



# OIA guideline for making an application to the Councillor Conduct Tribunal

## Functions of the Independent Assessor

The functions of the Independent Assessor (IA) include,

- to assess complaints about councillors of a conduct breach, misconduct or corrupt conduct when referred by the Crime and Corruption Commission
- to refer suspected conduct breaches back to councils to resolve
- to investigate alleged misconduct complaints
- to undertake a natural justice process to give councillors an opportunity to respond to complaints before possible referral to the Councillor Conduct Tribunal (CCT) which decides misconduct matters
- to prepare applications for hearing by the CCT
- the use of OIA investigative powers for misconduct investigations and the investigation of statutory offences
- to investigate other matters as decided by the Minister and any other functions given to the IA under the *Local Government Act 2009* (LG Act).

## Delegation of functions

The IA may delegate any of the assessor's functions to an appropriately qualified OIA staff member. However, the IA may not delegate the assessor's power to give a notice under section 150CK of the LG Act, a confidentiality notice.

## The decision to make an application to the CCT

The decision to make an application to the CCT is made by the IA or the person to whom the IA delegates the making of an application under the LG Act. Any decision by the IA to make an application to the CCT is made with the following in mind:

- given the evidence available, are there reasonable prospects of the application being sustained, and
- is it in the public interest to make the application.

## Reasonable prospects of success

To determine if there are reasonable prospects of the application being sustained, the IA or delegate considers the following against the evidence obtained during the investigation:

- is there sufficient available evidence to prove misconduct by the councillor on the balance of probabilities
- is the relevant evidence credible, and
- the availability of witnesses.

## Public interest considerations

The exercise of the IA's functions will be guided by whether it is in the public interest. The IA or delegate may use the following public interest considerations. This is a non-exhaustive list:

- any reasons for, or factors relevant to, the conduct
- any steps taken by the councillor to mitigate or remedy the effects of the conduct
- the consequences, both financial and non-financial, resulting from the conduct
- the seriousness of the alleged misconduct
- the experience of the councillor
- mitigating or aggravating circumstances
- other alternatives that may exist to deal with the matter





- the previous disciplinary history of the councillor
- whether the alleged breach is ongoing
- how often, misconduct of this kind occurs and whether there is a need for deterrence
- the length of time since the alleged misconduct occurred
- the physical or mental health of the councillor
- the length and expense of any misconduct hearing
- if the alleged misconduct is sustained, what are the possible orders available to the CCT, and
- the need to maintain public confidence in the councillor conduct framework.

## **Further considerations**

### **OIA submissions on CCT orders**

The following is a non-exhaustive list of factors which may be considered by the OIA in preparing submissions on possible CCT orders:

- the experience of the councillor
- the conduct of the councillor, including:
  - whether the misconduct was intentional or not
  - whether the councillor attempted to conceal their misconduct
  - any steps taken by the councillor to rectify or mitigate consequences of the misconduct
  - the level of cooperation by the councillor with the OIA
  - any prior misconduct or inappropriate conduct findings made against the councillor relevant to the alleged offending
  - any benefit or profit derived by the councillor due to the misconduct
- the appropriate type of sanction to deter others from engaging in similar conduct, and
- any precedents or comparative cases.

## **Review by the OIA**

Although there is no specific restriction on whether the OIA may review a finding made by the CCT, when considering whether to review a decision, the OIA would have regard to the Model Litigant Principles.

A review would only be instituted where the OIA considers that the review is likely to succeed.

