

**LOCAL GOVERNMENT ELECTED MEMBERS ASSOCIATION (WA) INC.
COMPLAINTS BY ELECTED MEMBERS**

1. DEPARTMENT OF LOCAL GOVERNMENT SPORT AND CULTURAL INDUSTRIES (DLGSC)

Website home page is here <https://www.dlgsc.wa.gov.au/department>

Website specifically for **local government** is here: <https://www.dlgsc.wa.gov.au/local-government>

General **contact** details are here <https://www.dlgsc.wa.gov.au/department/contact-us>

Local Government inquiries/complaints (8.30 am to 4.30 pm, Monday to Friday) contact details are:

Telephone: 61 8 6552 7300

Freecall: 1800 634 541 (regional WA callers only)

Local Government Advisory Hotline Phone: 1300 762 511 (for local governments only).

Local Government Advisory Hotline Email lghotline@dlgsc.wa.gov.au

It is best to use the email hotline, so you have the advice and information in writing.

The DLGSC will receive your complaints but may not acknowledge your complaint or respond to it or investigate it in a timely manner.

The Department also gives advice to CEOs.

The Department gives legal advice on its LG Hotline that appears not to be given always if at all by qualified legal practitioners. It is important to understand if Department advice you are given is from lawyer qualified to give that advice and with a legal practice certificate.

The Department should be required to publish the legal advices it relies on for the advice it gives to Elected Members about its interpretation of the LG Act. The Department should not be giving legal advice that is not given by an independent legal practitioner with a current practice certificate.

The Department manages the operation, administration, practice and procedure of the Standards Panel and along with WALGA influences the Standards Pane membership.

2. WA PUBLIC SECTOR COMMISSION (PSC)

Website is here <https://publicsector.wa.gov.au/>

PSC **advisory service** phone number is 08 6552 8888

Reporting minor misconduct to PSC here <https://publicsector.wa.gov.au/conduct-integrity/minor-misconduct/reporting-minor-misconduct-psc>

**LOCAL GOVERNMENT ELECTED MEMBERS ASSOCIATION (WA) INC.
COMPLAINTS BY ELECTED MEMBERS**

PSC **workplace behaviour guide** is here <https://publicsector.wa.gov.au/conduct-integrity/managing-workplace-behaviour-guide>

The PSC is not required but chooses whether or not to hear, investigate or make a decision about a complaint **against a local government CEO**. If the PSC chooses to hear and decide such a complaint, it will return those findings to a Council to decide finally or may refer to the CCC if the facts disclose a possible serious misconduct breach.

PSC for Minor Misconduct by local government employees including CEOs

Test to be met is that, *the conduct is a disciplinary offence providing reasonable grounds for termination of employment, and includes conduct that adversely affects honest or impartial performance, is not honest or impartial, breach of trust, misuse of information to the benefit of officer or another person, or detriment of another person.*

Matters of general low-level discipline that is not minor misconduct

Such matters include, *human resources and performance management, employee grievances, minor infractions of policies and procedures.* These are, *managed by the employing authority, noting that the CCC advises that records of such matters should be retained for internal monitoring and for reporting to the PSC on an annual basis.*

3. WA WHISTLE-BLOWERS

WA Whistleblowing legislation is the *Public Interest Disclosure Act 2003 (WA) (PID Act)* and it is here [insert link
https://www.legislation.wa.gov.au/legislation/statutes.nsf/actsif_p.html

How the PID Act works is described here by the Public Sector Commission [insert link
<https://publicsector.wa.gov.au/public-administration/official-conduct-and-integrity/public-interest-disclosures>

Under the PID Act a **public authority** includes a *local government, a regional local government or a regional subsidiary* and a **public officer** includes a *member, officer, or employee of a public authority.*

Under the PID Act **public interest information** means *information that tends to show that, in relation to its performance of a public function... a public authority, a public officer, or a public sector contractor is, has been, or proposes to be, involved in —*

- (a) *improper conduct; or*
- (b) *an act or omission that constitutes an offence under a written law; or*

LOCAL GOVERNMENT ELECTED MEMBERS ASSOCIATION (WA) INC.
COMPLAINTS BY ELECTED MEMBERS

- (c) *a substantial unauthorised or irregular use of, or substantial mismanagement of, public resources; or*
- (d) *an act done or omission that involves a substantial and specific risk of —*
 - (i) *injury to public health; or*
 - (ii) *prejudice to public safety; or*
 - (iii) *harm to the environment;**or*
- (e) *a matter of administration that can be investigated under section 14 of the Parliamentary Commissioner Act 1971;*

Each local government should have a safe, clear and transparent path for whistle-blowers: see for example Dowerin CCC report [insert link <https://www.ccc.wa.gov.au/sites/default/files/Report%20on%20a%20Matter%20of%20Governance%20at%20the%20Shire%20of%20Dowerin.pdf>] that investigated the fraud against the local government the CEO, at para [103] “... Ms King was concerned about how Mr Alcock was performing in the job. She checked the legislation and concluded that she wasn't supposed to be talking to councillors; she didn't feel she had an avenue to raise her concerns...”

4. WORKSAFE (Safe workplace including freedom from bullying)

Make a **Worksafe complaint** here about a workplace hazard or incident <https://www.commerce.wa.gov.au/worksafe/how-make-complaint-about-workplace-hazard-or-incident>

Section 22 of the *Occupational Safety and Health Act 1984 (WA)* (OSH Act) deals with the duty of persons who have “... *control of workplaces where other persons who are not employees of that person work or are likely to be in the course of their work... and states the person in control “ shall take such measures as are practicable to ensure that the workplace, .. and that the other persons who are at the workplace ... are not exposed to hazards.”*

As a general principle, if a local government CEO can influence a situation, that CEO will continue to have OSH duties even if another agency or person also has duties.

In Western Australia, bullying is a workplace hazard like any other under the OSH Act.

The OSH Act Code Practice “Code of practice Occupational safety and health in the Western Australian Public Sector 2007” (the Code) recognises that bullying is a form of workplace hazard. Bullying can be covert or more subtle behaviour that undermines or treats the person less favourably or disempowers them such as “deliberately denying access to information, consultation or resources.”

LOCAL GOVERNMENT ELECTED MEMBERS ASSOCIATION (WA) INC.
COMPLAINTS BY ELECTED MEMBERS

One form of bullying could be for a local government CEO to withhold or selectively withhold information from Elected Members or some Elected Members.

WorkSafe should recognise that local government Elected Members, who are subject to control by a CEO in the local government workplace and are subject to the processes that the CEO puts or does not put in place, can be subject to bullying by a local government CEO.

Elected Members should and need to be able to lodge a bullying claim under the OSH Act against local government administration CEOs and/or staff.

This complaint process for Elected Members is as yet not settled.

5. WA OMBUDSMAN

Ombudsman **website** is here (insert link <http://www.ombudsman.wa.gov.au/>)

About the Ombudsman is here
[http://www.ombudsman.wa.gov.au/About Us/Aboutus.htm](http://www.ombudsman.wa.gov.au/About_Us/Aboutus.htm)

Contact the Ombudsman here
[http://www.ombudsman.wa.gov.au/Contact Us/Contact.htm](http://www.ombudsman.wa.gov.au/Contact_Us/Contact.htm)

Guidelines for making a complaint are here
<http://www.ombudsman.wa.gov.au/Publications/Guidelines.htm>

How to **Complain** to the Ombudsman is here
http://www.ombudsman.wa.gov.au/Complaints/Making_complaints.htm

The **online complaint form** is here
http://www.ombudsman.wa.gov.au/Complaints/Complaint_Form.htm

With some exceptions, the Ombudsman can investigate complaints against the **Department of Local Government Sport and Cultural Industries (DLGSC)**, and **local governments** (cities, towns and shires) where the conduct is related to an **administration matter**.

A complaint can be made about any decision, action or inaction by the DLGSC or a local government within the Ombudsman's jurisdiction but only if the complaint is related to an administration matter, which include the decision making practices and actions of public authorities in providing their services to the public, and the matter affects you personally.

The Ombudsman cannot investigate Complaints more than 12 months old or complaints which could be taken to a court or tribunal.

6. CORRUPTION AND CRIME COMMISSION WA (CCC)

Draft "LGEMA Making Complaints" document seeking submissions/comments from LGEMA Members

**LOCAL GOVERNMENT ELECTED MEMBERS ASSOCIATION (WA) INC.
COMPLAINTS BY ELECTED MEMBERS**

The CCC [insert link here https://www.ccc.wa.gov.au/contact_us] has repeatedly identified what has been wrong in local government practice and procedure, and repeatedly makes recommendations. These CCC reports and recommendation can be considered for best practice local government. See the LGEMA public page here for applicable WA CCC local government reports [insert link <http://lgema.org/public>] for CCC reports that are helpful for identifying best practice local government.

You can complain (anonymously if you wish) to the CCC about **corruption** here <https://www.ccc.wa.gov.au/reporting-corruption>
Corruption for the CCC purpose is explained here <https://www.ccc.wa.gov.au/what-is-corruption>

You can complain (anonymously if you wish) to the CCC about **misconduct** here https://www.ccc.wa.gov.au/report_misconduct
Serious misconduct for the CCC purpose is explained here <https://www.ccc.wa.gov.au/sites/default/files/Fact%20Sheet%203%20-%20Reporting%20serious%20misconduct.pdf>

You can complain (anonymously if you wish) to the CCC about **unexplained wealth** here https://www.ccc.wa.gov.au/report_unexplained_wealth
Unexplained wealth indicators for CCC purpose are explained here <https://www.ccc.wa.gov.au/Unexplained-Wealth-Indicators>

7. WA OFFICE OF THE AUDITOR GENERAL (OAG)

The State Auditor General has completed many reports and made many recommendations.

You can suggest topics to the OAG here (**insert link** <https://audit.wa.gov.au/contact-us/>).

You cannot make a direct complaint to the OAG about the operations, practice and procedure of a particular local government (unless you make it through your local government Audit Committee and your local government auditor). Councillors should be very clear about the scope of their annual audit and whether or not the scope of the audit proposed by your CEO is sufficient for you to be sure that your financial oversight role can be taken to have been performed.

(NB: The conventional wisdom and best practice is that Auditors should be changed at least every seven years, and this is arguably true even though the OAG is now responsible for local government Audits))

**LOCAL GOVERNMENT ELECTED MEMBERS ASSOCIATION (WA) INC.
COMPLAINTS BY ELECTED MEMBERS**

See the LGEMA public page for OAG reports about local government best practice here [insert link <http://lgema.org/public>] and scroll down until you find the OAG heading. The OAG is helpful for identifying best practice local government.

NB: WALGA (Western Australian Local Government Association)

WALGA is not a complaint body for Elected Members.

CEOs may use WALGA or WALGA Preferred Providers to intervene on the CEO behalf when the Council is disagreeing with a CEO. Council and Councillors are not required to participate in any such meeting.

WALGA may charge the Council for this service.

DRAFT