



# Investigation Policy (Statutory) Councillor Conduct Breach

## 1. PURPOSE

This is Balonne Shire Council's investigation policy about how it deals with the suspected conduct breaches of councillors referred, by the assessor, to the local government to 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.

## 2. SCOPE & AUTHORITY

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

This is a statutory policy, resolved by Council under its powers in accordance with the Queensland Local Government Act (2009) Section 150AE of the Local Government Act 2009 which states:

### **150AE Local Government must adopt investigation policy**

- (1) *A local government must adopt, by resolution, a policy (an investigation policy) about how it deals with the suspected conduct breaches of councillors referred, by the assessor, to the local government to be dealt with.*

## 3. POLICY STATEMENT

### 3.1 Confidentiality

Matters of suspected conduct breach 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 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.*

A summary of the investigation report must be made publicly available S150AFA – S150AGA of the Local Government Act 2009. *Note: this does not include all information contained in the investigation report subject to legal professional privilege or the Public Interest Disclosure Act 2010. Refer to S150AGA(2) for items that must not be disclosed publicly.*

### 3.2 Natural justice

*S150AE (3)(d) to (g) put beyond any doubt the natural justice process that a Council must afford the councillor the subject of an allegation of a conduct breach, before it proceeds to make a decision about the matter.*

Any investigation of suspected conduct breach 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:

- that 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)
- that the investigator(s) should be objective and impartial (absence of bias)
- that any action taken is based on evidence (not suspicion or speculation).

A fair hearing means the councillor who is the subject of the suspected conduct breach 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.



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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.

Ensuring decisions are 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.

### 3.3 Assessor's referral

The council will receive from the assessor a referral notice about the suspected conduct breach of a councillor/s. (S150AC) The referral notice must—

- (a) include details of the conduct and any complaint received about the conduct; and
- (b) state why the assessor reasonably suspects the councillor has engaged in a conduct breach; and
- (c) include information about the facts and circumstances forming the basis for the assessor's reasonable suspicion.

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.

The investigation must be conducted in a way consistent with:

- (i) any recommendation of the assessor
- (ii) to the extent that this policy is not inconsistent with the recommendation of the assessor – this investigation policy, or
- (iii) in another way the local government decides by resolution.

A resolution under subsection (iii) must state the decision and the reasons for the decision.

### 3.4 Receipt of assessor's referral

On receipt of a referral notice about the suspected conduct breach 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 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 for the council to decide, by resolution, the appropriate process to investigate the complaint. Such a request must be made in accordance with the council's meeting procedure requirements.

*Refer to S150AEA of the Local Government Act 2009 whereby council may decide not to start or to discontinue an investigation.*

### 3.5 Investigator

Unless otherwise resolved by council, the mayor will manage the investigation of suspected conduct breach of other councillors.

If the suspected conduct breach involves conduct where, 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 may refer the suspected conduct breach to the president of the Councillor Conduct Tribunal (the Tribunal) or other entity to investigate and make recommendations to the council about dealing with the conduct.

If the suspected conduct breach involves an allegation about the conduct of the mayor or the mayor as the complainant, then the chief executive officer may refer the suspected conduct breach to the president of the Tribunal, or another entity, to investigate and make recommendations to the council about dealing with the conduct.



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## 3.6 Early resolution

Before beginning an investigation, the investigator should consider whether the matter is appropriate for resolution prior to the investigation. This consideration can include any recommendations made by the assessor and/or whether the complaint lacks substance, credibility and/or made to harass, annoy or cause detriment (vexatious).

A matter is only appropriate for early resolution if the parties to the matter both voluntarily agree to explore early resolution. (Refer to S150AEA) 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.

Note: A summary of the investigation report must be made publicly available S150AFA – S150AGA of the Local Government Act 2009. *Note: this does not include all information contained in the investigation report subject to legal professional privilege or the Public Interest Disclosure Act 2010. Refer to S150AGA(2) for items that must not be disclosed publicly.*

Council must give the assessor a notice under S150AHA of the LGA if it decides not to continue or makes a decision about the conduct breach.

## 3.7 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.*

## 3.8 Assistance for investigator

If the mayor, or another councillor appointed by council resolution, is the investigator of a matter of suspected conduct breach, the mayor or councillor 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.

## 3.9 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 that 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 conduct breach. (S150K)

## 3.10 Completion of investigation

On the completion of an investigation, the investigator will provide a report to a council meeting outlining as appropriate:



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- 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 gathered
- the investigation findings
- a statement of any relevant previous disciplinary history
- any recommendations about dealing with the conduct
- a record of the investigation costs.

The 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 whether the councillor has engaged in inappropriate conduct and, if so, what action it will take under section 150AH of the LGA.

The chief executive officer is also required to ensure the details are entered into the councillor conduct register.

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 S254J(j) of the LGR. In accordance with s254J(6) of the LGR, the resolution in relation to 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 and the decision recorded in the meeting minutes.

### **3.11 Disciplinary action against councillors**

If the council decides at the completion of the investigation that the councillor has engaged in inappropriate a conduct breach, the council may:

- (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(b) of the LGA.
16. 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.

Note: A summary of the investigation report must be made publicly available S150AFA – S150AGA of the Local Government Act 2009. *Note: this does not include all information contained in the investigation report subject to legal professional privilege or the Public Interest Disclosure Act 2010. Refer to S150AGA(2) for items that must not be disclosed publicly.*

### **3.12 Councillor conduct register**

The chief executive officer must ensure decisions about suspected conduct breach of a councillor/s are entered into the councillor conduct register.

Where a complaint has been resolved under S150AEA of the LGA, or otherwise withdrawn by the complainant, the chief executive officer will update the register to reflect that the complaint was withdrawn.

### **3.13 Expenses**

Council must pay any reasonable expenses of council associated with the investigation of suspected conduct breach of a councillor including any costs of:



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- the president of the Tribunal in undertaking an investigation for council
- an independent investigator engaged on behalf of, or by the Tribunal
- an independent investigator engaged on behalf of the local government
- 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 conduct breach. Any costs incurred by complainants, or the subject councillors will not be met by council.*

## 4. RESPONSIBILITIES

### 4.1 All Councillors and Council employees

- Councillors are responsible for their conduct
- Council employees should be aware of the policy and procedures required for investigation of councillor conduct complaints

### 4.2 Director Finance & Corporate Services

- Shall be the custodian of this policy
- Shall implement control measures and training that provide assurance that Council acts in accordance with the policy
- Shall implement systems and processes to measure and report on the number of complaints and outcomes as outlined in the legislation.

### 4.3 Chief Executive Officer

- Shall refer councillor conduct complaints to the Office of Independent Assessor or Crime & Corruption Commission, as required
- Maintain the councillor conduct register
- Refer a complaint for investigation by a suitable provider as required

## 5. RISK

This policy seeks to mitigate the risk of failing to provide natural justice when investigating a councillor complaint and reduce the risk of damaged reputation through openness and transparency in the public interest balanced with the protection of confidentiality in the interests of the individuals involved.

## 6. IMPACTS

**Corporate Plan:** Governance: High levels of transparency and compliance

**Human Rights Compatibility Statement:** The policy is consistent with the Human Rights Act 2019;

**Engagement:** Councillors will receive training and awareness of this and associated policies relating to their conduct as an elected member.

## 7. RELATED LAWS

- Local Government Act 2009
- Local Government Regulations 2012

## 8. RELATED DOCUMENTS

- Code of Meeting Practice



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- Code of Conduct

## 9. REVISION HISTORY

**Revokes:** All previous versions of the policy adopted 19 January 2023

**Previous approved versions:** Doc ID 610635 adopted 19 January 2023

**Suggested to review by:** Every two years or as updated via legislation

## 10. 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 for Councillors in Queensland approved under section 150E of the LGA

**Conduct** includes—

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

**Conduct Breach** see section 150K of the LGA

**Councillor conduct register** means the register required to be kept by Council as set out in section 150DX 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

**LGA** means the *Local Government Act 2009*

**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 LGA

**Model procedures** see section 150F 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

## 11. ATTACHMENTS

NIL