

Intent

This policy sets out how complaints about the suspected conduct breach of Councillors will be dealt with as required by s150AE of the *Local Government Act 2009* (LGA).

Tablelands Regional Council (TRC) must adopt, by resolution, an investigation policy about how it deals with any suspected conduct breach by a Councillor referred to it by the Independent Assessor (IA) under s150AE(1) of the LGA. This policy must be published on TRC's website (s150EA(4) of the LGA).

Scope

This policy applies to investigations and determinations by TRC about any suspected conduct breach by a Councillor including the Mayor, which has been referred by the IA.

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 (e.g. a sitting councillor campaigning for re-election or attending a private social function), or with investigations of matters not associated with councillor conduct.

Policy Statement

Chapter 5A of the LGA prescribes the councillor conduct management system. Section 150CT of the LGA establishes an Independent Assessor (IA) to carry out particular 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 IA reasonably suspects a Councillor has engaged in a conduct breach, the IA may refer the matter to TRC to deal with under s150SD(4)(a) or s150W(b) of the LGA.

On receipt of a referral notice relating to a suspected conduct breach, TRC must deal with the Councillor's conduct as prescribed under s150AF of the LGA, unless a decision is made to either not start, or to discontinue the investigation under s150AEA of the LGA. In conducting the investigation, TRC must comply with this policy.

1. Confidentiality

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

- to give the Councillor information about the suspected conduct, including details about the evidence of the conduct
- to give the Councillor the preliminary findings of the investigation before preparing an Investigation Report about the investigation
- to give the Councillor a notice if an investigation is not started, or is discontinued and
- for conduct the subject of a complaint – to give the complainant and the IA a notice if an investigation is not started or is discontinued.

However, once the conduct is investigated and an Investigation Report is received, a summary investigation report must be made publicly available before any discussion is undertaken by Council. The published summary investigation report must however not contain any names or identifying information about the complainant and persons who were interviewed or a transcript of interview, or provided a statement or affidavit, unless the complainant is a Councillor or Chief Executive Officer (CEO), whose identity was disclosed at the meeting at which the investigation report was considered.

Once the matter has been investigated and a report has been provided to the Council, the matter will be placed on the 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 s254J(j) of the *Local Government Regulation 2012* (LGR)). At this point, the summary investigation report is not treated as confidential as it must be publicly available and attached to the agenda that is circulated before the meeting.

A final decision by resolution of the Council in an open Council meeting must take place when the decision is made about whether a Councillor engaged in a conduct breach and if so, any decision about orders that are made under s150AH of the LGA. Any decision that is not consistent with the recommendation of the investigation report must state in the meeting minutes the reasons for the decision. The minutes must give sufficient information to demonstrate the logic that has been applied to justify the decision not to follow the recommendation of the investigation report.

The full investigation report must be made publicly available within 10 business days of Council making a decision by resolution about whether the Councillor engaged in a conduct breach and if so, any orders made in relation to the matter. The published investigation report must however not contain any names or identifying information about the complaint, persons who were interviewed or a transcript of interview, or provided a statement or affidavit unless the complaint is a Councillor or CEO whose identity was disclosed at the meeting at which the investigation report was considered.

A notice about the outcome of the investigation must be given to the IA as soon as practicable that states the decision, the reasons for the decision and the details of any orders made under s150AH of the LGA.

2. Natural justice

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

Natural justice, or procedural fairness, refers to 3 key principles:

- the Councillor who is the subject of the suspected conduct breach matter has a chance to present their views before formal adverse findings are made and before any adverse action is taken (i.e. a fair hearing)
- the investigator should be objective and impartial (i.e. an absence of bias)
- any actions taken or decisions made are based on evidence (i.e. not on suspicion or speculation).

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

- the preliminary findings of the investigation before an investigation report about the investigation outcome is prepared
- a notice if an investigation is not started or is discontinued, including the reasons for the decision
- allowing the Councillor to give evidence or a written submission to Council about the suspected conduct breach and preliminary findings
- requiring TRC to consider the evidence or written statement from the Councillor in preparing the investigation report
- include, 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 be impartial and not biased or seen to be biased in any way. A proper examination of all issues means the investigation must give a proper and genuine consideration to each party's case.

3. Standard of proof

The civil standard of proof (i.e. "on the balance of probabilities") will be applied by the investigator when determining whether a Councillor has engaged in a conduct breach.

An allegation will be found to be sustained "on the balance of probabilities", if based on the evidence, the investigator and Council, is reasonably satisfied that the allegation is more probable than not.

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 the Council meeting within 8 weeks of commencing the investigation, after the receipt of the complaint referral from the IA.

If the investigator is of the opinion that it may take longer than 8 weeks to complete the investigation, the matter should be raised with the Mayor to seek an extension of time.

5. Expenses

TRC must 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 TRC
- travel where the investigator needs to travel to undertake the investigation, or to interview witnesses and
- obtaining legal or expert advice.

Council may order the subject Councillor to reimburse TRC for 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 of the investigator engaged to undertake the investigation. Any costs incurred by complainants, or the subject Councillor will not be met by TRC. Costs will be kept to a reasonable rate, taking into consideration the cost for more serious matters dealt with by, e.g. the Councillor Conduct Tribunal or other jurisdictions that deal with conduct matters.

6. Councillor conduct register

The CEO will ensure decisions and any orders under s150AH of the LGA made about a conduct breach by a Councillor (or any decision not to start or to discontinue an investigation of a suspected conduct breach under s150AEA of the LGA) are entered into the councillor conduct register.

Procedures for the Investigation

7. Independent Assessor's referral

TRC will receive a Referral Notice from the IA about any 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 IA 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 IA's reasonable suspicion.

The IA is required to give a notice to the Councillor that states the Councillor's conduct has been referred to TRC to deal with and a copy of the referral notice must be attached.

8. Receipt of Independent Assessor's referral

On receipt of a referral notice from the IA about a suspected conduct breach of a Councillor, the CEO will provide a copy of that referral notice to the Mayor and all Councillors, including the subject Councillor, as a confidential document.

The Councillor who is the subject of the complaint and the complainant if the complainant is a Councillor, have a declarable conflict of interest and should manage it in a way that is consistent with the requirements of the Model Meeting Procedures (section 5).

9. When Council may decide not to start, or to discontinue an investigation

On receipt of the referral notice from the IA, 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 choose to formally not start, or to discontinue a matter are set out under s150AEA of the LGA. They include where the:

- complaint is withdrawn by the complainant
- complainant consents to the matter being withdrawn (e.g. the matter has been resolved and it is unnecessary for TRC to investigate the matter)
- complainant refuses to cooperate by providing additional information during the investigation phase and not enough information is available to proceed
- office of the Councillor becomes vacant for any reason (e.g. the person has resigned or was not re-elected and is no longer a Councillor).

TRC must give a notice to the complainant, the IA and the subject Councillor if an investigation is not started or is discontinued. The notice must include the reasons for the decision. Additionally, matters not started or discontinued must be reported in TRC's annual report, including the reasons for the decision as well as be recorded in the councillor conduct register.

10. Investigating a suspected Councillor conduct breach

The Mayor is responsible for managing the investigation process and may undertake the investigation of the suspected conduct breach themselves, or engage a suitably qualified, 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.

The Mayor is authorised by Council to expend money as reasonably necessary to engage contractors in accordance with TRC's Procurement Policy.

If the Mayor has a conflict of interest in the matter, the Mayor's powers to manage the investigation must be delegated by Council resolution to the Deputy Mayor, or if the Deputy Mayor is conflicted, then another Councillor must be appointed by resolution, to manage the investigation.

11. Completion of investigation

Findings and recommendations

The investigator must prepare a preliminary statement of findings and must give the preliminary statement of findings to the Councillor before preparing the final investigation report and allow the Councillor to give evidence, or a written statement about the conduct and preliminary findings.

If during the course of the investigation, the investigator obtains information that indicates a Councillor may have engaged in misconduct, the investigator must cease the investigation and advise the Mayor and the CEO. The CEO will determine if the conduct is within the timeframe for reporting the matter. The CEO

will then provide an information notice to the IA giving the details of the suspected misconduct. The information notice must be given within 1 year after the conduct occurred, or within 6 months after the conduct comes to the knowledge of the CEO or another person who gave the information notice to the IA, but within 2 years after the conduct occurred.

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

Investigation report and summary investigation report

The investigator must then prepare an investigation report about the investigation of the suspected conduct breach. The investigation report must include the findings of the investigation, a summary of any evidence or a full copy of any written submission given by the Councillor and recommendations for consideration by the Council.

The investigation report must include the following:

- Investigation process
- Any witnesses interviewed
- Documents or other evidence obtained
- Statement of relevant facts ascertained
- Confirmation that the subject Councillor has been provided with an opportunity to respond to the complaint and the evidence compiled
- Investigation findings
- Statement of any relevant previous disciplinary history
- Recommendations about dealing with the conduct
- Record of the investigation costs.

The investigation report must be publicly available within 10 business days after the local government makes a decision about the outcome of the investigation.

A summary investigation report must also be prepared and by made publicly available before the meeting where the Councillors will consider the matter. This is required to be done by:

- 5 pm on the next business day after the notice of the meeting has been provide to the Councillors or
- the day and time when the agenda for the meeting is publicly available (s254C of the LGR).

The summary investigation report must include:

- the name of the Councillor whose conduct has been investigated
- a description of the alleged conduct
- a statement of the facts established by the investigation
- a description of how natural justice was afforded to the Councillor during the conduct of the investigation
- a summary of the findings of the investigation and
- any recommendations made by the investigator who investigated the conduct.

The published summary investigation report must not contain any names or identifying information about the complainant and persons who were interviewed or a transcript of interview, or provided a statement or affidavit, unless the complainant is a Councillor or Chief Executive Officer (CEO), whose identity was disclosed at the meeting at which the investigation report was considered, or any other information TRC is entitled or required to keep confidential under a law.

12. Making a decision about the investigation

Council must decide 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 their conflict of interest, and the eligible Councillors can decide by resolution whether the subject Councillor may remain in the Meeting during the debate and may answer questions through the chairperson to assist the eligible Councillors in making a decision. The resolution may 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.

Should the complainant be a Councillor, that Councillor also has a declarable conflict of interest in the matter and must follow the declarable conflict of interest procedures set out in the Model Meeting Procedures (s5).

If Council loses quorum due to the number of conflicted Councillors (or another reason), then the conduct matter must be delegated to either the Mayor or a Standing Committee to make a decision. If the conduct is a suspected conduct breach by the Mayor, then the matter must be delegated by resolution to a Standing Committee.

If a decision is reached that the Councillor has engaged in a conduct breach, Council (with the exception of the Councillor the subject of the investigation and the complaint, if another Councillor) will consider the findings and recommendations of the investigation report and decide what, if any, action it will take under s150AH of the LGA.

After making a decision about the conduct breach, the full investigation report must be made publicly available when the meeting minutes are made publicly available or within 10 business days of Council making the decision about whether the Councillor engaged in a conduct breach.

The published investigation report must not contain:

- any names or identifying information about the complainant/s, people who were interviewed, or a transcript of interview, statement or affidavit unless the complaint was a Councillor or CEO whose identity was disclosed at the meeting at which the investigation report was considered
- any other information TRC 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 under the *Public Interest Disclosure Act 2010*).

13. Disciplinary action against a Councillor

Section 150AG of the LGA provides that where an allegation of a conduct breach has been referred by the IA to Council, the Council must decide whether or not the Councillor has engaged in a conduct breach and if so, what action the local government will take to discipline the Councillor.

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

- an order that no action be taken against the Councillor
- an order that the Councillor make a public apology for the conduct, in the way decided by the Council
- 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 Councillor's 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 Council for all or some of the costs arising from the Councillor's conduct breach (s150AH of the LGA).

When deciding what action to take, Council may consider any previous conduct breach by the Councillor, any allegation made in the investigation that was admitted or not challenged, and which the local government is reasonably satisfied is true.

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 a conduct breach for the first time, for a second or third time.

Additionally, if Council disciplines a Councillor for a conduct breach on 3 occasions within a 1 year period, this is considered misconduct (s150AG of the LGA).

The following table provides guidance as to what disciplinary action may be suitable in various circumstances:

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 for the conduct, in the way decided by the Council	✓ *	✓ *	✓ *
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 Councillor's 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 conduct breach **		✓	✓

* 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 appropriate where the conduct involves bullying or harassment or making inappropriate comments about another person.

^ For more serious and deliberate conduct breaches by an experienced Councillor.

** Costs arising from the Councillor's conduct include investigation costs, legal costs and administrative costs. However, costs should be kept to a reasonable rate taking into consideration the cost of more serious matters dealt with by the councillor conduct tribunal.

14. Notice about the outcome of the investigation

After an investigation is finalised, TRC must give a notice about the outcome of the investigation if the Council decides not to start, or to discontinue an investigation under s150EA of the LGA, or makes a decision about whether the Councillor has engaged in a conduct breach under s150AG of the LGA, including the reasons for the decision and any orders made to the IA, the complainant and the subject Councillor.

Context

Definitions

Independent Assessor (IA) means the Independent Assessor appointed under s150CT of the LGA

Conduct includes:

- failing to act
- a conspiracy or attempt to engage in conduct

Conduct breach has the meaning set out in s150K of the LGA. A conduct breach occurs when a Councillor:

- breaches a behavioural standard set out in the *Code of Conduct for Councillors in Queensland*
- breaches a Council policy, procedure or resolution
- contravenes an order by a chairperson of a local government to leave a council meeting and stay away from the place at which it is being held
- engages in unsuitable meeting conduct on 3 occasions within a 1 year period

Investigation Policy refers to this policy as required by s150AE of the LGA

Investigator means the person responsible under this Investigation Policy for carrying out the investigation of the suspected conduct breach of a Councillor or Mayor

Misconduct has the meaning set out in s150L of the LGA

Model Meeting Procedures has the meaning set out in section 150F of the LGA

Referral Notice has the meaning set out in ss 150AB, 150AC and 150AD of the LGA

Unsuitable Meeting Conduct has the meaning set out in s150H of the LGA

Alignment to Risk Register

This policy mitigates the following corporate risks:

- COR2 Fraud
- COR5 Poor Governance
- COR8 Legislative non-compliance
- COR12 Poor organisational culture
- COR13 Political influence impacting operational management or organisation
- COR20 Poor decision making

Relevant Legislation

- *Local Government Act 2009* (Qld)
- *Local Government Regulation 2012* (Qld)
- *Crime and Corruption Act 2001* (Qld)
- *Public Interest Disclosure Act 2010* (Qld)
- *Public Sector Ethics Act 1994* (Qld)

Related Documents

- Code of Conduct for Councillors in Queensland
- Model Meeting Procedures
- Standing Orders
- Complaint Management Policy
- Information Privacy Policy

Corporate Plan Links

This policy aligns with the following Corporate Plan 2021– 26 themes:

- Our organisation is progressive, efficient, transparent and collaborative.

Human Rights Commitment

Tablelands Regional Council has considered the human rights protected under the *Human Rights Act 2019* (Qld) when adopting and/or amending this policy. When applying this policy, TRC will act and make decisions in a way that is compatible with human rights.

Responsibility

Council is responsible for the adoption, amendment and repeal of this policy and the Chief Executive Officer is responsible for the development and amendment of any associated procedures and guidelines relevant to the policy.

This policy is to remain in force until otherwise amended or repealed by resolution of Council.

Adopted By	Council	Responsible Officer	Coordinator Legal & Governance
Adopted Date	26 September 2024	Review Date	22 August 2028
Version	2	This policy repeals any previous versions.	