

Investigation Policy

Local Government Act 2009



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1. Policy Statement

This Investigation Policy sets out how Townsville City Council (Council) deals with complaints about the suspected conduct breach of Councillors as required by section 150AE of the *Local Government Act 2009* (LGA).

A local government must adopt, by resolution, an Investigation Policy about how it deals with the suspected conduct breach of Councillors referred by the Assessor under section 150AE (1) LGA, to the local government to be dealt with. This policy must be published on the local government's website in accordance with section 150AE(4), LGA.

2. Principles

Chapter 5A of the LGA prescribes the Councillor conduct management system. Section 150CT of the LGA establishes an Assessor to carry out certain functions including the preliminary assessment, dismissal, referral, or investigation of complaints about Councillor conduct.

After undertaking a preliminary assessment on a Councillor conduct matter, if the Assessor reasonably suspects a Councillor has engaged in a conduct breach, the Assessor may decide to refer a suspected conduct breach to the Council to deal with under section 150SD(4)(a) or 150W(b) of the LGA.

Upon receipt of the referral notice of a complaint of suspected conduct breach Council must deal with the Councillor's conduct as prescribed under section 150AF of the LGA unless a decision is made not to start or to discontinue the investigation under section 150AEA of the LGA. In conducting the investigation, Council must comply with this Investigation Policy.

Council may decide not to start or discontinue the investigation if:

- if the complaint is withdrawn by the complainant;
- if the complainant consents to the matter being withdrawn. For example, the matter has been resolved and it is unnecessary for the local government to investigate the matter;
- if the complainant refuses to cooperate by providing additional information during the investigation phase and not enough information is available to proceed; or
- if the office of the Councillor becomes vacant for any reason, i.e., the person has resigned or was not re-elected and is no longer a Councillor.

The policy requires Council -

- to give the Councillor information about the suspected conduct, including details about the evidence of the conduct; and
- to give the Councillor a notice if an investigation is not started or is discontinued; and
- for conduct the subject of a complaint - to give the person who made the complaint, if the contact details of the person are known, a notice if an investigation is not started or is discontinued; and
- to give the Councillor the preliminary findings of the investigation before preparing an investigation report about the investigation; and
- to allow the Councillor to give evidence or a written submission to the local government about the suspected conduct and preliminary findings; and

- to consider any evidence and written submission given by the Councillor in preparing the investigation report for the investigation; and
- to include in the investigation report -
 - i. if evidence is given by the Councillor—a summary of the evidence; and
 - ii. if the Councillor gives a written submission—a full copy of the written submission.

3. Scope

This policy applies to investigations and determinations by the Council about the suspected conduct breach of a Councillor including a Mayor, which has been referred by the Assessor.

This policy does not relate to more serious Councillor conduct, such as misconduct or corrupt conduct, which are dealt with under separate legislative provisions.

This policy also does not deal with unsuitable meeting conduct, or any conduct undertaken in a personal capacity by a Councillor, for example, a sitting Councillor campaigning for re-election or attending a private social function.

4. Responsibility

The Mayor, Councillors and the Chief Executive Officer (CEO) are responsible for the application of this policy.

5. Definitions

Assessor - means the Independent Assessor appointed under section 150CT of the LGA.

Behavioural Standard - means a standard of behaviour for Councillors set out in the Code of Conduct for Councillors in Queensland approved under section 150D and 150E of the LGA.

Conduct includes—

- (a) failing to act; and
- (b) a conspiracy, or attempt, to engage in conduct.

Conduct Breach - has the meaning provided in section 150K of the LGA.

Councillor Conduct Register - means the register required to be kept by the local government as set out in section 150DX and 150DY of the LGA.

Investigation Policy - refers to this policy, as required by section 150AE of the LGA.

Investigation Report - means a report provided by the Investigator to the local government that must be publicly available within 10 business days after the local government makes a decision about the outcome of the investigation.

Investigator - means the person responsible under this investigation policy for carrying out the investigation of the suspected conduct breach of a Councillor or Mayor.

Local Government Meeting - means a meeting of—

- (a) a local government; or
- (b) a committee of a local government.

Misconduct - has the meaning given in section 150L of the LGA.

Referral notice - see section 150AB, AC and AD of the LGA.

Summary of Investigation Report - means a summary of the full investigation report prepared before making a decision about the outcome of the investigation that must be publicly available on or before the day prescribed by regulation.

Tribunal - means the Councillor Conduct Tribunal as established under section 150DK of the LGA.

Unsuitable Meeting Conduct - is conduct that:

- (a) happens during a local government meeting; and
- (b) contravenes a behavioural standard.

6. Policy

6.1. Confidentiality

Matters relating to the investigation of suspected conduct breach of a Councillor are confidential to the local government during the investigation period, except:

- to give the Councillor information about the suspected conduct, including details about the evidence of the conduct;
- to give the Councillor the preliminary findings of the investigation before preparing an investigation report about the investigation;
- to give the Councillor a notice if an investigation is not started or is discontinued; and,
- for conduct the subject of a complaint - to give the person who made the complaint, and the Assessor a notice if an investigation is not started or is discontinued.

However, once the conduct is investigated and an investigation report is received, a summary of the investigation report must be made publicly available before any discussion is undertaken by the Council. The published summary report must not contain any names or identifying information about the complainant and persons who were interviewed or a transcript of interview, or provided a statement or affidavit, unless the complainant is a Councillor or CEO of the local government, whose identity was disclosed at the meeting at which the investigation report was considered.

Once the matter has been investigated and a report has been provided to the local government, the matter will be placed on the Council meeting agenda and the investigation report and any recommendations of the investigator may be debated in the Council meeting, which may be in a closed session under section 254J(j) of the *Local Government Regulation 2012* (LGR). At this point, the summary investigation report is not treated as confidential as it must be publicly available and attached to the agenda papers that are circulated before the meeting.

A final decision by resolution of the Council in an open Council meeting must take place when the decision is made about whether a Councillor engaged in a conduct breach and if so any decision about orders that are made under section 150AH of the LGA. Any decision that is not consistent with the recommendation of the investigation report must state in the meeting minutes, the reasons for the decision. The minutes must give sufficient information to demonstrate the logic that has been applied to justify the decision not to follow the recommendation of the investigation report.

The full investigation report must be made publicly available within 10 business days of Council making a decision by resolution about whether the Councillor engaged in a conduct breach and if so, any orders made in relation to the matter. The published report must not contain any names or identifying information about the complainant, persons who were interviewed or a transcript of

interview, or provided a statement or affidavit unless the complainant is a Councillor or CEO of the local government whose identity was disclosed at the meeting at which the investigation report was considered.

When deciding what action to take, the local government may consider any previous conduct breach of the Councillor, any allegation made in the investigation that was admitted or not challenged, and the local government is reasonably satisfied is true.

A notice about the outcome of the investigation must be given to the Assessor as soon as practicable that states the decision, the reasons for the decision and the details of any orders made under section 150AH of the LGA.

6.2. Natural Justice

Any investigation of suspected conduct breach of a Councillor must be carried out in accordance with natural justice.

Natural justice or procedural fairness refers to three key principles:

1. that the Councillor who is the subject of the suspected conduct breach matter has a chance to have his or her say before adverse formal findings are made and before any adverse action is taken i.e., fair hearing;
2. that the investigator should be objective and impartial i.e., absence of bias; and,
3. that any actions taken, or decisions made are based on evidence i.e., not on suspicion or speculation.

A fair hearing means the Councillor who is the subject of the suspected conduct breach matter will receive information about the suspected conduct, including;

- the preliminary findings of the investigation before the preparing of an investigation report about the investigation; and
- a notice if an investigation is not started or is discontinued including the reasons for the decision
- allow the Councillor to give evidence or a written submission to the local government about the suspected conduct breach and preliminary findings; and
- require the local government to consider the evidence or written statement from the Councillor in preparing the investigation report, and,
- include, if evidence is given by the Councillor, a summary of the evidence and, if a written submission is provided, a full copy of the written submission, in the investigation report.

The local government must give the following notices to the other parties;

- the person who made the complaint if an investigation is not started or dismissed including the reasons for the decision
- the Assessor if an investigation is not started or dismissed including the reasons for the decision.

An absence of bias means that any investigation must not be biased or be seen to be biased in any way. This principle embodies the concept of impartiality.

A proper examination of all issues means the investigation must give a proper and genuine consideration to each party's case.

6.3. Standard of Proof

The civil standard of proof is applied by the Investigator when determining whether a Councillor has engaged in a conduct breach.

The civil standard of proof is ‘on the balance of probabilities,’ which means the weighing up and comparison of the likelihood of the existence of competing facts or conclusions.

An allegation is sustained ‘on the balance of probabilities,’ if based on the evidence, the Investigator and/or the local government, is reasonably satisfied that its existence is more probable than not.

6.4. Timeline

The Councillor conduct framework must be effective and efficient. The investigator will make all reasonable endeavours to complete the investigation and provide a report for inclusion on the agenda of the local government’s meeting within eight weeks of commencing the investigation, after the receipt of the complaint from the Assessor.

If the investigator is of the reasonable opinion that it may take longer than eight weeks to complete the investigation, the matter must be raised with the Mayor or delegate (if the Mayor is managing the investigation) to seek an extension of time.

6.5. Expenses

Local Governments must pay the expenses associated with the investigation of suspected conduct breach of a Councillor including any costs of:

- an independent investigator engaged on behalf of Council;
- travel where the investigator needed to travel to undertake the investigation or to interview witnesses; and,
- obtaining legal or expert advice.

Council may order the subject Councillor to reimburse them for all or some of the costs arising from a sustained conduct breach. Costs incurred by a Councillor in responding to formal allegations of a conduct breach, will be managed in accordance with the Councillor’s and Officer’s Indemnity Policy and any relevant Council insurance policies. Where possible, costs should be kept to a reasonable rate taking into consideration the costs for more serious matters dealt with by, for example, the Councillor Conduct Tribunal or other jurisdictions who deal with conduct matters.

6.6. Councillor Conduct Register

The CEO must ensure decisions and any orders under section 150AH of the LGA made about suspected conduct breach of a Councillor or any decision to not start, or to discontinue an investigation of suspected conduct breach under section 150AEA of the LGA, are entered into the relevant Councillor conduct register.

6.7. Independent Assessor’s Referral

Council will receive a referral notice from the Assessor about the suspected conduct breach of a Councillor. The referral notice will include details of the conduct and any complaint received about the conduct, state why the Assessor reasonably suspects that the Councillor has engaged in a

conduct breach and include information about the facts and circumstances that form the basis of the Assessor's reasonable suspicion.

Council must deal with the matter and the investigation must be conducted in a way that is consistent with this policy.

The Assessor must also give a notice to the Councillor that states the Councillor's conduct has been referred to Council to deal with and a copy of the referral notice must be attached.

6.8. Receipt of Assessor's Referral

On receipt of a referral notice about the suspected conduct breach of a Councillor from the Assessor, the CEO will forward a copy of that referral notice to the Mayor and all Councillors, including the subject Councillor, as a confidential document.

The Councillor who is the subject of the complaint and the complainant, if the complainant is a Councillor, have a declarable conflict of interest and should manage it in a way that is consistent with the requirements of the Code of Meeting Practice.

The Mayor will manage the investigation process and may undertake the investigation themselves, or engage an external investigator, to investigate the suspected conduct breach and prepare an investigation report with recommendations about whether the Councillor engaged in a conduct breach and how the conduct may be dealt with. If the Mayor has a conflict of interest in the matter, the Mayor's powers to manage the investigation must be delegated by Council resolution to the Deputy Mayor, or if the Deputy Mayor is conflicted, then an acting Mayor must be appointed from the other Councillors by resolution, to manage the investigation.

As noted in section 6.10, where the Mayor and all other Councillors are conflicted, the CEO (or where the CEO is conflicted, a Director of Council who is not conflicted) will manage the investigation process.

Where the local government meeting loses quorum due to conflicts of interest of Councillors or absent Councillors, then the conduct matter must be delegated to the Mayor or a standing committee to make a decision. If the referral notice is about the suspected conduct breach by the Mayor, then the matter must be delegated to a standing committee.

Council may establish a standing committee under section 264 of the LGR to deal with decisions about a conduct breach matters which are delegated by resolution to a standing committee. The standing committee will decide about the Mayor's conduct in all circumstances where there is a loss of quorum or more generally, may also deal with Councillors' conduct.

While section 12(4)(f) of the LGA provides that the Mayor has the extra responsibility of being a member of each standing committee, the Mayor could not be a decision-making member of a standing committee dealing with decisions about the Mayor's conduct because of the conflict of interest. The remainder of the unconflicted members of the committee will decide the matter.

If there are no Councillors without a conflict of interest who can be part of the standing committee for a particular matter, then Councillors may seek the Minister's approval to participate to decide the matter pursuant to section 150EV of the LGA.

6.9. When the Local Government May Decide Not to Start or to Discontinue an Investigation

On receipt of the referral notice from the Assessor, the Mayor will manage the investigation unless it is delegated or the Mayor is the subject of the referral notice, in which case the Deputy Mayor will manage the investigation. If there are circumstances for considering not starting or

discontinuing an investigation, the matter will be placed on the agenda for the next Council meeting. The local government may decide by resolution to not start, or discontinue, a suspected conduct breach matter. The resolution must state the decision and the reasons for the decision.

The only circumstances in which the local government can formally not start or discontinue a matter are under section 150AEA of the LGA:

The matters not started or discontinued must be reported in the annual report (including the reasons) and recorded in Councillor conduct register.

6.10. Local Government Investigating the Suspected Conduct Breach of a Councillor

Unless the matter has been delegated by the local government or the matter relates to the Mayor (in which case the Deputy Mayor will manage the investigation), the Mayor will manage the investigation of suspected conduct breach matters relating to other Councillors by either performing the role of Investigator or engaging a suitably qualified person to undertake the investigation and provide an investigation report for the local government to consider. The Mayor is authorised by Council to expend money as reasonably needed to engage contractors in accordance with Council's Procurement Policy.

If all Councillors are conflicted in relation to the Councillor who is the subject of a referral, then the CEO will manage the investigation. If the CEO is conflicted in relation to the Councillor, then the CEO may delegate management responsibility to a Director of Council who is not conflicted.

If the investigator obtains information which indicates a Councillor may have engaged in misconduct, the investigator must cease the investigation and advise the Mayor and the CEO. The CEO (or if conflicted, a delegate of the CEO who is not conflicted) will determine if the conduct is within the timeframe for reporting the matter. The CEO (or delegate) will then provide an information notice to the Assessor giving the details of the suspected misconduct. The notice must be given within one year after the conduct occurred, or within six months after the conduct comes to the knowledge of the CEO or another person who gave the information notice to the Assessor, but within two years after the conduct occurred.

If the investigator obtains information that indicates a Councillor may have engaged in corrupt conduct, the investigator must cease the investigation and advise the Mayor (or where relevant the Deputy Mayor) and CEO (or where relevant the delegate of the CEO). The CEO (or delegate) will then provide an information notice to the Assessor giving the details of the suspected corrupt conduct or notify the Crime and Corruption Commission of the suspected corrupt conduct. There are no reporting time limits for corrupt conduct.

6.11. Engaging an Investigator

Once an investigator has been selected to undertake the investigation, that investigator will follow the investigation standards of the local government .

Once the investigation is finalised, the investigator will prepare a report for the local government including the following the details:

- the investigation process;
- any witnesses interviewed;
- documents or other evidence obtained;
- a statement of the relevant facts ascertained;

- confirmation that the subject Councillor has been provided with an opportunity to respond to the complaint and the evidence compiled;
- the investigation findings;
- a statement of any relevant previous disciplinary history;
- any recommendations about dealing with the conduct; and,
- a record of the investigation costs.

6.12. Completion of Investigation

6.12.1 Findings and Recommendations

The investigator must prepare a Preliminary Statement of Findings and must give the preliminary findings to the Councillor before preparing the Investigation Report and allow the Councillor to give evidence or a written statement about the conduct and preliminary findings.

The investigator must consider any evidence or written submission given by the Councillor in preparing the investigation report and include a summary of the evidence and a full copy of any written submission in the investigation report.

6.12.2 Investigation Report

The investigator must prepare an investigation report about the investigation of a suspected conduct breach matter referred by the Assessor to the local government under section 150AFA of the LGA. The investigation report must include the findings of the investigation, a summary of the evidence or a full copy of any written submission given by the Councillor and recommendations for consideration by the Council.

A summary investigation report with the preliminary Statement of Findings and summary of the outcome of the investigation attached, must be prepared for public availability before the meeting where the Councillors will consider the investigation report matter on or before the day and time prescribed by the LGR section 254C.

Council must prepare a summary of the investigation report that must include—

- the name of the Councillor whose conduct has been investigated; and
- a description of the alleged conduct; and
- a statement of the facts established by the investigation; and
- a description of how natural justice was afforded to the Councillor during the conduct of the investigation; and
- a summary of the findings of the investigation; and
- any recommendations made by the investigator who investigated the conduct.

The following information must not be made publicly available—

- if the investigation relates to the conduct of a Councillor that was the subject of a complaint—
- the name of the person who made the complaint or any other person, other than the Councillor; or
- information that could reasonably be expected to result in identifying a person who made the complaint or any other person;

- if a person, other than the Councillor, provided information for the purposes of the investigation including, for example, by giving an interview or making a submission or affidavit—
 - the name of the person; or
 - information that could reasonably be expected to result in identifying the person or any other person, other than the Councillor;
 - any other information the local government is entitled or required to keep confidential under a law.

6.12.3 Making a Decision about the Investigation

Council must make a decision as to whether the subject Councillor has engaged in a conduct breach.

When debating this matter the subject Councillor who has a declarable conflict of interest in the matter, must declare the conflict of interest, and the eligible Councillors (those who do not have a conflict of interest in the matter) can decide by resolution for the subject Councillor to remain in the meeting during the debate and may answer questions put to the subject Councillor through the chairperson to assist the eligible Councillors in making a decision. The resolution can include conditions that the subject Councillor must leave the place where the meeting is being held, including any area set aside for the public, during the vote on whether they have committed a conduct breach and what, if any, penalty to impose if the Councillor is found to have committed a conduct breach.

Should the complainant be a Councillor, that Councillor has a declarable conflict of interest in the matter and must follow the declarable conflict of interest procedures set out in the Council's Code of Meeting Practice.

If the Council has lost quorum due to the number of conflicted Councillors or another reason, the matter must be delegated consistent with section 257 of the LGA, deferred to another date when a quorum will be present, or be dealt with by Council as a result of the Minister's approval for Councillors participation pursuant to section 150EV of the LGA.

If a decision is reached that the Councillor has engaged in a conduct breach, Council (with the exception of the Councillor the subject of the investigation and the complainant, if another Councillor), will consider the findings and recommendations of the investigator's report and decide what, if any, action it will take under section 150AH of the LGA.

After making a decision about the conduct breach, Council must make the investigation report for the investigation publicly available after the meeting at which the decision about the outcome of the investigation is made, by;

- on or before the day and time prescribed by regulation, or 5pm on the tenth day, or
- the day and time that the meeting minutes are made publicly available.

The following information contained in the investigation report must not be made publicly available;

- if the investigation relates to the conduct of a Councillor that was the subject of a complaint
 - the name of the person who made the complaint or any other person, other than the Councillor even if that person has a declarable conflict of interest; or
 - information that could reasonably be expected to result in identifying a person;

- if a person, other than the Councillor, provided information for the purposes of the investigation including, for example, by giving an interview or making a submission or affidavit:
 - the name of the person; or
 - information that could reasonably be expected to result in identifying the person or any other person, other than the Councillor;
 - the submission or affidavit of, or a record or transcript of information provided orally by, a person, including, for example, a transcript of an interview;
 - any other information the local government is entitled or required to keep confidential under a law e.g. documents subject to legal professional privilege or information that is part of a public interest disclosure under the *Public Interest Disclosure Act 2010*.

The report made publicly available must include the name of the person who made the complaint if:

- the person is a Councillor or the CEO of the local government; and
- the person's identity as the complainant was disclosed at the meeting at which the report for the investigation was considered.

6.13. Disciplinary Action against Councillors

If Council decides that the Councillor has engaged in a conduct breach, any of the following orders may be imposed:

- i. order that no action be taken against the Councillor, or
- ii. make an order outlining action the Councillor must undertake in accordance with section 150AH(1)(b) of the LGA.

6.14. Notice about the Outcome of the Investigation

After an investigation is finalised, Council must give a notice about the outcome decision of the investigation if the local government decides not to start or discontinue an investigation (section 150AEA of the LGA), or makes a decision about whether the Councillor has engaged in a conduct breach (section 150AG of the LGA) including the reasons for the decision and any orders made under section (150AH of the LGA) to:

- the Assessor;
- the person who made the complaint about the Councillor's conduct that was the subject of the investigation; and,
- the subject Councillor who was investigated.

7. Legal Parameters

Crime and Corruption Act 2001

Local Government Act 2009

Local Government Regulation 2012

Public Interest Disclosure Act 2010

8. Associated Documents

Code of Conduct for Councillors in Queensland

Code of Meeting Practice Policy

Councillor's and Officer's Indemnity Policy

Information Management Policy

Information Privacy Policy

Procurement Policy

Public Interest Disclosure Policy

Public Interest Disclosure Procedure

Queensland Government Example Local Government Investigation Policy March 2024