

1022 Investigation Policy

Statutory Policy



PURPOSE

This is North Burnett Regional Council's investigation policy for how complaints about a suspected conduct breach of a Councillor (including the Mayor) will be dealt with as required by section 150AE of the *Local Government Act 2009* (the 'Act').

SCOPE

This policy applies to investigations and determinations by Council about an alleged inappropriate conduct breach of a Councillor including the Mayor, which has been referred by the Independent Assessor. As required under the Act, this policy:

- provides a procedure for investigating a suspected conduct breach of a Councillor;
- states the circumstances in which another entity may investigate the conduct;
- is consistent with the principles of natural justice;
- specifies the requirement to prepare a report about each investigation;
- incorporates the requirement for a notice about the outcome of investigations to be provided to:
 - i. the Independent Assessor;
 - ii. to the Councillor who is the subject of the investigation; and
 - iii. the Councillors and persons who made the complaint about the conduct of a Councillor
- Includes a procedure about when a decision may be made to not start, or to discontinue, an investigation under section 150AEA of the Act.

This policy requires that:

- The Councillor to whom the complaint relates is given information about the suspected conduct breach, including details about the evidence of the conduct;
- The Councillor who is the subject of the complaint is given a notice if an investigation is not started or is discontinued;
- For the person who made the complaint, if the contact details of a person are known, to be provided with a notice if an investigation is not started or is discontinued;
- The Councillor who is the subject of the complaint is given the preliminary findings of the investigation before preparation of an investigation report about the investigation;
- The Councillor who is the subject of the complaint is able to give evidence or a written submission to Council about the suspected conduct and preliminary findings;
- Any evidence and written submission given by the Councillor who is the subject of the complaint are considered in the preparation of the investigation report for the investigation; and
- The investigation report includes:
 - If evidence is given by the Councillor, a summary of the evidence; and
 - if the Councillor gives a written submission a full copy of the written submission.

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.

POLICY STATEMENT

Chapter 5A of the Act prescribes the Councillor conduct management system.

Section 150CT of the Act establishes an Independent Assessor to carry out certain functions including the preliminary assessment, dismissal, referral, or investigation of complaints about Councillor conduct.

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

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

Council may decide to not start, or to discontinue, an investigation if:

- The complaint is withdrawn by the complainant; or
- The complainant consents to the matter being withdrawn, for example, the matter has been resolved and it is unnecessary for the Council to investigate the matter; or
- There is insufficient information to investigate the conduct of the subject Councillor; or
- The complainant refuses to cooperate by providing additional information during the investigation phase; or
- The office of the Councillor becomes vacant for any reason during the investigation, i.e. the person has resigned or was not re-elected and is no longer a Councillor.

Confidentiality

Matters relating to the investigation of a suspected conduct breach of a Councillor are confidential during the investigation period, other than:

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

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 or any decision made by Council. The published summary report must not contain any names or identifying information about the complainant and persons who were interviewed or provided a statement or affidavit. The summary report must also not include any transcripts of interviews conducted by the Investigator.

Once the matter has been investigated, the matter will be placed on an ordinary meeting agenda. The investigation report and any recommendations of the Investigator may be considered during the ordinary meeting. The debate on the investigation report may occur in closed session under section 254J(3)(j) of the *Local Government Regulation 2012* (the 'Regulation').

A decision by resolution during an open Council meeting, must be made to determine whether a Councillor engaged in a conduct breach and if so, any decision about orders that are made under section 150AH of the Act. Any decision that is not consistent with the recommendations of the investigation report must state the reason for the decision in the meeting minutes. The minutes must give sufficient information to demonstrate the logic that has been applied to justify the decision to deviate from the recommendations of the investigation report.

The full investigation report must be made publicly available within 10 business days of Council deciding by resolution about whether the Councillor engaged in a conduct breach. The published full investigation report must not contain any names or identifying information about the complainant, persons who were interviewed, any transcript of interview, or statement or affidavit by a witness or person interviewed, unless the

complainant is a Councillor or the Chief Executive Officer of the Council and the identity of a Councillor or the Chief Executive Officer was disclosed at the meeting at which the investigation report was considered.¹

When deciding what Action to take Council may consider:

- any previous conduct breach of the Councillor;
- any allegation made in the investigation that was admitted, or not challenged, and the Council is reasonably satisfied is true.

A notice about the outcome of the investigation must be given to the Independent 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 Act.

Natural Justice

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

Natural justice or procedural fairness (in the context of a Councillor conduct investigation) involves three key principles:

- That the Councillor who is the subject of the suspected conduct breach has a chance to have his or her say before adverse findings are made and before any adverse action is taken (fair hearing);
- That the Investigator should be objective and impartial (absence of bias²); and
- That any action taken, or decisions made are based on evidence (not suspicion or speculation).

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

- Information about the suspected conduct, including details about the evidence of the conduct;
- The preliminary findings of the investigation before the preparation of an investigation report about the investigation outcome and afforded the opportunity to respond to the preliminary findings;
- A notice if an investigation is not started or is discontinued including the reasons for the decision;
- Allowing the Councillor to give evidence or written submission to Council about the suspected conduct breach and any preliminary findings;
- Requiring Council to consider the evidence for 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 off the written submission, in the investigation report.

Notice must be given to the following parties if an investigation is not started or discontinued including the reasons for the decision:

- the person who made the complaint; and
- the Independent Assessor.

Standard of proof

The civil standard of proof is to be 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 acts or conclusions.

¹ *Local Government Act 2009*, section 150AGA(4)(a)

² 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 parties case. It must be kept in mind that the matter, when referred, is suspected and not yet proven.

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.³

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.⁴

Expenses

Council will pay the expenses associated with the investigation of a suspected conduct breach of a Councillor including any costs of:

- an independent Investigator engaged on behalf of the Council;
- travel where the Investigator needed to travel to undertake the investigation, or to interview witnesses
- Council obtaining legal or expert advice.⁵

Councillor conduct register

The Chief Executive Officer must ensure decisions and any orders under section 150AH of the Act 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 Act, are entered into the relevant Councillor Conduct Register.

Deciding not to start, or to discontinue an investigation

Depending on the circumstances of the matter, Council may determine to not start, or to discontinue an investigation about a Councillors alleged conduct breach after receiving a Referral Notice if:

- The complainant withdraws the complaint or consents to the investigation not being started or being discontinued; or
- the complainant does not comply with the request from Council for further information; or
- there is insufficient information to investigate the conduct.

Council will discontinue or not start an investigation and will not make a decision if the office of the Councillor is vacated during the process.

Should Council decide not to start or discontinue an investigation of an alleged Councillor conduct breach, it will provide a notice to the Independent Assessor stating the decision and the reasons for same.

Procedure for investigation

The Chief Executive Officer (CEO) will manage the investigation of suspected conduct breach matters relating to the Mayor or a Councillor by either performing the role of Investigator or engaging a suitably qualified person to undertake the investigation.

If the Investigator obtains information which indicates the Mayor or a Councillor may have engaged in misconduct, the Investigator must cease the investigation and advise the CEO. The CEO will then provide relevant information to the Independent Assessor.

³ Briginshaw v Briginshaw [1938] 60CLR 336 considered how the requisite standard of proof should operate in civil proceedings. The case affirmed that the standard of proof that applies to all civil matters is the balance of probabilities. Matters involving allegations of a more serious nature may require stronger evidence to be adduced to establish the cause of action.

⁴ 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 CEO or delegate to seek an extension of time.

⁵ Note: Council may order the subject Councillor to reimburse all or some of the costs arising from a sustained conduct breach. These costs would usually only relate to obtaining legal or expert advice and reasonable costs for the Investigator engaged to undertake the investigation. Any costs incurred by complainants, or the subject Councillor will not be met by Council. 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.

If the Investigator obtains information which indicates the Mayor or a Councillor may have engaged in corrupt conduct, the Investigator must cease the investigation and advise the CEO. The Investigator and/or the CEO will then provide relevant information to the Crime and Corruption Commission.

Completion of investigation

Findings and recommendations

The Investigator must prepare a statement of preliminary findings and must give the preliminary findings to the Councillor who is the subject of the complaint before preparing the final investigation report. The Investigator must allow the Councillor to give evidence or a written statement about the conduct and any 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.

Investigation report

The Investigator must prepare an investigation report about the investigation of a suspected conduct breach referred by the Independent Assessor to Council under section 150AFA of the Act.

Once the investigation is finalised the Investigator will prepare a report for Council including the following details:

- The investigation process;
- Any witnesses interviewed;
- Documents or other evidence obtained;
- A statement of the relevant acts ascertained;
- Confirmation that the subject Councillor has been provided with an opportunity to respond to the complaint and any evidence compiled;
- The investigation findings and any response by the Councillor the subject of the complaint to the findings;
- A statement of any relevant previous disciplinary history;
- Any recommendations about dealing with the conduct; and
- A record of the investigation costs.

A summary investigation report must be prepared and made publicly available before the meeting where the Councillors will consider the matter. The summary report must be made available:

- 5:00 PM on the next business day after the notice of the meeting at which a decision is to be made has been provided to the Councillors; or
- The time when the agenda for the meeting at which a decision is to be made is publicly available.

The summary report 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; or

- If a person, other than the Councillor who is the subject of the complaint, 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; or
 - Any other information the Council is entitled or required to keep confidential under a law (eg Public Interest Disclosure Act 2010).

Making a decision about the investigation

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

When debating the matter, the subject Councillor (who has a declarable conflict of interest in the matter), must declare the conflict of interest. The eligible Councillors (i.e. those who do not have a conflict of interest in the matter), must decide by resolution:

- if the subject Councillor can remain in the meeting during the debate and may answer questions to assist the eligible Councillors in deciding the outcome of the investigation; or
- that the subject Councillor must leave the place where the meeting is being held, including any area set aside for the public, during the consideration and vote on the matter.

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 Council's Standing Orders Procedures and the Act.

If the Council cannot achieve and maintain a quorum due to the number of conflicted Councillors or for another reason, the matter is to:

- be deferred to another date when a quorum will be present; or
- delegated consistent with section 257 of the Act (i.e. delegated to the Mayor or a Standing Committee of Council)

The eligible Councillors at the meeting will consider the findings and recommendations of the investigations report, decide whether the subject Councillor engaged in a conduct breach and what, if any, action it will take under section 150AH of the Act.

After deciding about the conduct breach, Council must make the investigation report for the investigation publicly available the earlier of:

- On or before the day and time prescribed by regulation, or within 10 business days after the decision is made; or
- On 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 Council 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; or
 - 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; or
 - Any other information Council 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 made 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 Chief Executive Officer of Council; and
- The person's identity as the complainant was disclosed at the meeting at which the report for the investigation was considered.

Disciplinary Action against Councillors

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

- Order that no action be taken against the Councillor; or
- Make an order outlining what action Council will take to discipline the Councillor under section 150AH of the Act. Under this section the Council may make one or more orders in accordance with those set out in section 150 AH(b)(i) – (vii) of the Act.

Notice of outcome of investigation

After an investigation is finalised, Council must give notice about the outcome to:

- The Independent Assessor; and
- 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.

CONDUCT BREACH – DISCIPLINARY ACTION MATRIX

Matrix guidance

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

As a guide, it is suggested that it may be appropriate for the local government to consider making an order or combination of orders depending on whether a Councillor has been found to have engaged in a conduct breach for the first time, or for a 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 local government to take action under s150AG to discipline the Councillor for a conduct breach on three occasions within a 1 year period.

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

Types of orders

Order	First instance engaging in a conduct breach	Second instance engaging in a conduct breach	Third instance engaging in a conduct breach
No Action be taken against the Councillor	✓		
An order for the Councillor to make a public apology in the way decided by the local government, for the conduct	✓*	✓*	✓*
An order reprimanding the Councillor for the conduct	✓#	✓#	✓#
An order that the Councillor attend training or counselling addressing the Councillor's conduct, including at the Councillo'rs expense	✓#	✓#	✓#
An order that the Councillor be excluded from a stated local government meeting		✓	✓

An order that the Councillor is removed or must resign from a position representing the local government other than the office of Councillor			✓
An order that if the Councillor engages in the same type of conduct again, it will be treated as misconduct	✓ ^	✓	
An order that the Councillor reimburse the local government for all or 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

Local Government Regulation 2012

Crime and Corruption Act 2001

Public Interest Disclosure Act 2010

Public Sector Ethics Act 1994

RELATED POLICIES AND PROCEDURES

Councillor Code of Conduct

Public Interest Disclosure Policy and Procedures
Information, Communication and Technology (ICT)

Councillor Acceptable Requests Guideline

Standing Orders and Model Meeting Procedures

DEFINITIONS

Term	Definition
Independent Assessor	means the Independent Assessor appointed under section 150CV of the Act
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 Act
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 and 150DY of the Act
Conduct breach	see section 150K of the Act
Corrupt conduct	see section 15 of the <i>Crime and Corruption Act 2001</i>
Investigator	means the person responsible under this investigation policy for carrying out the investigation of the suspected conduct breach of a Councillor or Mayor
Investigation Report	means a report provided by the Investigator to the local government
Act	means the <i>Local Government Act 2009</i>

Local Government Meeting	means a meeting of— (a) a local government; or (b) a committee of a local government
Misconduct	see section 150L of the Act
Referral Notice	see section 150AC of the Act
Tribunal	means the Councillor Conduct Tribunal as established under section 150DK of the Act
Unsuitable meeting conduct	see section 150H of the Act

APPROVAL

The investigation policy was adopted by Council resolution on 28 August 2024 and applies from this day.

REVIEW

This policy will be reviewed by Council every four years and will be due for review no later than August 2028. The Office of the Chief Executive Officer will continue to monitor this policy and is authorised to make administrative amendments as required to ensure currency is maintained.

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
4	General	29 May 2024	Council has adopted the Queensland Government Template Policy
5	General	28 August 2024	Reverting back to a tailored Policy