

Councillor Investigation Policy

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Councillor Investigation Policy

1. PURPOSE

This policy details how a complaint referred to Council by the Independent Assessor (the Assessor) about a suspected conduct breach by a Councillor will be dealt with as required by the section 150AE of the *Local Government Act 2009*.

2. SCOPE

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

This policy does not relate to:

- (1) suspected misconduct or corrupt conduct by a Councillor, which are dealt with under separate legislative provisions;
- (2) unsuitable meeting conduct, or
- (3) 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).

3. INVESTIGATION PRINCIPLES

3.1 Confidentiality

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

- (1) to give the subject Councillor information about the suspected conduct, including details about the evidence of the conduct;
- (2) to give the subject Councillor the preliminary findings of the investigation, before preparing an investigation report about the investigation;
- (3) to give the subject Councillor a notice if an investigation is not started or is discontinued; and
- (4) 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.

Once the matter has been investigated and a report has been provided to Council, the matter will be placed on a 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*.

The **investigation report** is confidential until:-

- (1) a decision is made about the conduct at a Council meeting and the investigation report is made publicly available by 5.00 p.m, on the tenth day after the meeting at which the decision was made, or when the minutes of the meeting are made publicly available¹; or
- (2) within ten business days after the decision is made.

Information as identified in section 150AGA(2) of the *Local Government Act 2009*, contained in the investigation report must not be made publicly available and must be redacted from the investigation report.

A **summary of the investigation report** including information identified in section 150AFA(4) of the *Local Government Act 2009*, must be attached to the agenda papers and made publicly available by 5.00 p.m. on the next business day after notice of the meeting at which the decision is to be made is given under section 254C of the *Local Government Regulation 2012*. Information identified in section 150AFA(5) of the *Local Government Act 2009* contained in the summary investigation report must not be made publicly available.

¹ *Local Government Regulation 2012* - sections 239C(3) and (4)



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3.2 Natural Justice

Any investigation of suspected inappropriate conduct 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 a suspected conduct breach matter has a chance to have their say before adverse formal findings are made and before any adverse action is taken (fair hearing);
- (2) that the investigator should be objective and impartial (absence of bias); and
- (3) that any action taken or decision made is based on evidence (not suspicion or speculation).

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

- (1) the preliminary findings of the investigation before the preparation of an investigation report about the investigation;
- (2) a notice if an investigation is not started or is discontinued, including the reasons for the decision;
- (3) allowing the Councillor to give evidence or a written submission to Council about the suspected conduct breach and preliminary findings;
- (4) requiring Council to consider the evidence or written statement from the subject Councillor in preparing the investigation report; and
- (5) 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.

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.

Note: It must be kept in mind that the matter when referred, is suspected and not yet proven.

3.3 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 Council is reasonably satisfied that its existence is more probable than not.

3.4 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 a Council meeting within eight weeks of commencing the investigation, after the receipt of the complaint from the Assessor.

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 or delegate (if the Mayor is managing the investigation) to seek an extension of time. Delay in procuring an investigator to undertake the investigation should be avoided.



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3.5 Expenses

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

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

Note: Council may order the subject Councillor reimburse Council for all or some of the costs arising from a Councillor's 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 the Councillor Conduct Tribunal or other jurisdictions who deal with conduct matters (by way of example).

3.6 Councillor Conduct Register

The Chief Executive Officer must ensure decisions and any orders made under section 150AH of the *Local Government Act 2009*, including a decision not to start or to discontinue an investigation² about a suspected Councillor conduct breach, are entered into the Councillor conduct register.

4. INVESTIGATION PROCEDURES

4.1 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 Investigation Policy.

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

4.2 Receipt of Assessor's Referral

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

The subject Councillor and the complainant, if the complainant is a Councillor, have a declarable conflict of interest and should manage the declarable conflict of interest in a way consistent with the requirements of the *Local Government Act 2009* and Council's *Meeting Procedures*.

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 will be assumed by the Deputy Mayor. If both the Mayor and the Deputy Mayor are conflicted, a Councillor will be appointed by resolution, to manage the investigation.

If the subject Councillor agrees to all of the facts presented and accepts complete accountability for the suspected conduct breach, then there would be no requirement for an external investigation; the matter will be presented to the Council for resolution, which must state the decision and reason for the decision.

² *Local Government Act 2009* - section 150AEA



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4.3 When Council 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. 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. Council may decide by resolution not to start or to discontinue a suspected conduct breach matter. The resolution must state the decision and the reasons for the decision. The only circumstances in which Council can resolve to not start or to discontinue a matter are provided in section 150AEA of the *Local Government Act 2009*.

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

4.4 Investigating a Suspected Conduct Breach by a Councillor

Unless the matter has been delegated by Council, 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 Council 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 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 Chief Executive Officer. The Chief Executive Officer will determine if the conduct is within the timeframe for reporting the matter (as prescribed by section 150SB of the *Local Government Act 2009*) and if it is, the Chief Executive Officer will provide an information notice to the Assessor giving the details of the suspected misconduct.

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 and Chief Executive Officer. The Chief Executive Officer will then provide an information notice to the Assessor giving the details of the suspected corrupt conduct and notify the Crime and Corruption Commission of the suspected corrupt conduct. There are no reporting time limits for corrupt conduct.

4.5 Engaging an Investigator

Once an investigator has been selected to undertake the investigation, they will follow relevant investigation standards.

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

- (1) the investigation process;
- (2) any witnesses interviewed;
- (3) documents or other evidence obtained;
- (4) a statement of the relevant facts ascertained;
- (5) confirmation that the subject Councillor has been provided with an opportunity to respond to the complaint and the evidence compiled;
- (6) the investigation findings;
- (7) a statement of any relevant previous disciplinary history;
- (8) any recommendations about dealing with the conduct; and
- (9) a record of the investigation costs.



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4.6 Completion of Investigation

Findings and Recommendations

The investigator must prepare a Preliminary Statement of Findings and must give the preliminary findings to the subject Councillor before preparing the Investigation Report and allow the subject 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 subject 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 matter referred to Council under section 150AFA of the *Local Government Act 2009*. 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 subject Councillor, and recommendations for consideration by Council.

A summary investigation report with a preliminary Statement of Findings and summary of the outcome of the investigation attached must be prepared for public availability in accordance with section 254D of the *Local Government Regulation 2012* before the meeting where Council will consider the investigation report matter. Council must prepare a summary of the investigation report that must include:

- (1) the name of the Councillor whose conduct has been investigated;
- (2) a description of the alleged conduct;
- (3) a statement of the facts established by the investigation;
- (4) a description of how natural justice was afforded to the Councillor during the conduct of the investigation;
- (5) a summary of the findings of the investigation; and
- (6) any recommendations made by the investigator.

The following information must not be made publicly available:

- (1) if the investigation relates to the conduct of a Councillor that was the subject of a complaint:
 - (a) the name of the person who made the complaint or any other person, other than the Councillor; or
 - (b) information that could reasonably be expected to result in identifying a person who made the complaint or any other person; and
- (2) 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:
 - (a) the name of the person;
 - (b) information that could reasonably be expected to result in identifying the person or any other person, other than the Councillor; or
 - (c) any other information the local government is entitled or required to keep confidential under a law.



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4.7 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.

If a decision is reached that the subject Councillor has engaged in a conduct breach, Council (with the exception of the Councillor the subject of the investigation) 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 *Local Government Act 2009*.

A final decision about whether a Councillor engaged in a conduct breach and if so, any decision about orders which are made under section 150AH of the *Local Government Act 2009*, must be made by resolution of Council in an open Council meeting. Any decision that is not consistent with the recommendation of the investigation report must state the reasons for the decision in the minutes of the meeting. The minutes must give sufficient information to demonstrate the rationale that has been applied to justify the decision not to follow the recommendation of the investigation report.

After making a decision about the conduct breach, Council must make the investigation report publicly available, in accordance with section 254F of the *Local Government Regulation 2012*. The following information contained in the investigation report must **not** be made publicly available:

- (1) if the investigation relates to the conduct of a Councillor that was the subject of a complaint:
 - (a) 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
 - (b) information that could reasonably be expected to result in identifying a person; and
- (2) 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:
 - (a) the name of the person;
 - (b) information that could reasonably be expected to result in identifying the person or any other person, other than the Councillor;
 - (c) 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
 - (d) any other information Council is entitled or required to keep confidential under a law (for example, documents subject to legal professional privilege or information that is part of a public interest disclosure under the *Public Interest Disclosure Act 2010*).

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

- (1) the person is a Councillor or the Chief Executive Officer of the local government; and
- (2) the person's identity as the complainant was disclosed at the meeting at which the report for the investigation was considered.

4.7.1 Quorum

Where the local government meeting loses a quorum due to conflicts of interest of Councillors or absent Councillors, then the conduct matter must be delegated to the Mayor to make a decision. If the referral notice is about a suspected conduct breach by the Mayor, then the matter must be delegated to a standing committee for decision.³

³ *Local Government Act 2009* - section 257(2)



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4.8 Disciplinary Action against Councillors

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

- (1) that no action be taken against the Councillor; or
- (2) outlining action the Councillor must undertake in accordance with section 150AH(1)(b) of the *Local Government Act 2009*.

4.9 Notice About the Outcome of Investigation

After an investigation is finalised, Council must give notice about the outcome if Council decides not to start or to discontinue an investigation (section 150AEA of the *Local Government Act 2009*) or makes a decision about whether the Councillor has engaged in a conduct breach (section 150AG of the *Local Government Act 2009*) including the reasons for the decision and any orders made under section 150AH of the *Local Government Act 2009* to:

- (1) the Assessor;
- (2) the person who made the complaint about the Councillor's conduct that was the subject of the investigation; and
- (3) the subject Councillor.

5. DEFINITIONS:

Assessor means the Independent Assessor appointed under section 150CT of the *Local Government Act 2009*.

Behavioural standard means a standard of behaviour for Councillors set out in the Code of Conduct for Councillors in Queensland approved under sections 150D and 150E of the *Local Government Act 2009*.

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 *Local Government Act 2009*.

Conduct breach see section 150K of the *Local Government Act 2009*.

Investigation Policy, refers to this policy, as required by section 150AE of the *Local Government Act 2009*.

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 see section 150L of the *Local Government Act 2009*.

Referral notice see sections 150AB, 150AC and 150AD of the *Local Government Act 2009*.

Tribunal means the Councillor Conduct Tribunal as established under section 150DK of the *Local Government Act 2009*.

Unsuitable meeting conduct see section 150H of the *Local Government Act 2009*.

6. REVIEW TRIGGER:

- (1) Periodic review
- (2) Change in legislation

