

1. Policy Intent

This is Tablelands Regional Council's investigation policy for how complaints about the inappropriate conduct of Councillors will be dealt with as required by the section 150AE of the *Local Government Act 2009* (the Act).

2. Commencement

The investigation policy was adopted by Council resolution on 24 January 2019 and applies to Councillor complaints received from 3 December 2018.

3. Background/Supporting information

Related Legislation

Crime and Corruption Act 2001

Criminal Code Act 1899

Information Privacy Act 2009

Integrity Act 2009

Local Government Act 2009

Local Government Regulation 2012

Public Interest Disclosure Act 2010

Council Policies

Complaints Policy

Councillors Code of Conduct

Fraud and Corruption Prevention Policy

Public Interest Disclosure Policy

Public Interest Disclosure Management Plans and Procedure

4. Scope

This investigation policy applies to investigations and determinations of a complaint about the alleged inappropriate conduct of a Councillor/s which has been referred by the Independent Assessor. This policy does not relate to more serious Councillor conduct.

5. Definitions

To assist in the interpretation of terms used in this policy the following definitions apply.

Act means *Local Government Act 2009*.

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 approved under section 150E of the Act.

CCC means the *Crime and Corruption Commission Queensland*.

conduct includes—

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

Corrupt Conduct has the same meaning as the *Crime and Corruption Act 2001*, being the conduct of a person regardless of whether the person holds or held an appointment that fulfils each of the following elements:

- (a) Adversely affects, or could adversely affect, directly or indirectly, the performance of functions, or the exercise of powers of a Unit of Public Administration (UPA) or a person holding an appointment in a UPA;
- (b) Results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that is:
 - (i) not honest or is not impartial; or
 - (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or
 - (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and
- (c) Is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and
- (d) Would, if proved, be a criminal offence; or a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

Council means Tablelands Regional Council.

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

inappropriate conduct has the same meaning as section 150K of the ACT.

investigation policy, refers to this policy, as required by section 150AE of the ACT.

investigator means the person responsible under this investigation policy for carrying out the investigation of the suspected inappropriate conduct 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 has the same meanings as section 150L of the LGA.

model procedures has the same meanings as section 150F of the Act.

natural justice – a set of principles to ensure fair and just decision making, including a fair hearing, an absence of bias, decisions based on evidence, and the proper examination of all issues.

referral notice has the same meaning as 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.

6. Policy Statement

Council is committed to providing a statutory compliant process for dealing with councillor complaints in an open and transparent manner that is fair and just.

6.1 Confidentiality

Matters of suspected inappropriate conduct of a Councillor are confidential except as otherwise specifically provided for either in the Act or this investigation policy.

Note: It must be kept in mind that the matter is an allegation only and not yet proven. Further, there will be circumstances where the detail of the referral will need to remain confidential to the Local Government. Any release of confidential information that a Councillor knows, or should reasonably know, to be confidential to the local government may be contrary to section 171(3) of the Act and dealt with as misconduct.

6.2 Natural Justice

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

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

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

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

An absence of bias means that any investigation must not be biased or be seen to be biased in any way. This principle embodies the concept of impartiality.

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

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

6.3 Assessor Referral

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

On receipt of a referral notice about the suspected inappropriate conduct of a Councillor/s from the Assessor, the Council's Chief Executive Officer will forward a copy of that referral notice to the Mayor and all Councillors as a confidential document.

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

6.4 Investigator

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

If the suspected inappropriate conduct involves conduct that in the circumstances, the Mayor believes, it is in the best interests of the investigation to refer the matter for external investigation, then the Chief Executive Officer must refer the suspected inappropriate conduct to the President of the Tribunal to investigate and make recommendations to the Council about dealing with the conduct.

If the suspected inappropriate conduct involves:

- (a) an allegation about the conduct of the Mayor, or
- (b) the Mayor as the complainant, then

the Chief Executive Officer must refer the suspected inappropriate conduct to the President of the Tribunal to investigate and make recommendations to the Council about dealing with the conduct.

6.5 Early resolution

Before beginning an investigation, the investigator must consider whether the matter is appropriate for resolution prior to the investigation. This consideration includes any recommendation made by the Assessor.

A matter is only appropriate for early resolution if the parties to the matter agree to explore early resolution.

The investigator may engage an independent person with suitable qualifications or experience to facilitate this process.

If the matter cannot be resolved, the matter will then be investigated as outlined in this investigation policy.

If the matter is resolved prior to investigation, the investigator will advise the Chief Executive Officer of this outcome. In turn, the Chief Executive Officer will advise the Mayor (if the Mayor is not the investigator) and all Councillors that the matter has been resolved. The Chief Executive Officer will also update the Councillor Conduct Register to reflect this.

6.6 Timeliness

The investigator will make all reasonable endeavors 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.

6.7 Assistance for investigator

If the Mayor is the investigator of a matter of suspected inappropriate conduct, the Mayor may use section 170A of the Act 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.

6.8 Possible misconduct or corrupt conduct

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

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

6.9 Completion of investigation

On the completion of an investigation, the investigator will provide a report to the Council outlining the investigation process, the investigation findings, any recommendations about dealing with the conduct and a record of the investigation costs.

The Council will consider the findings and recommendations of the investigator's report and decide whether the Councillor has engaged in inappropriate conduct and, if so, what action it will take under section 150AH of the Act.

Provisions for internal and external review of decisions are set out in sections 150CO to 150CS of the Act.

6.10 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. The outcome must also be notified in writing to the Councillor subject to the investigation

6.11 Councillor conduct register

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

Where a complaint has been resolved under section 6.5 of this policy, the Chief Executive Officer will update the register to reflect that the complaint was withdrawn.

6.12 Expenses

Council must pay any reasonable expenses of Council associated with the informal early resolution or investigation of suspected inappropriate conduct of a Councillor including any costs of:

- (a) the president of the Tribunal in undertaking an investigation for Council
- (b) a mediator engaged under this investigation policy
- (c) a private investigator engaged on behalf of or by the investigator
- (d) travel where the investigator needed to travel to undertake the investigation or to interview witnesses
- (e) seeking legal advice

- (f) engaging an expert.

Note: Council may order the subject Councillor reimburse it for all or some of the costs arising from the Councillor's inappropriate conduct.

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

7. Responsibility

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

8. Review

It is the responsibility of the Coordinator Legal and Governance to monitor the adequacy of this policy and recommend appropriate changes. This policy will be formally reviewed every three years or as required by Council.

This Policy is to remain in force until otherwise amended/repealed by resolution of Council.

JUSTIN COMMONS
CHIEF EXECUTIVE OFFICER