



Department of
Local Government, Planning,
Sport and Recreation

Model Code of Conduct for Councillors

Local Government Act 1993

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Queensland Government

Department of Local Government, Planning,
Sport and Recreation

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Part 2

Explanatory Information must be read in conjunction with the Model Code of Conduct for Councillors

Model Code of Conduct for Councillors

1. Introduction

The model code provides councillors with guidance and a frame of reference about their roles, obligations including statutory obligations and acceptable behavioural standards, in accordance with the *Local Government Act 1993* (the Act).

It also provides a public statement of behaviour which is considered appropriate for elected officials and which the community can expect them to observe.

1.1 Application

This code applies to all councillors of a local government in performing the duties of their office (s.250E of the Act) unless the local government prepares and adopts its own code in accordance with s.250J of the Act.

The code comes into effect on the date of its application to the council (see ss.250C, 250D and 250E of the Act). It remains in effect until the council adopts its own code. It also remains in effect after an election if the council does not then adopt its own code in accordance with s.250C (1)(b) of the Act.

2. Obligations

The Act and the *Local Government Regulation 2005* (the Regulation) place a number of statutory obligations on councillors relating to the way they carry out their roles. The statutory obligations are:

2.1 Statutory obligations for which the Act provides a penalty

2.1.1 Requirements of councillors before acting in office

Sections 242(1)(a), 242(3) and 242(3A) of the Act provide that a councillor is required to give the council's Chief Executive Officer (CEO):

- a return in the approved form stating the information required by s.427 of the Act about gifts to candidates; and
- the information required by s.427A of the Act about gifts to groups of candidates (if applicable).

Section 242(8) then provides:

- the person must not give a return, under subsection (1)(a), containing particulars that are, to the knowledge of the person, false or misleading in a material particular.

2.1.2 Exclusion from meeting of councillor with material personal interest

Section 244 of the Act provides that a councillor who has a material personal interest in an issue to be considered at a meeting of the local government, or any of its committees:

- must disclose the interest to the meeting;
- must not be present at or take part in the meeting while the issue is being considered or voted on; and
- must not be in the chamber where the meeting is being conducted, including any area set apart for the public.

Section 246 provides that a councillor who contravenes s.244 is liable to a penalty. This applies whether or not the councillor voted on the issue with an intention to gain an advantage for the councillor or anyone else.

2.1.3 Registers of interests

Section 247 of the Act provides for the keeping of a register of interests – financial and non-financial – of each councillor and persons related to the councillor (as defined in ss.22-25 of the *Local Government Regulation 2005*).

If a councillor knows of an interest that must be recorded in the register, in regard to the councillor or a related person, or that particulars of such an interest are no longer correct, the councillor must tell the CEO of the interest, or the correct particulars in accordance with the Regulation.

For example, s.10 of schedule 10 of the Regulation requires a councillor to declare gifts of more than \$500 (in amount or value) except if the gift is from a friend or relative. However, in relation to this exemption, the councillor must be satisfied there can be no perception of a conflict of interest relating to the gift that could conflict with the councillor's duty as a councillor.

2.1.4 Improper use of information by councillors

Section 250 of the Act provides that a councillor must not:

- 1) make improper use of information acquired as a councillor:
 - a) to gain, directly or indirectly, a financial advantage for the person or someone else; or
 - b) to harm the local government.

- 2) release information that the person knows, or should reasonably know, is:
 - a) confidential to the local government; and
 - b) the local government wishes to keep confidential.

2.2 Statutory obligations for which the Act does not provide a penalty

2.2.1 Councillors' roles

Section 229 of the Act defines the roles of a councillor:

- 1) A councillor:
 - a) represents the overall public interest of the local government's area, and if the councillor is a councillor for a division, also represents the public interest of the division; and
 - b) takes part in deciding the facilities, services and enterprises that are appropriate for the area; and
 - c) takes part in formulating, adopting and reviewing –
 - i. the local government's corporate plan and operational plans; and
 - ii. the policies and goals of the local government; and
 - d) takes part in making decisions for achieving the goals and implementing the policies of the local government.

- 2) In performing the role, a councillor:
 - a) must serve the overall public interest of the area, and if the councillor is the councillor for a division, the public interest of the division; and

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- b) if a conflict arises between the public interest and the private interest of the councillor or another person – must give preference to the public interest.
 - 3) A councillor must ensure there is no conflict, or possible conflict, between the councillor's private interest and the honest performance of the councillor's role of serving the public interest.

2.2.2 Limitations on councillors' roles

Section 230 of the Act provides:

- 1) A councillor who is not the mayor must not assume any part of the mayor's role without the mayor's prior approval; and
- 2) A councillor cannot and must not attempt to direct an employee of the local government about the way in which the employee's duties are to be performed.

However, in relation to 2) above, under s.1135 of the Act:

- A councillor may ask for help or advice from the CEO, or if the request is made under guidelines made by the CEO, another employee; and
- The mayor may ask for reasonable help or advice from any employee.

2.2.3 Queries on contents of register

Section 249 relates to queries on contents of a register of a councillor's interests or the register of interest of a person related to a councillor:

- If there is a suspicion that a register does not contain all relevant particulars, the councillor must, within 30 days, establish whether the register should be amended, and if so, provide the appropriate particulars in writing; and
- If the councillor establishes that the register does not need to be amended, the councillor must complete a statutory declaration that the particulars in the register are a true record of fact and give the statutory declaration to the CEO.

2.2.4 Councillors' liability for disbursements

Section 523 of the Act provides for situations where a local government makes a disbursement which is not provided for in the budget. Any councillors who knowingly agree to such a disbursement are jointly and severally liable to repay the amount to the local government.

2.2.5 Councillors' liability for unauthorised borrowings

Section 526 of the Act provides for situations where councillors knowingly agree to borrowing without relevant authority. Those councillors are jointly and severally liable to pay to the local government the amount borrowed and all interest, and other penalties incurred by the local government, for the borrowing.

2.3 Additional ethical and behavioural obligations

The additional ethical and behavioural obligations imposed by this code of conduct are based on the ethics principles which are contained in schedule 1 of the Act.

2.3.1 Principles for imposing additional obligations

The principles that must be met by additional obligations set out in this code are stated in schedule 1 of the Act and are as follows:

Integrity of local government

It is vital that the public has confidence in a local government's ability to ensure the good rule and government of its area. Councillors must conduct themselves in a way that promotes and maintains the public's trust and confidence in the integrity of the local government and the good rule and government of its area.

Primacy of the public interest

Councillors are elected to act in the public interest and to make decisions solely in terms of the public interest. Councillors must take steps to avoid, resolve or disclose conflicts of interest.

Independence of action

Councillors must not place themselves under any financial obligation that may influence them in discharging of their duties and responsibilities as councillors.

Appropriate use of information

Councillors who in the course of carrying out their duties, receive information that is not available to the general public must not misuse this information, particularly for personal gain.

Transparency and scrutiny

It is vital that the public has confidence in the integrity of a local government's decision-making processes. To ensure transparency and public scrutiny of, and public confidence in those processes, councillors must disclose their financial interests.

Appropriate use of entitlements

Councillors must comply with the requirements about using entitlements provided for under the local government's remuneration policies.

2.3.2 Additional obligations imposed by this code

The additional ethical and behavioural obligations imposed by this code are set out below. These obligations are in addition to any statutory obligation.

2.3.2.1 Dealing with conflicts of interest

Councillors must take steps to avoid, resolve or disclose any conflicts of interest arising in a way that protects the public interest.

Councillors must ensure that conflicts of interest are managed in an open and transparent manner in accordance with the principle underpinning s.10 of Schedule 1 of the *Local Government Regulation 2005*.

If or when a councillor becomes aware that he or she holds a conflict of interest (real or perceived), which does not amount to a material personal interest under the Act, in a matter under consideration by a meeting of the council (including a general meeting, closed meeting, committee meeting or advisory committee meeting) that councillor shall immediately advise the chairperson (of that meeting) of:

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- the existence and nature of the conflict of interest; and
 - the determination by the councillor that he or she holds no material personal interest in the matter.

2.3.2.2 Use of council resources

Councillors must avoid the improper use of council resources to which they have been given access. That is, they must avoid the use of these resources for personal benefit or gain beyond that allowed for in the council's councillor remuneration policy. Resources include items such as the internet, e-mail, credit cards, facsimile, vehicles, office stationery etc.

2.3.2.3 Use of official information

- a) Councillors must use council information in a way that promotes and maintains the public's trust and confidence in the integrity of the local government. In using council information they must give primacy to public interests over private interests.
- b) Councillors must not release information that they know, or should reasonably know, is confidential to the local government other than to authorities or persons with a right of access to such information.
- c) Councillors must not cause harm to the local government, another person or organisation, for instance by misrepresenting council policy or using council information improperly to gain financial advantage for someone.
- d) Councillors must, in communicating with the public, make clear that the position they state on an issue is a personal view rather than the Council's official position, unless they are communicating an adopted policy or resolution of the council.
- e) Where the council has a local law, subordinate local law or council policy on the availability of official information held by the council, councillors must abide by that local law, subordinate local law or council policy.

2.3.2.4 Standards of personal behaviour

- a) Councillors must conduct themselves in a manner which will maintain and strengthen the public's trust and confidence in the integrity of the Council, ensuring that their actions do not detract from the integrity of the Council and avoiding any action which may diminish its standing, authority or dignity.
- b) Councillors must demonstrate respect for people, including treating others with dignity and respect and ensuring that neither offence nor embarrassment are caused.
- c) Councillors must ensure that they do not harass (including sexually harass), intimidate or bully other councillors, council staff or contractors engaged by the council.
- d) Councillors must show respect for the law and the system of government in general. Councillors must comply with local laws, subordinate local laws or council policies as adopted by the council.
- e) Councillors must deal with council staff appropriately, e.g. not attempt to unduly influence a council employee in their role and responsibilities in circumstances involving, for instance, planning, contracts and tendering.

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- f) Councillors must ensure that all communications with council staff on the operations of the council are in accord with the guidelines set out by the CEO.

Such guidelines may include, for example, restrictions or prohibitions on councillors approaching council staff for information on sensitive matters, controversial matters or matters in which the councillor has a conflict of interest or material personal interest.

- g) Where the council has a local law, subordinate local law or council policy covering the behaviour of councillors (for example, meetings local law), councillors must abide by that local law, subordinate local law or council policy.
- h) Councillors must ensure, where the council's adopted purchasing and tendering policies restrict or regulate councillor communications with tenderers, that they comply with such policies.

Such a policy may require, for example, that councillors do not meet with tenderers or potential tenderers to discuss the tender or potential tender unless such meetings are sanctioned by the council in advance, have a council officer in attendance, and a record kept and made available to the council through the CEO. In addition, such a policy may also, for example, prohibit a councillor from attending such a meeting if the councillor has a conflict of interest or material personal interest.

- i) Councillors must ensure, where the council's adopted development application processing policies and delegations restrict or regulate councillor communications with applicants, that they comply with such policies.

Such a policy may require, for example, that councillors do not meet with development applicants or potential development applicants to discuss the application or potential application unless:

- such meetings are sanctioned by council in advance;
- there is a council officer in attendance;
- and a record is kept and made available to the council through the CEO.

In addition, such a policy may also, for example, prohibit a councillor from attending such a meeting if the councillor has a conflict of interest or material personal interest.

2.3.2.5 Employment of staff and disciplinary action by the council

Councillors, in any decisions regarding employment of or disciplinary action with regard to council staff appointed by council (i.e. not appointed by the CEO or the CEO's delegate), must comply with the local governments' Equal Employment Opportunity Policies and Procedures and all relevant industrial laws including the principles of fairness, equity and confidentiality.

2.3.2.6 Reporting of suspected official misconduct

Councillors must disclose, through appropriate processes, any suspected fraud, corruption and maladministration of which they

become aware, which may require investigation. A councillor complies with this requirement by disclosing the matter to the CEO, or if the CEO is implicated, to the Crime and Misconduct Commission.

2.3.2.7 Councillor training and development

Councillors must (except in circumstances acceptable to the council) take reasonable measures to be available and participate in Council arranged training sessions and workshops, to assist councillors understand their statutory obligations and any additional obligations imposed by this code. Council arranged training is training that the council determines by resolution is appropriate for councillors to attend.

2.3.2.8 Diligence in performing duties of office

Councillors must be diligent in performing the duties of their office.

3. Compliance

Statutory requirement

Section 243A of the Act requires councillors to comply with the obligations stated in the code of conduct, which provides for breaches of the code to be dealt with under the Act, and confirms that if an act, omission or breach is an offence under the provisions of the Act, court proceedings may also be taken for the offence.

4. Breaches

4.1 Types of breaches

Section 250M of the Act identifies four categories of code of conduct breaches:

Meeting breach

A councillor breaches an obligation in the code, or under a local law, about behaviour at council or council committee meetings.

Minor breach

A councillor breaches one of the ethical or behavioural obligations under the code (see section 2.3 above). This category includes misbehaviour that does not amount to a meeting or a statutory breach but is otherwise inconsistent with the behavioural standards set out in the code (e.g. inappropriate behaviour towards other councillors or council employees).

Repeat breach

A councillor commits a meeting breach or minor breach that, under the code, is a repeat breach. For the purposes of the code, this means four breaches (meeting and/or minor) within six months. Breaches in excess of four are to be regarded as having occurred within the next six month period.

Statutory breach

A councillor breaches one of the statutory obligations identified in the code, that is, one of the obligations under the Act (see sections 2.1 and 2.2 above).

4.2 Penalties

Breaches of the code may result in varying penalties, according to the seriousness of the breach.

Penalties allowed for under the Act are applied only by a council resolution and are made by the council considering:

- the complaint alleging a breach of the code;
- any other information the local government considers relevant to consideration of the complaint (such as reports from council officers or external agencies such as the Crime and Misconduct Commission);
- any representations made to it by the councillor who is the subject of the complaint (regarding the principles of natural justice); and
- the recommendations of the council's conduct review panel (if the complaint has been referred to this panel).

A council may, by resolution, decide to take no further action in relation to a complaint about a councillor if it is satisfied that the complaint concerns only a frivolous matter or was made vexatiously.

Meeting breaches, minor breaches and repeat breaches, however, may be dealt with only through the penalties allowed in the code.

For statutory breaches where a penalty applies (section 2.1 above), the local government (or any other person or agency) may commence a summary action in the justice system through the relevant court.

Regardless of the outcome of court action, a local government may impose its own penalty for a statutory breach. In other words, a statutory breach may be penalised both by the local government and by a court.

The following table summarises the penalties which may applied in accordance with section 250X of the Act only:

Breach Type	Penalty
Meeting breach	One or more of the following: <ul style="list-style-type: none"> • a written reprimand; • suspension from the remainder of the local government meeting; • suspension from one future ordinary meeting of the local government and all local government’s committees of which the councillor is a member, with the maximum period of suspension not to include more than one ordinary meeting.
Minor breach	One or more of the following: <ul style="list-style-type: none"> • a written reprimand; • suspension from one future ordinary meeting of the local government and all local government’s committees of which the councillor is a member, with the maximum period of suspension not to include more than one ordinary meeting.
Repeat breach	One or more of the following: <ul style="list-style-type: none"> • a written reprimand; • suspension from not more than two consecutive future meetings of the local government and all local government’s committees of which the councillor is a member, with the maximum period of suspension not to include more than two consecutive ordinary meetings
Statutory breach (where no penalty applies)	One or more of the following may be imposed by the local government: <ul style="list-style-type: none"> • a written reprimand; • suspension from not more than two consecutive future meetings of the local government and all local government’s committees of which the councillor is a member, with the maximum period of suspension not to include more than two consecutive ordinary meetings.
Statutory breach (where a penalty applies)	One or more of the following may be imposed by the local government: <ul style="list-style-type: none"> • a written reprimand; • suspension from not more than two consecutive future meetings of the local government and all local governments’ committees of which the councillor is a member, with the maximum period of suspension not to include more than two consecutive ordinary meetings. In addition the local government (or any other person or agency) may commence legal action with respect to such breaches.

5. Enforcement

The procedures for dealing with code breaches are set out in the Appendix.

These procedures do not include the requirements for commencement of a summary action in the justice system through the relevant court for any statutory breaches where a penalty applies under the Act.

Information about how a person can make a complaint about an alleged breach is included in column two of the Appendix. Further detail on the procedure(s) to be followed can be obtained from the council itself.

6. Accountability

Public reporting

The council must include in its annual reports for the financial year information including the following:

- The number of breaches of the council's code of conduct for councillors in the financial year;
- The number of complaints about alleged code of conduct breaches by councillors, other than frivolous or vexatious complaints, that were referred to the conduct review panel during the year by the local government or the chief executive officer under chapter 4, part 3A in the financial year;
- The number of recommendations made to the local government by the conduct review panel during the year that were adopted, or not adopted, by the local government in the financial year;
- The number of complaints resolved under the local government's general complaints process during the year and the number of those complaints that related to an alleged breach by a councillor of the local government's code of conduct for councillors in the financial year;
- The number of complaints made to the Ombudsman, and notified to the local government, during the year about decisions made by the local government in relation to enforcement of its code of conduct for councillors in the financial year; and
- The name of each councillor who has breached the code, a description of how the councillor breached, and details of any penalty imposed.

7. Dictionary

All terms in this code, unless otherwise defined below, have the meaning assigned by the Act or Regulations under the Act.

Conflict of interest	Any matter which places a councillor in a position where they may be influenced (an actual conflict) or appear to be influenced (a perceived conflict) now or in the future (a potential conflict) by their private interests when being called on to make a decision, as a councillor, in the public interest.
Confidential information	Information that a councillor knows, or should reasonably know, is information that is: <ul style="list-style-type: none"> ▪ confidential to the local government, and ▪ the local government wishes to keep confidential.
Council policy	Any policy made or adopted by a resolution of council, provided the policy is listed in a policy register of the local government, and made available to a councillor and a member of the public on request.
Harassment	If not already defined in a council policy applicable to council staff and/or councillors, shall include: <ul style="list-style-type: none"> • Repeated behaviour, other than behaviour amounting to sexual harassment, by a person that <ul style="list-style-type: none"> ▪ is unwelcome and unsolicited; ▪ the person considers to be offensive, intimidating, humiliating or threatening; and ▪ a reasonable person would consider to be offensive, humiliating, intimidating or threatening. • ‘Repeated behaviour’ refers to the constant nature of the behaviour, not the specific type of harassing behaviour. Behaviour is considered ‘repeated’ if an established pattern can be identified. It may involve a series of diverse incidents – for example, verbal abuse, sabotaging a person’s work, and unreasonable threats of dismissal. • Sexual harassment which is unwelcome sexual conduct which makes a person feel offended, humiliated and/or intimidated where that reaction is reasonable in the circumstances.
Related person	A person related to a councillor as defined by s.22 of <i>Local Government Regulation 2005</i> .

8. Appendix

Procedures for dealing with code breaches – summary

Breach Type	Making a complaint	Processing	Action
Meeting breach at a council meeting	A councillor present at the meeting may make a complaint to the mayor or the chairperson for the meeting. The complaint must be made at that meeting.	At the same meeting or next meeting, council must decide: <ul style="list-style-type: none"> whether the councillor has committed the alleged meeting breach and, if so, whether to impose a penalty, or whether another type of breach may have been committed and, if so, whether to refer the complaint to the conduct review panel. 	Council may decide to: <ul style="list-style-type: none"> take no further action; or impose a penalty; or refer the complaint to the conduct review panel as a possible statutory breach. <p>It may also, if there are grounds to do so, refer the complaint to the conduct review panel as a possible repeat breach.</p>
Meeting breach at a council committee meeting	A councillor present at the meeting may make a complaint to the chairperson for the meeting. The complaint must be made at that meeting. The chairperson must then notify the Chief Executive Officer (CEO) who must in turn refer the complaint to the council.	At the next council meeting, council must decide: <ul style="list-style-type: none"> whether the councillor has committed the alleged meeting breach and, if so, whether to impose a penalty, or whether another type of breach may have been committed and, if so, whether to refer the complaint to the conduct review panel. 	Council may decide to: <ul style="list-style-type: none"> take no further action; or impose a penalty; or refer the complaint to the conduct review panel as a possible statutory breach. <p>It may also, if there are grounds to do so, refer the complaint to the conduct review panel as a possible repeat breach.</p>
Minor breach	A person who can claim to be directly affected by the matter may make a complaint through the council's general complaints process.	A complaints officer must consider whether the complaint should be investigated and, if so, must then report to council. If the report says that the complaint has not been resolved, council must decide: <ul style="list-style-type: none"> whether the councillor has committed the alleged minor breach and, if so, whether to impose a penalty, and whether a repeat breach may have been committed and, if so, whether to refer the complaint to the conduct review panel. 	Council may decide to: <ul style="list-style-type: none"> take no further action; or impose a penalty. <p>It may also, if there are grounds to do so, refer the complaint to the conduct review panel as a possible repeat breach.</p>
Repeat breach		Council may refer a suspected repeat breach to the conduct review panel, which must then review the matter and report back. The conduct review	Council may decide to: <ul style="list-style-type: none"> take no further action; or

		panel may make recommendations on the allegation and the appropriate penalty.	<ul style="list-style-type: none"> impose a penalty.
Statutory breach	Any person may make a complaint to the CEO and/or to the Crime and Misconduct Commission (if the statutory breach raises a suspicion of official misconduct).	<p>The CEO must firstly determine if the complaint raises a suspicion of official misconduct in which case the CEO is required to refer the matter to the Crime and Misconduct Commission (the CEO is required to make this evaluation of all complaints lodged with the local government).</p> <p>If no suspicion of official misconduct is raised the CEO is required to refer the complaint to the local government's conduct review panel.</p> <p>If the complaint has been referred to the Crime and Misconduct Commission by the CEO, AND the Crime and Misconduct Commission has decided to take no action or to discontinue any action, AND has decided to recommend referral of the complaint to the conduct review panel for review, the CEO is required to refer the complaint to the local government's conduct review panel.</p> <p>If referred to the local government's conduct review panel the CEO must give the councillor written notice of this referral.</p> <p>The conduct review panel must review the complaint and report to council. It may:</p> <ul style="list-style-type: none"> state whether it considers the complaint only concerns a frivolous matter or has been made vexatiously; decide more information is required to make a recommendation; recommend to the local government as to whether or not the panel considers that the councillor committed the alleged breach; and recommend to the local government what the panel considers to be an appropriate penalty out of the following available penalties: <ul style="list-style-type: none"> a written reprimand; and suspension from a future meeting of the local government or a committee of the local government of which the councillor is a member of up to two consecutive meetings. <p>Note: The conduct review panel is unable to recommend to the local government that summons action be taken in the justice system.</p>	<p>Council may decide to:</p> <ul style="list-style-type: none"> take no further action under the code penalty provisions allowed; or impose a penalty; and/or pursue an action in the courts to obtain a prosecution for the offence.

Explanatory Information for the Model Code of Conduct for Councillors

1. Introduction

Purpose of the model code

The basis for this model code of conduct (the code) is the *Local Government Act 1993* (the Act), which requires Queensland local governments to adopt a code of conduct for councillors.

Councils are expected to develop their own codes to reflect their particular needs. Any such code developed must, of course, comply with all the statutory requirements of the Act.

The model code is a guide to help councils in the development of their own code. However, s.250D of the Act provides that if a council does not adopt its own code of conduct on or before 1 March 2006, the model code will be taken to have been adopted by the council as its code of conduct. In other words, the model code is also a 'default' code.

In general terms, the purpose of a code of conduct is to strengthen councillors' awareness of ethical issues, generate public confidence in the way they operate, and set a high standard for the culture and reputation of the council as a whole. As stated by the Crime and Misconduct Commission in its *Prevention Pointer*, no. 2, codes of conduct 'provide important behavioural guidelines and a set of standards against which councillors' behaviour can be assessed. They are a means of reassuring the community that high standards of accountability exist.'

A code of conduct can give councillors a better understanding of their representative role and responsibilities; maintain and strengthen the public's trust and confidence in the council's integrity; and help to avoid any action that could diminish the council's standing, authority or dignity.

Content

A code of conduct is a statement on how people should conduct themselves. It sets standards of behaviour, saying what they should do and should not do. It helps people make decisions about what is the right thing to do.

This model code gives guidance on topics such as:

- conflicts of interest, and how to recognise and deal with them;
- the use of council resources;
- the use of official information;
- standards of personal behaviour;
- the acceptance of gifts and benefits;
- conduct in the council chambers;
- harassment and intimidation; and
- councillors' interactions with staff.

Examples are included to make the code more easily understood.

The model code comprises seven parts, dealing with: the purpose and application of the model code; obligations which councillors must abide by; compliance; breaches and penalties; enforcement procedures; reporting requirements; and definitions.

Application

This code applies to all councillors of a local government in performing the duties of their office (s.250E of the Act) unless the local government prepares and adopts its own code in accordance with s.250J of the Act. The code does not apply to situations when a councillor is not performing the duties of office. In this regard the situation of councillors is like that of council employees who, under the *Public Sector Ethics Act 1994*, are subject to a code of conduct that applies to them in performing their official duties.

Councils are encouraged to review their code at least every two years. Such a review should also encompass a review of any council local law, subordinate local law, policy or procedure referenced in the code to ensure consistency with the code.

2. Obligations

The model code has been drawn from both law and ethics. Councillors are therefore expected to comply with two sets of obligations: statutory obligations and additional ethical and behavioural obligations.

Councillors should make themselves familiar with the Act, particularly those sections referred to in this code.

Further to the statutory obligations under the Act, councillors must, like anyone else, abide by the laws of the State of Queensland and the Commonwealth of Australia. In particular, councillors must be aware of and abide by the provisions of the various Acts, local laws, subordinate local laws, policies and procedures relevant to their role(s). This is most important because of the position of trust they occupy in the community and their status as role models, demonstrating through personal example the behaviours which are necessary for a well functioning society.

Under the Act, however, standards of personal behaviour as detailed in section 2.3.2.4 of the code are enforceable only in regard to times when councillors are performing the duties of their office.

Conflict of interest is one of the significant matters addressed in relation to primacy of the public interest. The Crime and Misconduct Commission defines conflict of interest as arising when a councillor's private or personal interests run counter to the public interest. They have the potential to adversely affect the way a councillor performs his/her official duties.

Example: A councillor had an interest in a company and participated in a number of council and committee meetings that considered, among other things, the councillor's business. The Crime and Misconduct Commission referred the matter to the Director of Public Prosecutions and proceedings were brought against the councillor in the local Magistrate's Court for allegedly contravening the Act. The Magistrate decided there was reasonable doubt of the evidence, and according to law the defendant was entitled to the benefit of that doubt.

The councillor sought to recover his costs of \$55,000 but the Magistrate considered that in the circumstances the councillor should pay his own costs.

In addition councillors are obliged not to release official information without the appropriate approval.

Example: A local council took court action against a councillor for releasing a media statement about sensitive discussions that took place at a closed meeting. The information disclosed by the councillor had the potential to affect the reputation and career of a council employee, and community confidence in the local council.

The councillor was found guilty of publicly releasing confidential council information, in contravention of the Act, and he was placed on a good behaviour bond for 18 months.

In regard to harassment, a short definition of the term is provided in the code however, guidelines as to what behaviours constitute harassment would already be available in council policies in place for council staff.

The model code incorporates the requirement for councillors to abide by council policies as additional ethical and behavioural obligations under the code. A number of examples of these policies are provided. Councils are encouraged to look at these examples to determine if their policies (and procedures attached to these policies) are in place to ensure the behavioural obligations suggested in the code are implemented.

3. Compliance

Section 243A of the Act requires councillors to formally accept and agree to comply with the code of conduct as part of making their declaration of office. This is intended to ensure that councillors are aware of their ethical obligations and responsibilities and represents a formal and ceremonial commitment to those obligations and responsibilities.

Compliance with the code includes not making complaints about alleged code breaches vexatiously or making complaints that contain frivolous matter.

Guide to ethical decision-making

Situations may arise when councillors are unsure whether their actions or decisions are consistent with the code. This is not unusual because public office involves many complexities and public officials such as councillors are expected to set high standards in dealing with these complexities.

The code recognises that there are basic freedoms such as a councillor's right to freedom of speech and freedom of communication with constituents, however these freedom need to be balanced with constraints inherent in the ethics principles for councillors, for example putting public interest above private interest and avoiding or disclosing conflicts of interest.

Maintaining high standards of ethical behaviour safe guards the council, particularly when dealing with contractors, tenderers or developers, as set out in s.2.3.2.4(h) and (i) of the model code. If not currently in place, councils may need to implement policies which clearly explain the mutual obligations, constraints and roles of all parties. This will facilitate ethical practices and, if these policies are made readily available, will raise the public's awareness of the constraints on councillors.

In cases of doubt, councillors are advised to consider the following five points:

- Is the decision or conduct lawful?

- Is the decision or conduct consistent with the local government’s policy and objectives and the code?
- What will the outcome be for the local government, the councillor and other parties?
- Do these outcomes raise a conflict of interest or lead to private gain at public expense?
- Can the action or decision be justified in terms of the public interest and would it withstand public scrutiny?

In addition it may be helpful to seek advice from an appropriate source. This might include the council’s CEO, the Department of Local Government, Planning, Sport and Recreation, the Crime and Misconduct Commission, the Local Government Association of Queensland, or the Aboriginal Local Government Association of Queensland.

4. Breaches

Councillors must adopt a high standard of behaviour, befitting their role as community leaders; however it is acknowledged that lapses may sometimes occur. These lapses may be sufficiently serious to constitute breaches of the code.

The table below summarises the relationship between code obligations and breaches.

Obligations	Breaches
Statutory (under a law other than the <i>Local Government Act 1993</i>) – penalty applicable under the other law	May be dealt with as an offence under the other law (i.e. summary action in a court of law may be taken to prosecute for the breach)
Statutory (under the <i>Local Government Act 1993</i>) – penalty applicable under the Act	Statutory breach – may be dealt with as a statutory code breach, AND may be dealt with as an offence under the Act (i.e. summary action in a court of law may be taken to prosecute for the breach)
Statutory (under the <i>Local Government Act 1993</i>) – no penalty applicable	Statutory breach
Statutory (under the code or a meeting local law) – no penalty applicable under the Act	Meeting breach, minor breach or repeat breach only
Ethical and behavioural – section 250M(1) and M(3) only	Meeting breach, minor breach or repeat breach only
Ethical and behavioural – other sections	Minor breach or repeat breach only

5. Enforcement

Primary enforcement

Enforcement of the code begins with the checks and balances that are part of the everyday operation of local government. For example, the obligations relating to behaviour at meetings are enforced through the chairperson and procedures contained in meetings’ local law. Obligations, such as relating to travel entitlements, are enforced through the standard procedures for ensuring that councillors are accountable for expenses they claim.

As complaints setting out allegations of breaches of the code may come from a number of sources (including councillors, council staff and the public) it is imperative that the council have a system and procedures in place to receive the complaints and refer them to the correct area for handling. The Act requires such a system to be in place for minor complaints. As the status of a complaint can not be determined until received, it is a given that the system should have procedures in place to handle all complaints.

Making a complaint or allegation

The next level of enforcement occurs when a breach is alleged. A council's complaint handling policies and procedures should be utilised to receive and correctly direct the complaint.

Meeting breaches allegations are generally dealt with by the council at the meeting at which the breach is alleged or at the meeting immediately following. Such breaches may come to the notice of council by any councillor at the meeting.

Other breaches allegations may involve referral to the council's conduct review panel. Procedures are set out in the Act for dealing with meeting, minor, repeat and statutory breaches.

Care should be taken to ensure that the requirements of other Acts with respect to complaints are also adhered to. For example, the *Crime and Misconduct Act 2001* requires reporting of any complaint that raises the suspicion of official misconduct to the Crime and Misconduct Commission. The *Whistleblowers Protection Act 1994* sets out specific requirements with respect to complaints that may be public interest disclosures. Acts which may constitute a criminal offence are required to be reported to the Queensland Police Service.

Suggested forms that might be used for making complaints are provided under section 7 below.

Investigation of complaints or allegations

A councillor cannot be found to have committed a breach unless the exact nature of the breach is specified. For example: Councillor X committed a minor breach by using abusive language to an employee, which breached the ethical behaviours section of the model code.

To establish conduct review panels, councils must appoint a pool of members (at least three members), for periods of not more than four years. The Act sets out required qualifications for conduct review panel members and categories of persons who are not considered qualified e.g. council employees, members of parliament.

If complaints of statutory or repeat breaches are referred to a conduct review panel, it must report to the council, making recommendations on its findings on the alleged breach and what penalty it recommends. The council must then decide, by resolution, if it considers a breach has occurred and what action to take, if any.

Actions that may be taken

If a councillor has allegedly committed an offence under the law, he or she may be charged for this offence. The commencement of a legal action to pursue such a charge can be made by the council or any other agency or person. This does not prevent the local government also dealing with the same matter as a breach of the code.

Referral of a matter which is a statutory breach to council's conduct review panel does not preclude it (or any other party) from proceeding with action to seek a prosecution for the breach.

In regard to the recommendations of a conduct review panel, councils are required to apply natural justice principles in determining code breach matters (as with all breach

matters). This means that in the decision-making process, councils should, for example, be unbiased in their consideration of the findings of the panel and not make a determination without first hearing from the councillor about whom the complaint has been made.

A council that rejects a recommendation from a conduct review panel must include in its decision, a statement of reasons for the rejection.

It should be noted that the conduct review panel only has the power to:

- state whether it considers the complaint only concerns a frivolous matter or has been made vexatiously;
- decide that more information is required to make a recommendation;
- recommend to the local government as to whether or not the panel considers that the councillor committed the alleged breach; and
- recommend to the local government what the panel considers to be an appropriate penalty out of the following available penalties:
 - a written reprimand; and
 - suspension from a future meeting of the local government or a committee of the local government of which the councillor is a member of up to two consecutive meetings.

The conduct review panel is unable to recommend to the local government that summons action be taken in the justice system, however the local government may choose to take such action when considering the complaint.

6. Accountability

The following are examples of how breaches of the code of conduct might be described in annual reports.

Councillor code of conduct complaints 2005-2006:

The total number of breaches of the council's code of conduct for councillors in 2005/2006 were:	5
The number of complaints about alleged code of conduct breaches by councillors, other than frivolous or vexatious complaints, that were referred to the conduct review panel during the year by the local government or the chief executive officer under chapter 4, part 3A in 2005/2006, were:	2
The number of recommendations made to the local government by the conduct review panel during the year that were adopted, or not adopted, by the local government in 2005/2006 were:	1
The number of complaints resolved under the local government's general complaints process during the year and the number of those complaints that related to an alleged breach by a councillor of the local government's code of conduct for councillors in 2005/2006 were:	10

Councillors found to have breached the code of conduct for councillors during 2005/2006 were:

Councillor	Description of breach	Details of penalty imposed by council
Cr A	Misconduct at a local government meeting	Suspension from the balance of ordinary council meeting at which the breach occurred (two hours).
Cr B	Directing an employee in contravention of section 230(2) of the Act	Suspension from one ordinary meetings of council.
Cr C	Failure to declare a conflict of interest at a meeting.	Suspension from one ordinary meeting of council.
Cr D	Improper use of confidential information	Suspension from two ordinary meetings of council.

Note that there is no requirement to report on whether or not council has determined to take legal action to seek a prosecution of a councillor for a statutory breach where a penalty applies. Any penalty that is applied (if the councillor is found guilty of the offence in a court) would be applied by the relevant court and not the council.

7. Suggested Forms

Template 1

Meeting breaches for council meetings ONLY

STATEMENT BY THE COUNCILLOR TO THE CHAIRPERSON AT THE COUNCIL MEETING

I, Councillor _____ hereby register my complaint that Councillor _____ has breached the Code of Conduct for Councillors by a *meeting breach* during the council meeting by _____ (specify the behaviour).

I therefore request that the Council consider whether Councillor _____ has committed a breach and, if so, whether to impose a penalty.

Template 2

Meeting breaches for council committee meetings ONLY

STATEMENT BY THE COUNCILLOR TO THE CHAIRPERSON AT THE COUNCIL COMMITTEE MEETING

I, Councillor _____ hereby register my complaint that Councillor _____ has breached the Code of Conduct for Councillors by a *meeting breach* during the meeting of the _____ committee by _____ (specify the behaviour).

I therefore request that the Chairperson forward my complaint to the Chief Executive Officer for referral to the next Council meeting for consideration.

Template 3

Minor breaches

TO THE CHIEF EXECUTIVE OFFICER (or Complaints Officer)

I, _____ hereby register my complaint that Councillor _____ has breached the Code of Conduct for Councillors by a *minor breach* by _____ (specify the behaviour).

I therefore request that this matter be investigated and a report be presented to Council.