

Council member disqualification – Absence from council meetings

Introduction

Under section 47 of the [Local Government Act 2019](#) (the Act) a person may be eligible for election or appointment as a member of a council unless the person is disqualified.

This information sheet relates to the disqualification criteria at section 47(1)(o), which states:

- (1) A person is disqualified from office as a member of a council if the person:
 - (o) is absent, without permission of the council in accordance with the regulations, from 2 consecutive ordinary meetings of the council.

Regulation 101 of the [Local Government \(General\) Regulations 2021](#) (the General Regulations) states:

- (1) This regulation applies if a member is absent without the permission of the council under section 47(1)(o) of the Act.
- (2) At the first meeting that a member is absent from the meeting without permission, the council must resolve that the member is absent from the meeting without permission and the resolution must refer to section 47(1)(o) of the Act.
- (3) The CEO must notify the member, in writing, of the resolution within 7 days of the making of the resolution.
- (4) The notification in subregulation (3) must include a copy of the minutes and a statement that if the member is absent without permission from the next ordinary meeting of the council, the member may be disqualified.
- (5) If the member is absent from the next ordinary meeting of the council without permission, the council must resolve that the member is absent from the meeting without permission and the resolution must refer to section 47(1)(o) of the Act.
- (6) However, nothing in this regulation prevents a council from revoking a resolution made under it if the member provides a reason to the council for the member's absence to the satisfaction of the council.

Steps for disqualification

Noting the requirements set out at regulation 101 of the General Regulations, the steps for disqualification due to consecutive absences from council meetings is set below.

Step 1 – First absence

The council may make a resolution at an **ordinary council meeting** with the following parts to be reflected in the resolution:

- (a) a statement that the council member is absent from the meeting without permission; and
- (b) a reference to section 47(1)(o) of the Act.

Step 2 – Notification to council member

Following **Step 1**, the CEO of the council notifies the absent council member, in writing, of the council's resolution in accordance with the following requirements:

- (a) the notification is given within 7 days of the council making of the resolution; and

- (b) a copy of the meeting minutes (this can be draft minutes) is included in the notification; and
- (c) a statement is included in the notification that if the council member is absent without permission from the **next ordinary council meeting**, that the council member may be disqualified.
- (d) A statement can be included in the notification that if the council member would like to provide any reason or supporting documentation for not providing a notification of absences in advance, for the council to consider at the next ordinary meeting.

If the council member provides a response to the first notification by the CEO with a reason for their absence without permission, the CEO of the council is to ensure an agenda item is included for council to consider the absence at the next ordinary meeting.

The council member may wish to request that the agenda item be placed in the confidential business section if the surrounding circumstances are of a sensitive nature.

The council has the option to rescind previous decisions if the council member provides a reason for the absence that satisfies the council (see regulation 101(6) of the General Regulations).

If the council rescinds a previous decision to not accept an absence, the current process would then end.

Step 3 – Second absence

Following **Step 2**, if the council did not rescind the previous absence and the council member is absent without permission at the **next ordinary council meeting**, the council may make a resolution with the following parts to be reflected in the resolution:

- (a) a statement that the council member is absent from the meeting without permission; and
- (b) a reference to section 47(1)(o) of the Act.

Important notes about Steps 1 to 3

All relevant processes should be followed by the council (and the CEO of the council) at the time of making these decisions regarding disqualification to ensure there is procedural fairness.

A decision that a council member has been absent without permission should not be made retrospectively (i.e. at a later meeting), as this would likely be inconsistent with procedural fairness and the process set out in the General Regulations. In other words, a council resolution at **Step 1** and **Step 3** should only be made at the meeting the council member is absent.

The council should have written evidence of **Step 1**, **Step 2** and **Step 3** before progressing this process.

Step 4 – Following up on absences

If **Step 1**, **Step 2** and **Step 3** have been followed, it is recommended that the council then writes to the council member, outlining the steps that have been followed and seeking any additional comments from the council member that may justify the absences.

It is recommended that the CEO of the council formally sends this correspondence to the council member by the most appropriate contact method (e.g. via email or post). If the CEO is unable to make contact with the council member to confirm receipt, the CEO should record all attempts to make contact with the council member.

Any reasons provided by the council member should then be presented to the council for the council's consideration at the next ordinary meeting.

The council has the option to rescind previous decisions if the council member provides a reason for the absence that satisfies the council. If the council rescinds a previous decision to not accept an absence, the current process would then end.

Step 5 – Informing the council member of responsibility to resign

If the council does not rescind any of the decisions to not accept a previous absence, then it is recommended that the council again writes to the council member to inform them of the council member's responsibility to resign (see section 51 of the Act).

It is recommended that the CEO of the council formally sends this correspondence to the council member and record any receipt or attempt of contact.

The council member may then resign by giving written notice to the CEO as soon as practicable (see section 52 of the Act). However, the council member may have reasons for believing they should not resign, for example, they may not believe that all procedures have been correctly followed. A council member cannot be forced to resign.

If the council member resigns, the CEO must provide a copy of the council member's written notice (resignation) to the Electoral Commissioner as soon as practicable (see section 53 of the Act).

Step 6 – Escalating the matter to NTCAT

If the council member does not resign after receiving this correspondence from the council at **Step 5**, then the council may lodge an application to seek the Northern Territory Civil and Administrative Tribunal (NTCAT) to determine whether the council member is to be dismissed (see section 56 of the Act).

More information

Please contact the Local Government Unit on LGQuestions.DHLGCD@nt.gov.au if you have queries on this topic.