

DALBY TOWN COUNCIL



CODE OF CONDUCT FOR COUNCILLORS

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Code of Conduct for Councillors

1. Introduction

Dalby Town Council's Code of Conduct for Councillors (the code) provides Councillors with guidance and a frame of reference about their roles and 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 Dalby Town Council in performing the duties of their office.

The code comes into effect on 28th February 2006 being the date of Dalby Town Council's resolution of adoption.

2. Obligations

The Act and the *Local Government Regulation 2005* (the regulation) places 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 1 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 local government 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 information that:
 - (a) is 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; and
- (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
 - (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.
- (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), 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 in Council's Councillor/Staff Interaction Policy, 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 agreed 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:

- 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.
- 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.

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; and
- 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); and
- any representations made to it by the Councillor who is the subject of the complaint (having regard to the principles of natural justice); and
- the recommendations of Council's Conduct Review Panel (if the complaint has been referred to the Council's Conduct Review 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, Council may impose its own penalty for a statutory breach. In other words, a statutory breach may be penalised both by Council 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 for one future ordinary meeting of the local government and all the local government's committees of which the Councillor is a member, 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 for one future ordinary meeting of the local government and all the local government's committees of which the Councillor is a member, 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 for not more than two consecutive future meetings of the local government and all the local government's committees of which the Councillor is a member, the maximum period of suspension not to include more than two consecutive ordinary meetings

Breach Type	Penalty
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 for not more than two consecutive future meetings of the local government and all the local government's committees of which the Councillor is a member, 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 for not more than two consecutive future meetings of the local government and all the local governments' committees of which the Councillor is a member, the maximum period of suspension not to include more than two consecutive ordinary meetings. <p>In addition the Local Government (or any other person or agency) may commence legal action with respect to such breaches.</p>

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.
- 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 under the Act or Regulations there 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: 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:

- Repeated behaviour, other than behaviour amounting to sexual harassment, by a person that
 - 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 *Local Government Regulation 2005*.

8. Appendix - Procedures for dealing with code breaches summary

Breach Type	Reporting	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: a) whether the Councillor has committed the alleged meeting breach and, if so, whether to impose a penalty, or b) 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: ○ take no further action; or ○ impose a penalty; or ○ refer the complaint to the conduct review panel as a possible statutory breach. It may also, if there are grounds to do so, refer the complaint to the conduct review panel as a possible repeat breach.
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: a) whether the Councillor has committed the alleged meeting breach and, if so, whether to impose a penalty, or b) 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: ○ take no further action; or ○ impose a penalty; or ○ refer the complaint to the conduct review panel as a possible statutory breach. It may also, if there are grounds to do so, refer the complaint to the conduct review panel as a possible repeat breach.
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: a) whether the Councillor has committed the alleged minor breach and, if so, whether to impose a penalty, and b) 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: ○ take no further action; or ○ impose a penalty. It may also, if there are grounds to do so, refer the complaint to the conduct review panel as a possible repeat breach.

Breach Type	Reporting	Processing	Action
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 governments 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 governments Conduct Review Panel.</p> <p>If referred to the local governments 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 vexatious matter or has been made frivolously ○ 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 	<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.

Breach Type	Reporting	Processing	Action
		<ul style="list-style-type: none"> ○ 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>	
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 panel may make recommendations on the allegation and the appropriate penalty.	<p>Council may decide to:</p> <ul style="list-style-type: none"> ○ take no further action; or ○ impose a penalty.