

CODE OF CONDUCT FOR COUNCILLORS IN QUEENSLAND

Guidance Material

Background

The *Local Government Act 2009* (LG Act) requires the Minister for Local Government to make a code of conduct setting out the standards of behaviors for councillors in performing their official functions as elected representatives consistent with the five local government principles (LG Principles) that underpin the Act.¹

Before assuming public office, councillors commit to complying with the LG Principles, legislative obligations of councillors and the *Code of Conduct for Councillors in Queensland*.²

The *Code of Conduct for Councillors in Queensland* made on 22 February 2024 sets out the principles, values and standards of behaviour expected of councillors. The code and this guidance are designed to encourage good conduct and effective local government decision-making that in turn build public confidence in local government and in the decisions it makes.

The aim of this supporting guidance information is to help understanding and consistency of approach towards the code on issues commonly raised by councils and councillors. Case studies and examples will illustrate some of the code's key elements. No departmental guidance information can hope to define all language used in the code or cover all scenarios. It is not exhaustive guidance but rather complements guidance offered by other agencies like the Crime and Corruption Commission, the Queensland Ombudsman, the Queensland Human Rights Commission, Queensland State Archives and the Office of the Information Commissioner. It can be read in conjunction with the advice of those agencies.

Finally, this guidance information will require review as changes in, for example, legislation, case law and social media technology, occur. Its structure follows that of the code.

¹ Section 150D of the LG Act. Sections 4 of both the LG Act and the City of Brisbane Act (CoB Act) set out identical principles.

² Sections 169 of the LG Act and CoB Act noting that Brisbane City Council councillors commit to their own separate Code of Conduct as made by that council. Legislative obligations of councillor are otherwise generally equivalent. It is assumed that given this equivalency across obligations and underpinning principals that this guidance information will assist all Queensland councillors.

Introduction to the Local Government Principles, Values and Standards of Behaviour

Section 4 of the LG Act³ states that to ensure the system of local government is accountable, effective, efficient, and sustainable, anyone performing a responsibility under it must do so in accordance with the local government principles (the LG principles).

The LG principles are:

Principle 1

Transparent and effective processes, and decision-making in the public interest.

Principle 2

Sustainable development and management of assets and infrastructure, and delivery of effective services.

Principle 3

Democratic representation, social inclusion and meaningful community engagement.

Principle 4

Good governance of, and by, local government.

Principle 5

Ethical and legal behaviour of councillors, council employees and councillor advisors.

The *Code of Conduct for Councillors in Queensland* aligns values describing expected conduct against the five LG Principles. The code then goes on to prescribe three standards of behavior that apply to all councillors; Responsibilities, Respect and Reputation. The 3R's are consistent with the LG Principles and values. Finally, the code also gives some practical examples of behaviour aligning with each 'R'.

The following table demonstrates the relationship between the five LG Principles, the associated values, and the overlaying three standards of behaviour.

³ And section 4 of the CoB Act.

Principle 1	Principle 2	Principle 3	Principle 4	Principle 5
Effective decision making in the public interest	Effective and economic service delivery	Meaningful community engagement	Good governance	Ethical and Legal behaviours. <u>High level leadership</u>
Corresponding Code Values				
Decisions made in open council meetings	Manage council resources effectively, efficiently and economically	Show respect to all	Develop open and transparent processes and procedures	Maintain the highest ethical standards
Properly inform relevant personnel of all relevant information	Foster a culture of excellence in service delivery	Clearly and accurately explain council decisions	Keep clear, concise and accessible records of decisions	Uphold the system of local government and relevant laws
Decisions must accord with law and policy		Accept and value differences of opinion		
Exercise proper diligence, care and attention				
AT ALL TIMES BE RESPONSIBLE, REPECTFUL, REPUTABLE				
Act responsibly and conscientiously and in the best interests of council and community				
Be respectful of all				
Protect the reputation of council by right conduct				

PART 1 Application of the Code of Conduct for Councillors in Queensland

When does the code apply?

Short Answer: It applies when a councillor is carrying out their role as an elected official.⁴

⁴ See section 150DE(1).

NB. The Code may apply in some limited circumstances to behaviour in a personal capacity if for example:

- a councillor is invoking their role or authority as a councillor; or
- is using council assets such as a council email address, phone or vehicle subject to agreed personal use.

The three behavioral standards set out in the code, the 3R's, apply when councillors are performing their functions as councillors under the LG Act⁵.

'Performing functions under the LG Act' is not defined in the Act however the *Code of Conduct for Councillors in Queensland* clarifies that the 3R's apply at all times when *'councillors are carrying out their role as elected officials'*.⁶

This means when councillors are carrying out local government business, for example, when considering council business in meetings, briefings, workshops or training opportunities to assist councillors in fulfilling their roles or when representing the council.

The code does not apply solely when you are in council meetings or on council premises. It also covers occasions when councillors are promoting and representing council in the local community. It applies to interactions between fellow councillors, council officers and interactions with the public. The code and 3R's also apply to all forms of communication including:

- Face-to-face meetings
- Online or telephone meetings
- Written, verbal and non-verbal communications
- Electronic and social medial communications, posts, statements and comments undertaken as a councillor.

Behaviour as a private individual

The code of conduct applies when a councillor is carrying out their role as an elected official, the code of conduct **does not** apply to conduct in a personal capacity **unless** the councillor:

- is invoking their role or authority as a councillor; or
- is using council assets such as a council email address, telephone or vehicle subject to agreed personal use.

⁵ The Code the Minister is required to make under section 150D(1) LG Act is stated to cover behaviour for that circumstance only. Please note that Chapter 6, part 2, division 5 of the CoB Act sets out the obligations imposed on councillors when performing their functions as councillors under this Act or the CoB Act.

⁶ It cannot be said that code always applies for a councillor in both their public and private lives. For instance, 'At all times' as used in example 3.3 of the Code is limited by section 150D(1) of the LG Act, that is, example 3.3 can only apply to a councillor's behaviour when the code applies, and the code applies when councillors are performing councillor functions under the LG Act.

The councillor complaints framework does not apply to conduct that is solely carried out in a councillor's personal capacity unless the conduct is suspected to be corrupt conduct. In the case of suspected corrupt conduct, the conduct may be investigated irrespective of whether the behaviour occurred in a private or official capacity.

Example 1

A councillor argues with a neighbour about their regular noisy Saturday night parties disturbing his family's sleep. The neighbour knowing of the councillor's elected role, complains to council saying the councillor was disrespectful and bullying. With no link to council function, the code does not apply.

In some private settings, it may be difficult for people to recognise that a councillor is acting in a private or personal capacity and is not performing a public function or acting in an official capacity. Especially when the person would most likely know the councillor holds their elected role, for example, in small communities where councillors are well known to their area. In Example 1, issues of Code application may be avoided if the councillor did not argue with the neighbour but instead made a noise complaint to police.

Councillors must be mindful of this and can elect to make it clear to people in what capacity they are engaging with them. Irrespective of the capacity in which a councillor is engaging, councillors should remain mindful of the important leadership role they have in the community and model behaviour befitting their responsibilities and position of trust within the community.

Example 2

A councillor is attending the local show with their family but has no council business to conduct while there. The mayor is officially opening the show and other councillors are on various judging panels. The councillor's partner wins first prize in the cake competition and while the partner is collecting the prize, the councillor confirms to those present that he was not on the judging panel. The second place-getter states that he had been thinking about making a complaint based on the councillor's careful inspection of the entries as he had assumed the interest was a judging interest and not a personal one.

Behaviour as a private individual and the difference between a conduct breach and misconduct

Under the LG Act, any conduct by a councillor in an official capacity that is contrary to the standards of behaviour in the Code of Conduct is dealt with as a conduct breach, provided it is not unsuitable meeting conduct, misconduct or corrupt conduct.

Misconduct is more serious in nature⁷ and does not rely on a breach of one of the 3R's. This is reflected not only by what it comprises but also by how it must be dealt with. The Office of the Independent Assessor (OIA) may decide to investigate and subsequently refer suspected misconduct to the Conduct Tribunal for decision. A suspected conduct breach may be referred by the OIA to the council to deal with.

Due to its level of seriousness and definition in the Act, private conduct of a councillor can amount to misconduct when there is a connection with the councillor's elected role.

So in Example 1 above, if when arguing with the neighbour, the councillor had instead heavily implied that due to his being a councillor, he would arrange for council inspectors to come and check the neighbour's property for local law violations if the parties do not cease, this behaviour may amount to misconduct under the LG Act definition.⁸ As a misconduct matter, it would not be necessary to consider whether one of the 3R's had been breached.

Social media posts

What is social media?

Social media is a group of online applications designed to allow information to be created, shared, discussed and disseminated. It includes tools, channels and engagement platforms used to publish content and promote connections and conversations. Social media can include but is not inclusive of:

- Social networking sites e.g. (formerly Twitter), Facebook, LinkedIn, Snapchat, Pinterest, WeChat, Weibo
- Video and photo sharing websites e.g. YouTube, Instagram, Flickr, Vimeo, Periscope, Vine, Youku, TikTok
- Blogs, including those hosted by social media channels or media outlets e.g. Tumblr, 'comments or 'your say' features on websites
- Wikis and online collaborations e.g. Wikipedia
- Forums, discussion boards and groups e.g. Google groups, Reddit, Whirlpool, WhatsApp groups
- Any other tool or emerging technology that allows individuals to publish or communicate in a digital environment

Posting as a councillor vs posting as a private individual and when does the code apply

⁷ See the definition of misconduct in section 150L of the LG Act.

⁸ Ibid.

Freedom of expression and the right to engage in public office are fundamental human rights and when exercised by an elected official are an essential part of any democracy.

If a councillor describes themselves as a councillor in a social media post or at the top of their page or in their username or profile, for example, it is reasonable for members of the public to assume that the post is covered by the *Code of Conduct of Councillors in Queensland*. To minimise the potential for a 3R breach, if expressing a personal view on an official councillor profile or when identified as a councillor username, expressly, it is recommended that you state that the view is personal. Be aware too that 'liking' or 'sharing' a post can be perceived by others as endorsing a position when posting on an official councillor profile.

Given how easily confusion can arise, it is best practice to ensure that content on 'councillor named' media is only ever related to the councillor's role or to council business. It must be noted too that even if not described as a councillor or using a 'councillor named' media, the post may still fall within the code's 3R's if discussing council business.

Example

Council has attracted significant media attention following a decision to close a street to vehicular traffic. A councillor who did not support the decision retweets a media article on the subject with the comment "we've made a big mistake here and the sooner we return this street to the way it was before, the better." The councillor relies on the fact that their X profile includes the sentence "all views my own". Notwithstanding this profile disclaimer, the tweet gives some community members the impression that the councillor is speaking for council on a changed position. If the councillor wished to tweet, the tweet could read "speaking for myself, I think the council has made a big mistake but sadly, this is the position that was endorsed by the majority". Expressing a councillor's own view is reasonably limited by the need to preserve confidence in the system of government. Councillors must be clear about whether they are expressing their own view or the view of council.

The department recommends that councillors have separate social media profiles for personal and council use and that they do not place council related opinion or matter on their personal profile. It is likely that readers may find it difficult to differentiate between personal and council accounts, increasing the possibility of unwarranted complaint and confusion.

Councillors should also ensure they have appropriate privacy settings on all social media sites they manage or operate, as all social media posts are public to some degree.

See below an example disclaimer that councillors can choose to disclose on their personal page or social media account:

I am an elected member of XX Council and comments made by me on this page and elsewhere using this account are my own views and might not represent the position of Council.

Managing social media accounts

The suggested measures for managing a councillor's council related social media accounts must be considered in conjunction with council's own social media guidelines. Additionally, it should be aligned with other council policies and procedures that may apply as well as any relevant legislation such as the *Copyright Act 1968* (C'th).

Moderating social media accounts is essential to ensure online conversation is respectful and constructive to the issue being discussed, explained or explored.

Blocking individuals or deleting commentary because of improper behaviour does not represent a breach of the three standards of behavior in the *Code of Conduct for Councillors in Queensland*. It is an appropriate response to good management of social media accounts. Improper behaviour that results in blocking of individuals or deletion of their commentary may include:

- Posting of commentary or imagery that is abusive, offensive, explicit or incites immediate threat to another or incites others to violate laws
- Posting of commentary or imagery that is defamatory, harassing, threatening or bullying to another
- Constant postings and repeated commentary that is off topic to council matters
- Subject of posts are designed in a way to be vexatious or harassing and lowering the value of the debate
- Posting of a councillor's or anyone else's personal information.

It is not acceptable to block commentary that is constructively critical of a councillor or council or to block commentary that constructively expresses a different view to that of a councillor. To do so may amount to a breach of the Code of Conduct.

Councillors who themselves engage in improper behaviour as described above on 'councillor-named' social media will of course enliven code of conduct issues or perhaps misconduct issues depending on the circumstances.

Freedom of expression and the right to engage in public office are fundamental human rights and when exercised by an elected official are essential part of any democracy. The *Local Government Act 2009* and the Code of Conduct however are intended to regulate the conduct of those who voluntarily choose to be councillors and may place reasonable justifiable and lawful limitations on those rights for example where a councillor advocates hatred based on race, gender or religion or makes statements that are demonstrably false and or misleading.

It is worth recalling at this point that the Code of Conduct would apply to such advocacy when a councillor is carrying out their role as an elected official.

Examples of social media posts that may infringe the behavioural standards of the code

Example 1

A new supermarket development has been endorsed by Council. A Councillor who opposed the development and voted against it posts on their councillor profile “*Councillors voted on this while drunk after a big lunch. Typical of this crew.*”

This conduct, if demonstrably false or misleading, suggests potential wrongdoing on the part of council, and many infringe the third R: Ensuring Councillor conduct does not adversely reflect on the reputation of Council. It may also infringe the second R: Respect for all.

Instead, the Councillor could post “*I strongly advocated against this development. I am disappointed by the decision.*”

Example 2

A Councillor publishes a post on their councillor Facebook site expressing disappointment in a Council decision. A member of the community posts a comment reading “*I’m not surprised that Cr A voted in favour – he is without doubt the stupidest person I’ve ever been unfortunate enough to meet.*” The Councillor ‘likes’ the comment.

The Councillor should not endorse the comment by ‘liking’. This conduct may possibly infringe the second R: treat people in a reasonable, just, respectful and non-discriminatory way. Consideration of a range of factors would occur in this circumstance in determining whether an infringement has occurred.

PART 2 General Obligations under the Code of Conduct

The standards of behaviour are summarised as the three R’s. Each councillor bears a personal responsibility to understand the Code and how it applies.

Responsibilities - The first R

Carry out responsibilities conscientiously and in the best interests of the Council and the community

The Code of Conduct for Councillors in Queensland lists seven examples of responsible conduct which it describes as minimum requirements. These are:

1.1 Attend and participate meaningfully in all local government meetings, committee meetings, informal meetings, relevant workshops and training opportunities to assist them in fulfilling their roles other than where prior leave is given.

1.2 Respect and comply with all policies, procedures and resolutions of local government.

1.3 Use only official local government electronic communication accounts (e.g. email accounts) when conducting local government business.

1.4 Report any suspected wrongdoing to the appropriate entity within required time periods.

1.5 Ensure that their behaviour or capacity to perform their responsibilities in their official capacity 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.

1.7 Ensure that the Councillor's Advisor is aware of their obligations to comply with the standards of behaviour in the Code of Conduct for Councillor Advisors in Queensland.

1.8 Awareness of responsibilities imposed on councillors by the Local Government Act 2009, the City Of Brisbane Act 2010 and the relevant regulations.

Active and objective personal support for council's policies and procedures along with processes related to conduct mentioned in some of the above examples is vital to the accountable and transparent management of council.

Attending meetings ensures the community is adequately represented. It is very important for councillors to read the agenda items and officers' reports before the council meeting. This background reading helps councillors to effectively assess and provide constructive input into council debate and decision making. Background reports and papers can be very lengthy. Therefore, setting aside enough time for preparation before each council meeting is important.

Respect – The second R

Treat people in a reasonable, just, respectful and non-discriminatory way

The Code lists three examples of respectful conduct which it describes as minimum requirements. These are:

2.1 Treat fellow Councillors, local government employees and members of the public with courtesy, honesty and fairness.

2.2 Not use abusive, obscene or threatening language (either oral or written) or behaviour towards other Councillors, local government employees or members of the public.

2.3 Have proper regard for other people's rights, obligations, cultural differences, safety, health and welfare.

To represent their community, councillors must interact and communicate with others in a variety of formal and informal settings from council meetings to one-on-one meetings with constituents or at community meetings and events for example.

Robust debate is necessary, and councillors are expected to express, challenge, criticise and disagree with ideas, views, policies or proposed resolutions of council. Differences of opinion and the defence of those opinions through argument and public debate is an essential part of council life. This must be done however, in a respectful way to build and maintain healthy working relationships among councillors, with council officers and members of the public.

A culture of mutual respect can encourage positive debate and meaningful communication. This in turn can increase the exchange of ideas, understanding and knowledge. Respectful communications are polite and courteous. They involve listening and having consideration for people's feelings, following procedures and policies as well as showing appreciation and thanks. Practically, this means using appropriate language in meetings, allowing others time to speak without interruption and focusing criticism on ideas and policies rather than on personalities or personal attributes.

Disrespectful behaviour can take many forms and will always depend on the circumstances in which it occurs. The circumstances can include:

- the place where the behaviour occurred
- who observed the behaviour
- the character and relationship of the people involved; and
- the behaviour of anyone who prompted the alleged disrespect.

Examples of disrespectful behaviour may include angry outbursts in a council meeting or in written communication or the sharing of malicious gossip or rumours.

Disrespectful behaviour by councillors undermines civil behaviour within our community generally. It is harmful. It impacts the willingness of others to interact. Ongoing disrespectful behaviour can ultimately create a toxic culture and lead to governance failure.

Councillors may respond to criticism and disrespectful behaviour shown to them. But it is important to always be civil and demonstrate leadership in the communication. Criticism on social media channels is common. Many councils offer social media guidance to councillors and management of social media channels is discussed earlier in this guidance material.

Reputation - The third R

Ensure conduct does not reflect adversely on the reputation of Council

The Code lists three examples of reputable conduct which it describes as minimum requirements. These are:

3.1 When expressing an opinion dissenting with the majority decision of the local government respect the democratic process by acknowledging that the local government decision represents the majority view of the local government.

3.2 When making public comment, clearly state whether they are speaking on behalf of the local government or expressing their personal views.

3.3 At all times strive to maintain and strengthen the public's trust and confidence in the integrity of local government and avoid any action which may diminish its standing, authority or dignity.

Councillors must be aware that their actions might have an adverse impact on council and may lower the public's trust in council's ability to discharge its functions. Conduct of a councillor which could reasonably be regarded as reducing public confidence could involve for example, making demonstrably dishonest social media posts about council publicly stating false criticisms of the council. Whether a councillor's conduct shifts from diminishing public confidence in their ability to fulfill their role to undermining public confidence in the council as a whole to fulfill its collective role will depend on the specific circumstances.

Example:

A councillor posts, 'Mayor X, you and your cronies in council should resign after approving Y development today. How much money did you and your pals accept? #councilfail #jailcouncil'

This example on its face, is likely to bring council's reputation into disrepute as a whole and undermine public confidence in council being able to fulfill its role appropriately.

This behavioural standard does not mean that a councillor cannot be critical of another councillor or the council in any circumstance. As mentioned in the discussion on the second R, *Respect*, councillors or councils make statements or decisions which should be subject to the expression of alternative views or critical commentary. Being able to hold other councillors to account is at the heart of the implied right of freedom of communication and is an essential part of democracy. Such commentary cannot be abusive, personal, unfair and/or materially and demonstrably false or misleading.

Conclusion

It is important to remember that *The Code of Conduct for Councillors in Queensland* sets only the *minimum* standards of behaviour required of councillors. Behavioural excellence in all respects should be the goal of all councillors. The communities that councillors have been elected to represent rightfully deserve nothing less.

