

# Councillor misconduct complaints

## How does the Councillor Conduct Tribunal deal with complaints about councillor misconduct?

### FAQ by councillors

This fact sheet provides a summary of how the Tribunal deals with complaints and allegations about misconduct, under the *Local Government Act 2009* (LGA).

NB. The Tribunal is not able to discuss a specific complaint while the matter is under active consideration.

### About the Tribunal

The Tribunal is an independent body created under the LGA to, among other things, hear and decide the complaints of misconduct by a councillor (s.150AL), LGA). Its members are the President and several casual members who are experienced professionals with qualifications in law, public administration, public sector ethics and investigations. There are no part time or full time members appointed to this Tribunal.

The Tribunal makes its decisions about councillor misconduct matters independently of the Department. However, the Department provides secretariat and administrative support to the Tribunal as required by s.150DW of the LGA.

### Complaints and allegations referred to the Tribunal by the Office of the Independent Assessor

#### How soon will the Tribunal hear the complaint?

The Tribunal must act as quickly and informally as is consistent with a fair and proper consideration of the issues (s.213(1),LGA). Each complaint is dealt with on a case by case basis; more complex matters may take longer and it is not possible to give a specific timeframe.

Before the hearing the Tribunal will review the documents provided by the Independent Assessor when it referred the complaint. The Tribunal will also review the documents that the Councillor provided to the Assessor during the investigation conducted by the Independent Assessor.

The Tribunal will provide both parties with an opportunity to provide any further information to the Tribunal prior to the hearing. This request will be made by the Tribunal issuing

a Notice (Directions) to the Councillor and to the Independent Assessor before proceeding to a hearing.

#### How will you know when the hearing is?

When the Tribunal is available to hear the complaint about your conduct it advises the Councillor and the Independent Assessor. The Tribunal's Registrar will issue notifications to the Councillor containing the Directions (steps in the hearing process) at least 14 days before the hearing date. You will receive a written notice which states:

- the alleged misconduct(S 150L)
- the time and dates to provide all further information to the Tribunal (if applicable)
- the possible dates that the hearing will begin
- the place where the complaint is to be heard.

The Tribunal will offer you an opportunity to make a written submission about the allegations made in the complaint before the date of the hearing. It may also, require you to attend the hearing either in person or by teleconference or video conference.

#### What happens at a hearing?

The Tribunal has considerable discretion as to how it conducts the hearing including whether to:

- decide all or part of the complaint from the documents provided to it without you, the complainant or other witnesses appearing before it (s.150AP(2), LGA)
- require you, the Complainant or any other witness to attend (s.214, LGA)
- close the hearing (a hearing must be held in public) unless the Tribunal directs it is to be held in private—s.298, *Local Government Regulation 2012*.

A Tribunal hearing is less formal than a court hearing and is not required to follow the prosecution/defence model, however the Independent Assessor is the prosecutor and attends all hearings of misconduct matters. If you are asked to attend a hearing, Tribunal members will ask you questions to help them decide whether or not the complaint against you is proven on the balance of probabilities i.e. whether, on the evidence put before it, the Tribunal considers it is more probable than not that you engaged in the

alleged conduct. This is a lesser standard than “beyond reasonable doubt”, the highest standard of proof required by a court of law.

### **What are your rights / obligations if you are asked to appear before the Tribunal?**

You are entitled to your own independent legal advice.

The Tribunal must observe natural justice in conducting the hearing (s.213(1), LGA). Natural justice generally rests on three principles—that you are sufficiently informed about the allegations made against you; that you are given a reasonable opportunity to respond to the allegations (e.g. by written submission or in person); and that Tribunal members have no personal interest in the outcome of the hearing (i.e. no conflict of interest or bias).

The Tribunal may decide to refuse to allow you to be represented by a legal practitioner (s.213, LGA).

If you receive a notice to appear before the Tribunal you must

- attend at the time and place specified in the notice
- continue to attend until excused by the Tribunal
- take an oath or affirmation if required by the Tribunal
- answer a question and/or produce a document required by the Tribunal unless you have a reasonable excuse (i.e. if answering the question or producing the document might tend to incriminate you).

Failure to do so carries a maximum penalty of 35 penalty units (a fine of more than \$4600).

It is an offence to knowingly give false or misleading information to the Tribunal and carries a maximum penalty of 100 penalty units (one penalty unit is \$133.00, the maximum fine is \$13,300.00 or 100 penalty units) – s.234(1)(i), LGA.

Insulting, interrupting or acting in contempt of a hearing carries a maximum penalty of 50 penalty units (a fine of \$6,650.00) - s.215, LGA.

### **After the hearing**

#### **The Tribunal does not issue verbal decisions on the day of the hearing.**

The Tribunal, after considering all the evidence before it, will decide whether the complaint against you has been proven or not proven on the balance of probabilities. If the Tribunal decides that you engaged in misconduct, it may make an order or recommendation that it considers appropriate (s.150AR), LGA.

### **Orders and Financial Penalties.**

The powers for the Tribunal to make penalty orders including fines are governed by the Local Government Act (section 150AR(1-5))

For example, the Tribunal may order that you

- receive counselling or attend in-service training
- make a public admission that you engaged in misconduct
- pay to the local government an amount that is no more than 50 penalty units (1 penalty unit is \$133.00)
- forfeit an allowance, payment to your council
- an order that the Councillor is not to act as the Deputy Mayor
- for further details of the penalties see section 150AR(1) of the Act.

It might also, or instead, recommend to the:

- Minister that you be suspended for a stated period from office
- Or that the Minister dismiss you from office(s.150AR(1)(xii)).

In deciding what disciplinary action is appropriate, the Tribunal may consider any past misconduct by you (s.150AQ(2), LGA).

### **How long does it take for the Tribunal decision to be made available?**

Following the hearing a detailed report containing the findings and the orders and the reasons for the decision will be prepared. This process is lengthy and can take many weeks depending on the complexity of the facts and evidence provided by the witnesses. The time needed to prepare the report will also depend on the availability of the Tribunal members (as there are no permanent full time Members appointed to the Tribunal). The report must be read and assessed by each member of the Tribunal before it is available for release to the parties.

### **How do you find out when the Tribunal decision will be available?**

The Tribunal will provide you, the complainant and the CEO with a copy of the Tribunal’s decision. The CEO must keep a record of the outcome of the complaint, including any disciplinary or other action, and ensure that the public may inspect that information (s.150AS(2)).

### **Review of the Tribunal decision**

A decision by the Tribunal in relation to a complaint about the conduct of a councillor, upon application can be subject to Review by Queensland Administrative and Civil Tribunal (s.150AT, LGA).

### **Compliance with Tribunal orders**

Refusal by a councillor to comply with an order of the Tribunal is misconduct (s.176(3)(b)(v), LGA).