

PURPOSE

This is North Burnett Regional Council's investigation policy for 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). However, this policy does not relate to more serious Councillor conduct.

SCOPE

This investigation policy applies to investigations and determinations of a complaint about the alleged inappropriate conduct of a Councillor/s which has been referred by the Independent Assessor.

POLICY STATEMENT

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.

2. Natural Justice

Any investigation of suspected inappropriate conduct of a Councillor/s must be carried out in accordance with natural justice. An overview of the principles of natural justice follows.

"Natural justice" or procedural fairness, refers to three key principles:

- the person being investigated has a chance to have his or her say before adverse formal findings are made and before any adverse action is taken (fair hearing)
- the investigator(s) should be objective and impartial (absence of bias), and
- any action taken is based on evidence (not suspicion or speculation).

A fair hearing means the Councillor who is the subject of the suspected inappropriate conduct matter must be told of the case against them including any evidence and be provided with an opportunity to put their case in writing with the investigation report provided to the Councillors as part of the meeting agenda.

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.

Decisions based on evidence requires that the investigation should not be based on mere speculation or suspicion but instead must be based upon evidence material.

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

3. Assessor's referral

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

The referral notice may be accompanied by a recommendation from the assessor about how the local government may investigate or deal with the conduct. The recommendation of the assessor may be inconsistent with this policy, and where possible, take precedent to the extent of any inconsistency.

4. Receipt of Assessor's referral

On receipt of a referral notice about the suspected inappropriate conduct of a Councillor/s from the Assessor, the Council's Chief Executive Officer will forward a copy of that referral notice to the Mayor and all Councillors, other than the Councillor who is the subject of the complaint, or the complainant if the complainant is a Councillor, as a confidential document.

Should the Mayor or a Councillor/s (other than the subject of the complaint or the complainant) disagree with any recommendation accompanying the Assessor's referral notice or form the opinion that the complaint should be dealt with in a way other than under this policy, the Mayor or Councillor may request the matter be placed on the agenda of the next Council meeting to decide on the appropriate process to investigate the complaint. Such a request must be made in accordance with the Council's meeting procedure requirements.

Note: Should Council decide an alternate process to investigate the complaint the resolution must state the reasons for the decision.

5. Investigator

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

If the suspected inappropriate conduct involves conduct that in the circumstances, 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 refer the suspected inappropriate conduct to the President of the Tribunal, or other entity 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 refer the suspected inappropriate conduct to the President of the Tribunal, or other entity, to investigate and make recommendations to the Council about dealing with the conduct.

6. Early Resolution

Before beginning an investigation, the investigator must should consider whether the matter is appropriate for resolution prior to the investigation. This consideration includes 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 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 this.

7. Timeliness

The investigator will make all reasonable endeavours 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 is of the opinion that it may take longer than eight weeks to complete the investigation, the matter should be raised with the Mayor (if the Mayor is not the investigator) to seek an extension of time.

8. Assistance for the investigator

If the Mayor is the investigator of a matter of suspected inappropriate conduct, the Mayor may use section 170A of the LGA to seek assistance 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.

9. Possible misconduct or corrupt conduct

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

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

Instances of suspected misconduct or corrupt conduct may be referred back to the Council if determined by the Assessor or Crime and Corruption Commission to be inappropriate conduct.

10. Completion of investigation

On the completion of an investigation, the investigator will 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.

If there is a risk to the health and safety of the complainant, under s 254J of the LGR the Council may resolve that the meeting be closed to the public for the Councillors to consider the investigation report and any recommendations. In accordance with s 275(3) of the LGR, the resolution of what action is to be taken as a result of the investigation must be made after the meeting has been re-opened to the public.

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.

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 and the subject Councillor.

12. Councillor conduct register

The Chief Executive Officer of the respective Council must ensure decisions about suspected inappropriate conduct of a Councillor/s must be entered into the Councillor conduct register.

Where a complaint has been resolved under section 6 of this policy, the Chief Executive Officer will update the register to reflect that the complaint was withdrawn.

13. Expenses

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

- 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.

Any costs incurred by complainants or the subject Councillors will not be met by Council.

INAPPROPRIATE CONDUCT – DISCIPLINARY ACTION MATRIX

14. Matrix guidance

It is open to Council to decide which order/s are suitable when a Councillor is found to have engaged in inappropriate conduct. The OIA stresses that the particular circumstances of a case must always be taken into consideration.

As a guide, the OIA suggests that it may be appropriate for the Council to consider making an order or combination of orders depending on whether a Councillor has been found to have engaged in inappropriate conduct for the first, second or third time.

Section 150L of the Act provides that conduct is misconduct if the conduct is part of a course of conduct leading the Council to take action under s150AG to discipline the Councillor for inappropriate conduct on three (3) occasions within a period of one (1) year.

The table below may assist Council decide what disciplinary action is suitable in various circumstances.

| Order | First instance engaging in inappropriate conduct | Second instance engaging in inappropriate conduct | Third instance engaging in inappropriate conduct |
|---|--|---|--|
| No action be taken against the Councillor | ✓ | | |
| The Councillor makes a public admission that the Councillor has engaged in inappropriate conduct | ✓* | ✓* | ✓* |
| A reprimand be recorded against the Councillor for the conduct | ✓# | ✓# | ✓# |
| The Councillor attends training or counselling addressing the Councillor's conduct | ✓# | ✓# | ✓# |
| The Councillor be excluded from a stated local government meeting | | ✓ | ✓ |
| The Councillor is removed or must resign from a position representing the local government, other than the office of Councillor | | | ✓ |
| If the Councillor engages in the same type of conduct again, it will be treated as misconduct | ✓^ | ✓ | |
| The Councillor reimburses the local government for some of the costs arising from the Councillor's inappropriate conduct** | | ✓ | ✓ |

- * May be appropriate where there is heightened or particular public interest in the type of conduct or the subject matter relating to the conduct
- # May be particularly appropriate where the conduct involves bullying or harassment or making inappropriate comments about another person
- ^ For more serious and deliberate inappropriate conduct by an experienced councillor
- ** Costs arising from the councillor's inappropriate conduct includes investigative costs, legal costs, and support costs.

RELEVANT LAW

Local Government Act 2009

RELATED POLICIES AND PROCEDURES

Councillor Code of Conduct
Public Interest Disclosure Process
Information, Communication and Technology
Councillor Portfolio Protocols
Handling of Confidential Information (Closed Meetings)
Councillor Acceptable Requests
Councillor Interaction with Council Staff
Meetings
Standing Orders

RELATED FORMS

Nil

DEFINITIONS

| Term | Definition |
|------------------------------------|---|
| <i>Assessor</i> | Assessor means the Independent Assessor appointed under section 150CV of the LGA |
| <i>Behavioural standard</i> | Behavioural standard means a standard of behaviour for Councillors set out in the Code of Conduct approved under section 150E of the LGA |
| <i>Conduct</i> | Conduct includes— (a) failing to act; and (b) a conspiracy, or attempt, to engage in conduct |
| <i>Councillor Conduct Register</i> | Councillor Conduct Register means the register required to be kept by Council as set out in section 150DX of the LGA |
| <i>Inappropriate conduct</i> | Inappropriate conduct see section 150K of the LGA |
| <i>Investigation Policy</i> | Investigation Policy, refers to this policy, as required by section 150AE of the LGA |
| <i>Investigator</i> | Investigator means the person responsible under this investigation policy for carrying out the investigation of the suspected inappropriate conduct of a Councillor or Mayor |
| <i>LGA</i> | LGA means the <i>Local Government Act 2009</i> |
| <i>LGR</i> | LGR means the <i>Local Government Regulation 2012</i> |
| <i>Local Government</i> | Local Government meeting means a meeting of— (a) a local government; or (b) a committee of a local government. |
| <i>Misconduct</i> | Misconduct see section 150L of the LGA |
| <i>Model procedures</i> | Model procedures see section 150F of the LGA |
| <i>Natural justice</i> | Natural justice – a set of principles to ensure fair and just decision making, including a fair hearing, an absence of bias, decisions based on evidence, and the proper examination of all issues. |
| <i>Referral Notice</i> | Referral Notice see section 150AC of the LGA |
| <i>Tribunal</i> | Tribunal means the Councillor Conduct Tribunal as established under section 150DK of the LGA |
| <i>Unsuitable meeting conduct</i> | Unsuitable meeting conduct see section 150H of the LGA |

APPROVAL

The investigation policy was adopted by Council resolution on 16 December 2020 and applies from this day.

REVIEW

This policy will be reviewed every four years by the Office of the CEO and is due for review in December 2024.

REVISION HISTORY

| Version | Meeting | Approval Date | History |
|---------|---------------------------------|------------------|---------------------|
| 1 | General | 28 November 2018 | New policy |
| 2 | General | 16 December 2020 | Revised |
| 3 | Administrative December 2022 | review | No changes required |

ACKNOWLEDGEMENT

This policy is based on the Department of Local Government, Racing and Multicultural Affairs 'Example Investigation Policy' September 2020.

APPENDIX

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| A. Office of the Independent Assessor External Investigation Flowchart | Doc ID 1019694 |
| B. Referral to Local Government Investigation Flowchart | Doc ID 1019763 |