



Mayor and councillor responsibilities and obligations (Queensland)

Author: [Patrick Quinn](#)

Email: pquinn@gnl.com.au

Phone: 0415 463 966

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Changes to the *Local Government Electoral Act 2011* in 2019 introduced the mandatory requirement for all candidates for council elections and by-elections to complete 'So you want to be a councillor?' training within six months before nominating for election. The training was designed to address the primary responsibilities and obligations of mayors and councillors.

That training had a focus upon:

- disclosure obligations;
- registers of interests;
- donations, engagement with the community;
- acceptable request guidelines;
- conduct of a councillor; and
- mayoral responsibilities.

In March 2020, Queensland local government elections saw the election of a significant number of mayors that were not elected as mayors in the previous term. Accordingly, it is an opportune time for a reminder about the role, powers and responsibilities of a mayor.

Mayor's responsibilities

Whilst all councillors have responsibilities imposed upon them, Section 12 of the *Local Government Act 2009* ('LGA') imposes additional responsibilities on a mayor. Those additional responsibilities include:

1. leading and managing meetings of the local government at which the mayor is the chairperson, including managing the conduct of the participants at the meetings;
2. leading, managing and providing strategic direction to the chief executive officer in order to achieve the high-quality administration of the local government;
3. directing the chief executive officer in accordance with a resolution or a document adopted by resolution, of the local government;
4. conducting a performance appraisal of the chief executive officer, at least annually, in the way that is decided by the local government (including as a member of a committee, for example);
5. ensuring that the local government promptly provides the Minister with the information about the local government area, or the local government, that is requested by the Minister;
6. being a member of each standing committee of the local government; and
7. representing the local government at ceremonial or civic functions.

Mayor's dealings with the CEO

Two of the additional responsibilities ((c) and (d)) of the mayor surround the mayor's dealings with the Chief Executive Officer (CEO). Recently there have been a number of investigations into mayors (and in some cases, councillors) in Queensland relating to their relationship and interactions with a Council's CEO.

Section 12(c) of the LGA gives mayors powers to direct the CEO and to conduct the performance appraisal of the CEO. However, it is important to recognise that those powers and responsibilities have limits placed upon them, including the power of direction in:

1. providing strategic direction to the CEO in order to achieve the high-quality administration of the local government; and/or
2. directing the CEO in accordance with a resolution or document adopted by resolution of the Council.
3. In relation to the employment of the CEO:
4. the Council is the entity that is charged with appointing the CEO and as such, Council has the power to remove and suspend the person in that role. The appointment, removal or suspension of a CEO is not a power that can be exercised by a mayor without a decision of Council;
5. whilst the mayor has the additional responsibility of conducting a performance appraisal of the CEO, the mayor's power is not absolute and must be done in the way decided by Council.

Mayors should be cautious when considering any direction to, or action against a CEO and should first seek advice. This is not only to ensure that any action is appropriate, lawful and in accordance with the LGA, but to ensure that the mayor does not become the

subject of an investigation by the [Office of Independent Assessor \(OIA\) and/or the Crime and Corruption Commission \(CCC\)](#).

Such investigations carry the potential for a mayor to be charged with a disqualifying offence.

Disqualifying offences will see automatic suspension of a councillor

Pursuant to section 175K of the LGA, a councillor or mayor charged with a disqualifying offence is automatically suspended from their position and is not able to act as a councillor (or mayor or deputy mayor).

Disqualifying offences are, pursuant to section 156(3) of the LGA:

- treason;
- electoral offences;
- “serious integrity offences”; and
- “integrity offences”.

The prescribed “serious integrity offences” and “integrity offences”, which are identified in Schedule 1 to the LGA, include offences such as:

- perjury (s123(1) of the Criminal Code);
- fraud (s408C(1) of the Criminal Code);
- extortion (s415(1) of the Criminal Code);
- taking reprisal action (150AW LGA); and
- failing to inform a meeting of a councillor's material personal interest (175C(2) LGA).

Get help from a professional misconduct lawyer

Gilshenan and Luton provide advice and representation to councillors and mayors that find themselves the subject of an OIA or CCC investigation or have been charged with an offence.

Contacting Gilshenan &Luton

[07 3361 0222](tel:0733610222) (24/7)

gnl@gnl.com.au

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