct which will provide a firm foundation for a fair and transparent complaints management process.

The Code of Conduct was developed by the Local Government Liaison Group, which included senior officers of the Department of Local Government, Racing and Multicultural Affairs (DLGRMA), and representatives from the Crime and Corruption Commission, the Queensland Ombudsman, the Auditor-General, the Integrity Commissioner, the Local Government Association of Queensland and the Local Government Managers Association.

All councils were provided with the opportunity to review the draft Code of Conduct prior to its finalisation. Douglas Shire Council reviewed the document and resolved at their meeting 26 June 2018 (Item 5.11) so lodge a submission to the DLGRMA providing comment on the draft.

The new Code of Conduct for Councillors in Queensland will take effect 3 December 2018.

COMMENT

The Code of Conduct for councillors in Queensland sets out the standards of behaviour expected of councillors and mayors when carrying out their roles, responsibilities and obligations as elected representatives for their communities.

Introducing a new uniform Code of Conduct will assist in efficiently making all councillors aware of their obligations around the three 'R's – responsibilities, respect and reputation.

The three 'R's ensure:

- that councillors carry out **RESPONSIBILITIES** conscientiously and in the best interests of the council and the community;
- they treat people in a reasonable, just, **RESPECTFUL** and non-discriminatory way;
- their conduct does not reflect adversely on the **REPUTATION** of the council.

The Code of Conduct for councillors is backed by tougher penalties for those who breach the code, including complaints that fall into corrupt conduct, misconduct, inappropriate conduct and a new category of unsuitable meeting conduct.

All councillors must declare that they will abide by this Code of Conduct when they are elected (*Local Government Act 2009 S.169*)

PROPOSAL

That Council's 'Code of Conduct for Councillors' be rescinded, and that the new 'Code of Conduct for Councillors in Queensland' be published on Council's website with Council's adopted policies.

FINANCIAL/RESOURCE IMPLICATIONS

Nil

RISK MANAGEMENT IMPLICATIONS

An elected member's failure to abide by the new Code of Conduct may result in reputational damage to Council.

SUSTAINABILITY IMPLICATIONS

Nil

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2014-2019 Initiatives:

Theme 5 – Governance

5.2.2 - Implement adopted policies and guidelines to ensure consistency in administrative management which also encourages innovation in Council operations.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Regulator Meeting the responsibilities associated with regulating activities through legislation or local law.

CONSULTATION

External: Local Government legislation amendments training was provided by the DLGRMA training for Councillors and the Executive Leadership Team.

COMMUNITY ENGAGEMENT

Nil

ATTACHMENTS

1. Code of Conduct for Queensland Councillors (DLGRMA Sep-18) **[5.3.1]**
2. Code of Conduct For Councillors General Policy (DSC #809871) **[5.3.2]**



Code of Conduct for Councillors in Queensland

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An electronic copy of this report is available on the Department of Local Government, Racing and Multicultural Affairs' website at www.dlgrma.qld.gov.au.



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Purpose of the Code of Conduct

The Code of Conduct sets out the principles and standards of behaviour expected of Councillors and Mayors when carrying out their roles, responsibilities and obligations as elected representatives for their communities. By adhering to the behaviours set out below, Councillors will increase public confidence in Local Government and Council decisions.

Background

Under section 150D of the *Local Government Act 2009* (the Act), the Minister for Local Government must make a Code of Conduct stating the standards of behaviour for Councillors in the performance of their responsibilities as Councillors. In addition to this, the Code of Conduct may contain anything the Minister considers necessary for, or incidental to, the standards of behaviour.

Before assuming public office, Councillors must understand and commit to complying with the Local Government principles and obligations of Councillors in accordance with section 169 of the Act, as well as the standards of behaviour set out in this Code of Conduct. All Councillors are required to make a declaration of office under section 169 of the Act. As part of that declaration, Councillors must declare that they will abide by this Code of Conduct.



The Local Government Principles and Values

The Act is founded on five Local Government principles with which Councillors must comply while performing their roles as elected representatives. These principles are listed below:

1. Transparent and effective processes, and decision-making in the public interest
2. Sustainable development and management of assets and infrastructure, and delivery of effective services
3. Democratic representation, social inclusion and meaningful community engagement
4. Good governance of, and by, Local Government
5. Ethical and legal behaviour of Councillors and Local Government employees.

This Code of Conduct provides a set of values that describe the types of conduct Councillors should demonstrate under each principle. These values are listed below:

1. In making decisions in the public interest, Councillors will:
 - make decisions in open council meetings
 - properly inform relevant personnel of all relevant information
 - make decisions in accordance with law and policy
 - commit to exercising proper diligence, care and attention.
2. To ensure the effective and economical delivery of services, Councillors will:
 - manage Council resources effectively, efficiently and economically
 - foster a culture of excellence in service delivery.
3. In representing and meaningfully engaging with the community, Councillors will:
 - show respect to all persons
 - clearly and accurately explain Council's decisions
 - accept and value differences of opinion.
4. In exercising good governance, Councillors are committed to:
 - the development of open and transparent processes and procedures
 - keeping clear, concise and accessible records of decisions.
5. To meet the community's expectations for high level leadership, Councillors will:
 - be committed to the highest ethical standards
 - uphold the system of Local Government and relevant laws applicable.

This Code of Conduct also sets out standards of behaviour aimed at helping Councillors understand how the principles and values are put into practice while performing their official duties as elected representatives.

Each standard of behaviour is not intended to cover every possible scenario. However, they provide general guidance about the manner in which Councillors are expected to conduct themselves.

It is important to note that the principles, values and standards set out in the Code of Conduct are of equal importance.



Standards of behaviour

This Code of Conduct sets out the standards of behaviour applying to all Councillors (excluding Councillors who are governed under the *City of Brisbane Act 2010*) in Queensland. The behavioural standards relate to, and are consistent with, the Local Government principles and their associated values.

The standards of behaviour are summarised as the three R's, being:

1. **RESPONSIBILITIES**
2. **RESPECT**
3. **REPUTATION**

Each standard of behaviour includes, but is not limited to, several examples to guide Councillors in complying with the Code of Conduct when carrying out their role as elected officials. Councillors are to understand and comply with the following standards of behaviour as set out in the Code of Conduct listed below.

1. Carry out **RESPONSIBILITIES** conscientiously and in the best interests of the Council and the community

For example, Councillors will, at a minimum:

- 1.1 Attend and participate meaningfully in all Council meetings, briefings, relevant workshops and training opportunities to assist Councillors in fulfilling their roles other than in exceptional circumstances and/or where prior leave is given
- 1.2 Respect and comply with all policies, procedures and resolutions of Council
- 1.3 Use only official Council electronic communication accounts (e.g. email accounts) when conducting Council business
- 1.4 Report any suspected wrongdoing to the appropriate entity in a timely manner
- 1.5 Ensure that their behaviour or capacity to perform their responsibilities as a Councillor is not impaired by the use of substances that may put them or others at risk while performing their duties (for example, alcohol, illegal drugs or prescribed/non-prescribed and/or restricted substances)
- 1.6 Cooperate with any investigation being undertaken by the Local Government or other entity.

2. Treat people in a reasonable, just, **RESPECTFUL** and non-discriminatory way

For example, Councillors will, at a minimum:

- 2.1 Show respect for fellow Councillors, Council employees and members of the public
- 2.2 Not bully, harass, intimidate or act in a way that the public would reasonably perceive a Councillor's behavior to be derogatory towards other Councillors, Council employees and members of the public
- 2.3 Be respectful of other people's rights, views and opinions.



3. Ensure conduct does not reflect adversely on the **REPUTATION** of Council

For example, Councillors will, at a minimum:

- 3.1 When expressing an opinion dissenting with the majority decision of Council, respect the democratic process by acknowledging that the Council decision represents the majority view of the Council
- 3.2 When making public comment, clearly state whether they are speaking on behalf of Council or expressing their personal views
- 3.3 Avoid making unnecessary or irrelevant comments or accusations about Councillors or Council employees in order to undermine them or their position
- 3.4 Ensure behaviour and presentation is appropriate to maintain the dignity of the office of the Councillor.

Consequences of failing to comply with the Code of Conduct

Failure to comply with the standards of behaviour in this Code of Conduct, or other conduct prescribed in this Code of Conduct may give rise to a complaint against a Councillor's conduct and subsequent disciplinary action under the Act.

A complaint about the conduct of a Councillor must be submitted to the Independent Assessor who will assess the complaint and determine the category of the allegation. In order of most to least serious, the categories of complaint are **corrupt conduct**, **misconduct**, **inappropriate conduct** and then **unsuitable meeting conduct**.

Unsuitable meeting conduct

Under section 150H of the Act, any conduct by a Councillor that is contrary to the standards of behavior in the Code of Conduct that occurs within a meeting of Council (including standing committee meetings), is dealt with as **unsuitable meeting conduct**.

Unsuitable meeting conduct by a Councillor is dealt by the Chairperson of the meeting. It is important that the Chairperson deal with matters of unsuitable meeting conduct locally, and as efficiently and effectively as possible so that Council can continue with their business of making effective decisions in the public interest.

Note: Chairpersons of meetings are carrying out a statutory responsibility under the Act to manage and lead the meeting. As such, where a Chairperson behaves inappropriately in a meeting this involves a serious breach of the trust placed in them as the Chairperson of the meeting and may be dealt with as misconduct (see below).



Inappropriate conduct

Under section 150K of the Act, any conduct by a Councillor that is contrary to the standards of behavior in the Code of Conduct or a policy, procedure or resolution of a Council, and is not unsuitable meeting conduct, misconduct or corrupt conduct (i.e. occurs outside of a meeting of Council) is dealt with as ***inappropriate conduct***.

The conduct of a Councillor is also inappropriate conduct if the conduct contravenes an order by the Chairperson of a meeting of Council for the Councillor to leave the meeting, or is conduct at Council meetings that leads to orders for the Councillor's unsuitable meeting conduct being made on three occasions within a period of one year.

The Independent Assessor is responsible for assessing allegations of suspected inappropriate conduct. If the Independent Assessor chooses to refer the matter to the Council to deal with, the Council must deal with the matter as quickly and effectively as possible.

Misconduct

Councillors are required to comply with all laws that apply to Local Governments. This includes refraining from engaging in ***misconduct***.

The Independent Assessor is responsible for assessing and investigating instances of suspected misconduct. The Independent Assessor may then refer the matter to the Councillor Conduct Tribunal to be heard and determined.

The conduct of a Councillor is misconduct if the conduct:

- adversely affects, directly or indirectly, the honest and impartial performance of the Councillor's functions or exercise of powers, or
- is, or involves:
 - a breach of trust placed in the Councillor
 - misuse of information or material acquired by the Councillor, whether the misuse is for the benefit of the Councillor or for the benefit or to the detriment of another person
 - a Councillor giving a direction to any Council employee (other than the Mayor giving direction to the Chief Executive Officer and senior executive employees)
 - a release of confidential information outside of the Council
 - failure by a Councillor to report a suspected material personal interest, conflict of interest or perceived conflict of interest of another Councillor, or
- is a failure by the Councillor to comply with:
 - an order made by the Council or Tribunal
 - any acceptable request guidelines of the Council made under section 170A of the Act
 - the reimbursement of expenses policy of the Council.

The conduct of a Councillor is also misconduct if the conduct leads to the Councillor being disciplined for inappropriate conduct on three occasions within a period of one year, or is conduct that is identified in an order of Council that will be dealt with as misconduct if the Councillor engages in the conduct again.



Corrupt conduct

Corrupt conduct is defined by, and dealt with, under the *Crime and Corruption Act 2001* and must be referred to the Crime and Corruption Commission. For a Councillor, corrupt conduct involves behaviour that:

- adversely affects or could adversely affect the performance of the Councillors responsibilities, and
- involves the performance of the Councillors responsibilities in a way that:
 - is not honest or impartial, or
 - involves a breach of the trust placed in the Councillor, or
 - involves the misuse of information acquired by the Councillor, and
- is engaged in for the purpose of providing a benefit or a detriment to a person, and
- if proven would be a criminal offence.

More information

The Department's website provides further information and resources for Councillors.

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

For more information, please contact your regional office within Local Government and Regional Services in the Department on:

Telephone: 13 QGOV (13 74 68)

Post: PO Box 15009, City East, Queensland 4002

Website: www.dlgrma.qld.gov.au

Department of Local Government, Racing and Multicultural Affairs
Level 12, 1 William Street, Brisbane, Queensland 4000
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CODE OF CONDUCT FOR COUNCILLORS GENERAL POLICY

Intent

The intent of this policy is to detail the standard of behaviour expected of Councillors of Douglas Shire Council.

Scope

The provisions of this policy apply to all actions of Councillors.

Reference

Legislation: *Local Government Act 2009*

Provisions

This code has been adopted by resolution of Council. Council accordingly considers this code to be a "procedure", as the term is used in section 176(4) of the *Local Government Act 2009*.

Key Ethical and Behavioural Obligations

Councillors must:

- 1) ensure their personal conduct does not reflect adversely on the reputation of the Council
- 2) demonstrate respect for fellow Councillors, Council staff and other members of the public
- 3) refrain from harassing, bullying or intimidating fellow Councillors, Council staff or other members of the public
- 4) with the exception of the Mayor, not communicate with the public or media on behalf of the Council, unless expressly authorized by the Council to make that communication
- 5) when communicating with the public or the media, make it clear when they are expressing a personal opinion, and when they are speaking on behalf of Council
- 6) when communicating with the public or the media to express a personal opinion about a Council resolution, respect the democratic process by first acknowledging that Council resolutions represent the majority view of Council
- 7) use their allocated Council business email address to communicate or conduct any aspect of Council business electronically, unless exceptional circumstances require otherwise
- 8) not carbon copy or blind carbon copy email communications about any aspect of Council business to private email accounts associated with a Councillor
- 9) comply with legislative obligations relating to the management, maintenance and confidentiality of public records,
In relation to paragraph 7) above, exceptional circumstances do **not** include a technical failure preventing a Councillor from accessing their email account, unless the Chief Executive Officer certifies to the Mayor that such a technical failure has occurred.

Consequences of Failing to Comply with this Code

Section 176(4) of the *Local Government Act 2009* provides: -

- (4) ***Inappropriate conduct*** is conduct that is not appropriate conduct for a representative of a local government, but is not misconduct, including for example—
- (a) a Councillor failing to comply with the local government's procedures; or
 - (b) a Councillor behaving in an offensive or disorderly way in a meeting of the local government or any of its committees.

A failure to comply with this code by a Councillor will be inappropriate conduct (as defined in section 176(4) (a) of the *Local Government Act 2009*) and will render a Councillor liable to disciplinary action prescribed by section 181(2) of that Act,

Section 181(2) provides: -

- (1) *The mayor or the department's chief executive may make either or both of the following orders that the mayor or department's chief executive considers appropriate in the circumstances—*
- (a) *an order reprimanding the Councillor for the inappropriate conduct;*
 - (b) *an order that any repeat of the inappropriate conduct be referred to the regional conduct review panel as misconduct.*

In addition, failure to comply with paragraphs 7, 8 or 9 of this code may in some circumstances amount to misconduct.

Section 176(3) of the *Local Government Act 2009* provides:-

- (3) **Misconduct** is conduct, or a conspiracy or attempt to engage in conduct, of or by a councillor—
- (a) *that adversely affects, or could adversely affect, (either directly or indirectly) the honest and impartial performance of the councillor's responsibilities or exercise of the councillor's powers; or*
 - (b) *that is or involves—*
 - (i) *the performance of the councillor's responsibilities, or the exercise of the councillor's powers, in a way that is not honest or is not impartial; or*
 - (ii) *a breach of the trust placed in the councillor; or*
 - (iii) *a misuse of information or material acquired in or in connection with the performance of the councillor's responsibilities, whether the misuse is for the benefit of the councillor or someone else; or*
 - (iv) *a failure by the councillor to comply with a direction to leave a meeting of the local government or its committees by the chairperson presiding at the meeting; or*
 - (v) *a refusal by the councillor to comply with a direction or order of the regional conduct review panel or tribunal about the councillor; or*
 - (c) *that is a repeat of inappropriate conduct that the mayor or the department's chief executive has ordered to be referred to the regional conduct review panel under section 181(2); or*
 - (d) *that contravenes section 171(3) or 173(4).*

This policy is to remain in force until otherwise determined by Council.

Manager Responsible for Review:

General Manager Corporate Services

ORIGINALLY ADOPTED: 20/05/2014
CURRENT ADOPTION: 16/06/2015
DUE FOR REVISION: 16/06/2019