

POLICY



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Policy title: **COUNCILLOR CONDUCT COMPLAINTS INVESTIGATION**

Directorate: ORGANISATIONAL SERVICES

Branch: CORPORATE GOVERNANCE

Policy objective: To establish a process for the investigation of complaints about alleged inappropriate conduct of a councillor which have been referred to Council by the Independent Assessor.

Policy scope:

This is Logan City 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 LGA). This policy does not relate to more serious councillor Conduct such as Misconduct.

This investigation policy applies to all investigations and determinations of a complaint about the alleged inappropriate Conduct of a councillor which has been referred to Council by the Independent Assessor.

Definitions:

TERM	DEFINITION
Behavioural Standard	means a standard of behaviour for councillors set out in the Code of Conduct
Code of Conduct	means the Code of Conduct for councillors approved under section 150E of the LGA
Conduct	includes: <ol style="list-style-type: none"> 1. Failing to act; 2. An attempt to engage in conduct; and 3. A conspiracy to engage in conduct.
Corrupt Conduct	has the same meaning as section 15 of the <i>Crime and Corruption Act 2001</i>
Council Meeting	means a meeting of the local government
Councillor Conduct Register	means the register required to be kept by Council as set out in section 150DX of the LGA
Inappropriate Conduct	has the same meaning as section 150K of the LGA
Independent Assessor	means the Independent Assessor appointed under section 150CV 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 <i>Local Government Act 2009</i>
Local Government	has the same meaning as section 8(1) of the LGA

TERM	DEFINITION
Misconduct	has the same meaning as section 150L of the LGA
Model Procedures	has the same meaning as section 150F of the LGA
Natural justice	means 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 LGA
Tribunal	means the Councillor Conduct Tribunal as established under section 150DK of the LGA
Unsuitable Meeting Conduct	has the same meaning as section 150H of the LGA

Policy statement:

1. Confidentiality

Matters of suspected Inappropriate Conduct of a councillor are confidential except as otherwise specifically provided for either in the LGA or this Investigation Policy.

It must be kept in mind that the complaint is an allegation only and not yet proven. 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 LGA and dealt with as Misconduct.

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:

- (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:

- (a) told of the case against them, including any evidence; and
- (b) given an opportunity to put their case in writing, which should be provided with the investigation report to the councillors as part of the meeting agenda to decide the matter.

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.

3. Independent Assessor's Referral

If Council receives a complaint about the Conduct of a councillor, Council must refer the complaint to the Independent Assessor in accordance with section 150P of the LGA.

Council may then receive a referral Notice from the Independent Assessor about the suspected Inappropriate Conduct of a councillor. On receipt of a Referral Notice about the suspected Inappropriate Conduct of a councillor from the Independent 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 (other than the councillor who is the subject of the complaint or the complainant, where the complainant is a councillor):

- (a) disagree with any recommendation accompanying the Independent Assessor's Referral Notice; or
- (b) form the opinion that the complaint should be dealt with in a way other than under this Investigation 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.

4. Investigator

Unless otherwise resolved by Council, the Chief Executive Officer will manage the investigation of suspected Inappropriate Conduct of other councillors.

If the suspected Inappropriate Conduct involves:

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

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 Conduct that in the circumstances the Chief Executive Officer 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.

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 Independent Assessor.

A matter is only appropriate for early resolution if the councillor the subject of the complaint and the complainant both agree to explore early resolution.

The Investigator may engage an independent person with suitable qualifications or experience to facilitate an early resolution process.

If the matter cannot be resolved by early resolution, the matter will then be investigated as outlined in this Investigation Policy.

If the matter is resolved by early resolution, the Investigator must advise the Chief Executive Officer of this outcome. The Chief Executive Officer must advise the Mayor and all councillors that the matter has been resolved. The Chief Executive Officer will also update the Councillor Conduct Register to reflect this.

6. Investigation

Investigation of the complaint will be done with consideration for:

- (a) the principles of natural justice;
- (b) the obligation to protect confidential information;
- (c) fairness to the councillor who is the subject of the complaint, the complainant and any other witnesses.

In undertaking the investigation, the following steps must be taken:

- (a) contact the complainant to:
 - (i) ascertain what further information if any may be necessary, including any documentation or further evidence that the complainant wishes to add;
 - (ii) ascertain further details on the issues advanced in the complaint, including the impact of the alleged conduct;
 - (iii) ascertain the outcome that the complainant seeks as a consequence of submitting the complaint (e.g. an apology);
 - (iv) outline the investigation process;
 - (v) invite the complainant to contact the investigating officer if the complainant wishes at any time to check on progress with the complaint;
 - (vi) determine whether early resolution is an option.
- (b) conduct a confidential interview and meeting with the councillor who is the subject of the complaint, to give the councillor the opportunity to provide their view and any evidence they have in relation to the alleged conduct;
- (c) conduct confidential interviews and meetings with relevant witnesses about the alleged conduct;
- (d) request files and gather all documentation relevant to the alleged conduct;
- (e) take detailed investigation notes.

It is the responsibility of the investigator to:

- (a) conduct the investigation impartially, confidentially and in a timely manner;
- (b) conduct the investigation according to the above investigation process;
- (c) prepare regular updates on the progress of the investigation to the Chief Executive Officer; and
- (d) prepare a final report on the findings of the investigation for the Chief Executive Officer, Mayor and councillors.

7. 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.

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 Chief Executive Officer to seek an extension of time.

The Chief Executive Officer will keep the complainant and all councillors informed of any extensions of time for the investigation.

Where an investigation is not completed within six months after receipt of the complaint, the Mayor or a councillor may request the matter be placed on the agenda of the next Council meeting to decide:

- (a) whether the current investigation should continue; or
- (b) whether the matter should be referred to the President of the Tribunal to investigate and make recommendations to the Council about dealing with the Conduct.

Such a request must be made in accordance with the Council's meeting procedure requirements.

8. Possible Misconduct and Corrupt Conduct

If during the course of an investigation the Investigator obtains information which indicates a councillor may have engaged in Misconduct, the Investigator must cease the investigation and advise the Chief Executive Officer. The Chief Executive Officer must then notify the Independent Assessor of the suspected Misconduct.

If during the course of an investigation, the Investigator obtains information which indicates a councillor may have engaged in Corrupt Conduct, the Investigator must cease the investigation and advise the Chief Executive Officer. The Chief Executive Officer must 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 Independent Assessor or Crime and Corruption Commission to be Inappropriate Conduct.

9. Notice about Outcome of Investigation

After an investigation is finalised, and at least four weeks prior to the Council meeting at which a decision is to be made about the matter, the Investigator must give notice about the outcome of the investigation to both the councillor who is the subject of the complaint, and the complainant.

The councillor who is the subject of the complaint will then be given an opportunity to provide the investigator with written submissions in response to the investigation findings. The response must be provided to the investigator within 2 weeks of the councillor receiving the investigation findings.

10. Completion of Investigation

On the completion of an investigation, the Investigator must provide a report to the Chief Executive Officer, the Mayor and all councillors which includes:

- (a) the investigation process;
- (b) the investigation findings;
- (c) any written submissions made by the councillor who is the subject of the complaint, in response to the investigation findings;
- (d) any recommendations about dealing with the conduct; and
- (e) a record of the investigation costs.

Council will consider the findings and recommendations of the Investigator's report and will decide at a Council Meeting whether the councillor has engaged in inappropriate conduct and, if so, what action it will take under section 150AH of the LGA.

If the councillor who is the subject of the complaint is dissatisfied with the decision made by Council under section 150AH of the LGA, the councillor may seek a judicial review of the decision or seek a review of the decision by the Queensland Ombudsman.

11. Councillor Conduct Register

The Chief Executive Officer must ensure decisions about suspected Inappropriate Conduct of a councillor are entered into the Councillor Conduct Register as required by section 150DX of the LGA.

Where a complaint has been resolved by way of early resolution in accordance with this Investigation Policy, the Chief Executive Officer will update the register to reflect that the complaint was withdrawn.

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 but not limited to 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.

Council may order the subject councillor to reimburse it for all or some of the costs arising from the councillor's Inappropriate Conduct.

Any costs incurred by complainants or subject councillors will only be met by Council in accordance with the Insurance and Indemnity for Councillors Policy.

Related policies/legislation/other documents:

DOC ID	DOCUMENT TYPE	DOCUMENT NAME
-	Legislation	<i>Local Government Act 2009</i>
-	Legislation	<i>Local Government Regulation 2012</i>
	Legislation	<i>Crime and Corruption Act 2001</i>
8226663	Policy	Insurance and Indemnity for Councillors Policy