



LGPro Proposal for dealing with Councillor misconduct

Introduction

LGPro considers it timely for the State Government to develop a new, simpler and more efficient system for the handling of complaints of Councillor misconduct and welcomes the opportunity to be involved in the process.

There are two key reasons why a new approach to dealing with Councillor misconduct is required. First, the establishment of the Independent Broad-based Anti-Corruption Commission (IBAC) and its responsibility for investigating criminal matters in the Local Government sector is likely to require consequential changes to the overall system in Victoria, particularly as it appears that the current role of the Local Government Investigations and Compliance Inspectorate (LGICI) will cease to exist. Second, the existing system has been demonstrated to be seriously inadequate – it is unresponsive, excessively legalistic and expensive and cases can drag on for years.

Principles that should underpin a new approach

1. Needs to be respectful of the important role of democratically elected Councils and contribute to public understanding and support of that role.
2. Process needs to recognise that there are broadly three levels of misconduct:
 - 1) Misconduct of a type that directly reflects on the character of the Councillor and their suitability to hold the office of Councillor (gross misconduct)
 - 2) Conduct that is disruptive to good governance (serious misconduct); and
 - 3) Behaviour that breaches a Council's code (misconduct)

*(IBAC is assuming responsibility for investigating corrupt and criminal behaviour that constitutes an indictable offence. The Local Government Act (LGA) has two indictable offences only: misuse of position and bribery. Investigation for summary criminal offences under the LGA is currently the responsibility of the LGICI).

3. Process should facilitate and enhance the capacity to achieve the resolution of differences within the Council before escalation to outside agencies.
4. The focus is on dealing with allegations of **Councillor** misconduct; as such the process needs to respect governance arrangements in Local Government and the respective roles of Councillors, the CEO and Council staff.
5. Codes of conduct for Councillors need to be principle-based rather than prescriptive. The primary principle of councillor conduct and the seven general principles defined in the Act are considered to be adequate. (Attachment 1)
6. In cases involving disruptive behaviour by individual Councillors the process needs to have the capacity to respond to, and take action to prevent such behaviour disrupting the effective operations of a Council. This should include the capacity to upgrade the complaint for repeated cases of misconduct and to impose appropriate penalties, including the ability to suspend or remove individual Councillors.

7. Process needs to minimise impact on the operations of a Council during the consideration of allegations of misconduct by a Councillor and contribute to the effective ongoing operations of a Council after the issue is resolved.
8. Process should enable allegations to be considered promptly and fairly, using the minimum of resources and resolved in a transparent and timely way.
9. There needs to be clarity in the respective roles of IBAC and other agencies involved in handling allegations of Councillor conduct and an integrated approach to the operation of the system.

Outline of new approach

1. Need for a new system to complement IBAC's role

In accord with its legislation, the Independent Broad-based Anti-corruption Commission (IBAC) will exercise its responsibilities for investigating and handling matters of corrupt and criminal behaviour constituting an indictable offence. There is now a need for Government to devise an efficient and effective system to address other levels of misconduct.

2. Enhancing the capacity to achieve the resolution of differences within Council

In those instances where there are interpersonal conflicts between Councillors that have a detrimental effect on the Council's ability to provide good governance, such disputes should wherever possible be resolved internally by the Councillors. Where this is not possible, Councils should be provided with access to independent mediators to facilitate the resolution of the dispute.

3. Proposal for a new independent investigative function within LGV

LGPro proposes that consideration be given to a new independent function within LGV for investigating complaints **involving governance and behaviour** and in accord with the earlier principles.

LGV be given the authority and resources to:

- 1) Investigate complaints of misconduct against Councillors made by existing Councillors that do not meet the threshold for criminal offences under the LGA and have not been able to be resolved internally.
- 2) Initiate investigations of Councillor misconduct on its own account.
- 3) Gather information either directly or through other parties necessary for consideration of a complaint.
- 4) Recommend to the Secretary of the Department of Planning and Community Development the suspension of Councillors from their role, with or without pay, while an investigation proceeds.
- 5) Recommend to the Secretary of the Department of Planning and Community Development the application of appropriate penalties.

4. Appropriate penalties

It is considered that the existing framework of penalties summarised below is appropriate, subject to the capacity to upgrade complaints for incidents of repeated cases of misconduct.

Finding	Range of penalties
Misconduct by Councillor	<ul style="list-style-type: none"> • Mediation • Training • Counselling • Reprimand • Apology required • Leave of absence (up to two months)
Serious misconduct by Councillor	<ul style="list-style-type: none"> • Suspension without pay (up to 12months) • Ineligible to be Mayor (up to four years) • Ineligible to Chair special committee (up to four years)
Gross misconduct by Councillor	<ul style="list-style-type: none"> • Suspension without pay (up to 12months) • Disqualification (up to four years)

Note: Work is required to develop a better definition of what constitutes serious and gross misconduct.

It is imperative that sanctions are binding and that failure to abide by the finding attracts further sanctions.

5. Internal appeal system

It is proposed that an internal appeal panel be established within the Department of Planning and Community Development to hear appeals. The appeal panel would consist of up to three people with a mix of legal, Local Government and governance skills.

6. A non-legal approach with time limits

Under the proposed new function LGV will be investigating complaints **involving governance and behaviour** – as such it is not necessary to take a legalistic approach to its operations. It will also be important to resolve matters in a timely way and it is proposed that a maximum of three months apply for both investigations and appeals.

Attachment 1

The Act defines "Councillor conduct principles", which are standards of conduct that the community has a right to expect of all Councillors. These include a "Primary Principle" and seven "General Principles". These principles must be included in every Councillor Code of Conduct and must be observed by every Councillor.

1.1.1 Primary Principle

Section 76B of the Act sets out the Primary Principle of Councillor Conduct being that, in performing the role of a Councillor, a Councillor must:

- Act with integrity, and
- Impartially exercise his or her responsibilities in the interests of the local community, and
- Not improperly seek to confer an advantage or disadvantage on any person.

1.1.2 General Principles

Section 76BA of the Act goes on to require that, in performing the role of a Councillor, a Councillor must also:

- (a) Avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations,
- (b) Act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person,
- (c) Treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council officers and other persons,
- (d) Exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office,
- (e) Endeavour to ensure that public resources are used prudently and solely in the public interest,
- (f) Act lawfully and in accordance with the trust placed in him or her as an elected representative, and
- (g) Support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.