

Investigation Policy

Local Government Act 2009

1. POLICY STATEMENT

This Investigation Policy sets out how complaints about the inappropriate conduct of Councillors will be dealt with as required by the section 150AE of the *Local Government Act 2009* (the LGA). This policy does not relate to more serious Councillor conduct.

2. PRINCIPLES

Complaints that Councillors have engaged in inappropriate conduct will be promptly investigated and dealt with in the public interest.

3. SCOPE

This investigation policy applies to investigations and determinations of complaints about the alleged inappropriate conduct of Councillors which are referred by the Independent Assessor.

4. RESPONSIBILITY

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

5. DEFINITIONS

Assessor – means the Independent Assessor appointed under section 150CV of the LGA

Behavioural Standard – means a standard of behaviour for Councillors set out in the Code of Conduct approved under section 150E of the LGA

Conduct – includes

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

Councillor Conduct Register – means the register required to be kept by Council as set out in section 150DX of the LGA

Inappropriate conduct – see section 150K of the LGA

Investigation policy – refers to this policy, as required by section 150AE of the LGA

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

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LGA – means the *Local Government Act 2009*

Misconduct – see section 150L of the LGA

Referral notice – see section 150AC of the LGA

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

Unsuitable meeting conduct – see section 150H of the LGA

6. POLICY

6.1 CONFIDENTIALITY

Matters of suspected inappropriate conduct of a Councillor are confidential except as otherwise specifically provided for either in the LGA or this investigation policy.

Note: It must be kept in mind that the matter is an allegation only and not yet proven. Further, there will be circumstances where the detail of the referral will need to remain confidential to the Local Government. Any release of confidential information that a Councillor knows, or should reasonably know, to be confidential to the local government may be contrary to section 171(3) of the LGA and dealt with as misconduct.

6.2 NATURAL JUSTICE

Any investigation of suspected inappropriate conduct of a Councillor must provide natural justice to the Councillor by:

- the investigation being carried out in a demonstrably impartial way;
- the investigation disregarding mere speculation and suspicion, and making a proper and genuine consideration of the available evidence; and
- the subject Councillor being told of the case against them including any evidence and provided with an opportunity to put his or her case in writing before the investigation report is provided to other Councillors.

6.3 ASSESSOR'S REFERRAL

The Council may receive from the Assessor a referral notice about the suspected inappropriate conduct of a Councillor. Council may also receive referrals directly.

6.4 RECEIPT OF ASSESSOR'S REFERRAL

Upon receipt of a referral notice about the suspected inappropriate conduct of a Councillor from the Assessor, the Council's Chief Executive Officer will forward a copy of that referral notice to the Mayor and all Councillors as a confidential document.

The Mayor or a Councillor (other than the subject of the complaint or the complainant) may request the matter be placed on the agenda of the next Council meeting to decide upon the appropriate process to investigate the complaint. Such a request must be made in accordance with the Council's meeting procedure requirements.

6.5 INVESTIGATOR

Unless otherwise resolved by Council, the Mayor will manage the investigation of suspected inappropriate conduct of other Councillors.

If, the Mayor believes it is in the best interests of the investigation to refer the matter for external investigation, then the Chief Executive Officer must either:

- obtain a recommendation from the President of the Qld Law Society about who should be appointed as an impartial investigator and refer the suspected inappropriate conduct to that person to investigate and make recommendations to the Council about dealing with the conduct; or
- refer the suspected inappropriate conduct to the President of the Tribunal to investigate and make recommendations to the Council about dealing with the conduct.

If the suspected inappropriate conduct involves:

- an allegation about the conduct of the Mayor, or
- the Mayor as the complainant, then:

the Chief Executive Officer must either:

- obtain a recommendation from the President of the Qld Law Society about who should be appointed as an impartial investigator and refer the suspected inappropriate conduct to that person to investigate and make recommendations to the Council about dealing with the conduct; or
- refer the suspected inappropriate conduct to the President of the Tribunal to investigate and make recommendations to the Council about dealing with the conduct.

6.6 EARLY RESOLUTION

The investigator must consider whether the matter is appropriate for resolution prior to full investigation. This consideration must include any recommendation made by the Assessor.

A matter is only appropriate for early resolution if the parties to the matter agree to explore early resolution.

The investigator may engage an independent person with suitable qualifications or experience to facilitate this process.

If the matter cannot be resolved, the matter will then be investigated as outlined in this investigation policy.

If the matter is resolved prior to full investigation, the investigator will advise the Chief Executive Officer of this outcome. In turn, the Chief Executive Officer will advise the Mayor (if the Mayor is not the investigator) and all Councillors that the matter has been resolved. The Chief Executive Officer will also update the Councillor Conduct Register to reflect the early resolution.

6.7 TIMELINESS

The investigator must make all reasonable endeavors to complete the investigation and provide a report for inclusion on the agenda of a Council meeting no more than eight weeks after the receipt of the complaint.

Note: If the investigator believes that it may take longer than eight weeks to complete the investigation and the Mayor is not the investigator, then the investigator must seek an extension of time from the Mayor.

6.8 ASSISTANCE FOR INVESTIGATOR

If the Mayor is the investigator of a matter of suspected inappropriate conduct, the Mayor may obtain any assistance necessary during the investigation.

The Mayor is authorised by Council to expend money as reasonably needed to engage contractors in accordance with the Council's procurement policy.

6.9 POSSIBLE MISCONDUCT OR CORRUPT CONDUCT

If during the course of an investigation the investigator obtains information which indicates a Councillor may have engaged in misconduct, the investigator must cease the investigation and advise the Chief Executive Officer. The Chief Executive Officer must then notify the Assessor of the possible misconduct.

If during the course of an investigation, the investigator obtains information which indicates a Councillor may have engaged in corrupt conduct, the investigator must cease the investigation and advise the Chief Executive Officer. The Chief Executive Officer must then notify the Crime and Corruption Commission of the possible corrupt conduct.

6.10 COMPLETION OF INVESTIGATION

Upon the completion of an investigation, the investigator must provide a report to the Council outlining the investigation process, the investigation findings, any recommendations about dealing with the conduct and a record of the investigation costs.

The Council will consider the findings and recommendations of the investigator's report and decide whether the Councillor has engaged in inappropriate conduct and, if so, what action it will take under section 150AH of the LGA.

Provisions for internal and external review of decisions are set out in sections 150CO to 150CS of the LGA.

6.11 NOTICE ABOUT THE OUTCOME OF INVESTIGATION

After an investigation is finalised, the Council must give notice about the outcome of the investigation to the person who made the complaint about the Councillor's conduct that was the subject of the investigation.

6.12 COUNCILLOR CONDUCT REGISTER

The Chief Executive Officer must ensure decisions about suspected inappropriate conduct of a Councillor are entered into the Councillor Conduct register.

When a complaint has been resolved under section 6.6 of this policy, the Chief Executive Officer must update the register to reflect that the complaint was withdrawn.

6.13 EXPENSES

- (a) In its *Councillor's and Officer's Indemnity Policy* Council has recorded that it is in the public interest that each Councillor be indemnified against legal costs related to their performance as a Councillor unless the Councillor's conduct is proven to have been dishonest, fraudulent, criminal, malicious or amounts to misconduct. Councillors who are the subject of a complaint that they have engaged in inappropriate conduct may have recourse to the indemnity provided under that policy.
- (b) Council must pay any reasonable expenses of Council associated with the informal early resolution or investigation of suspected inappropriate conduct of a Councillor including any costs of:
 - the president of the Tribunal in undertaking an investigation for Council;
 - a mediator engaged under this investigation policy;
 - a private investigator engaged on behalf of or by the investigator;
 - travel where the investigator needed to travel to undertake the investigation or to interview witnesses;
 - seeking legal advice; and
 - engaging an expert.

Note: Council may order the subject Councillor reimburse it for all or some of the costs arising from the Councillor's inappropriate conduct.

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- (c) Without derogating from paragraph 6.13(a), the costs incurred by the subject Councillor in responding to the complaint from the time the complaint was made until the Council makes an order pursuant to section 6.10 of this investigation policy:
1. will be met by the Council if the Council makes an order pursuant to section 150AH(1)(a) of the Act (*that no action be taken against the subject councillor*); or
 2. will be met by the Council in part, or in full, if the Council makes an order pursuant to section 150AH(1)(b) of the Act and makes an order that the Councillor's costs be met in part or in full by the Council.

The costs incurred by any complainant will not be met by Council.

7. LEGAL PARAMETERS

Local Government Act 2009

Local Government Regulations 2012

8. ASSOCIATED DOCUMENTS

Councillor's and Officer's Indemnity Policy