

# COUNCILLOR INVESTIGATION POLICY

## STATUTORY POLICY



### 1 Scope

This policy applies to complaints about alleged inappropriate conduct of a Councillor/s which have been referred to Rockhampton Regional Council from the Independent Assessor. This policy does not apply to more serious Councillor conduct, such as misconduct or corrupt conduct.

### 2 Purpose

The purpose of this policy is to satisfy legislative obligations by establishing an investigation policy about how it deals with suspected inappropriate conduct of Councillors.

### 3 Related Documents

#### 3.1 Primary

*Local Government Act 2009*

#### 3.2 Secondary

*Crime and Corruption Act 2001*

*Criminal Code Act 1899*

*Information Privacy Act 2009*

*Integrity Act 2009*

*Local Government Regulation 2012*

*Public Interest Disclosure Act 2010*

Code of Conduct for Councillors in Queensland

Complaints Management Policy

Councillor Acceptable Request Guidelines Policy

Councillor Conduct Register

Council Meeting Procedures Policy

Corrupt Conduct Policy and Procedure

Expenses Reimbursement and Provision of Facilities for Mayor and Councillors Policy

Public Interest Disclosure Policy and Procedure

Purchasing Policy – Acquisition of Goods and Services

### 4 Definitions

To assist in interpretation, the following definitions apply:

Act	<i>Local Government Act 2009</i>
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Assessor	The Independent Assessor appointed under section 150CV of the Act
Behavioural Standard	The standard of behaviour for Councillors set out in the Code of Conduct approved under section 150E of the Act.
CCC	Crime and Corruption Commission
CEO	Chief Executive Officer A person who holds an appointment under section 194 of the Act. This includes a person acting in this position.
Conduct	As defined in the Act, includes: (a) Failing to act; and (b) A conspiracy, or attempt, to engage in conduct.
Corrupt Conduct	As defined in the <i>Crime and Corruption Act 2001</i> , conduct of a person, regardless of whether the person holds or held an appointment, that fulfils <b>each</b> 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; (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: (i) Is 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) 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. Corrupt conduct also means conduct of a person, regardless of whether the person holds or held an appointment, that fulfils <b>each</b> of the following elements: (a) Impairs, or could impair, public confidence in public administration; and (b) Involves, or could involve any of the following: (i) Collusive tendering; (ii) Fraudulent applications for licences, permits or other authorities under an Act with a purpose or object of any of the following (however described) – protecting health or safety of persons; protecting the environment or protecting or managing the use of the State's natural, cultural, mining or energy resources; (iii) Dishonestly obtaining, or helping someone to dishonestly obtain, benefits from the payment or application of public funds or the disposition of State assets; (iv) Evading State taxes, levies, duties or otherwise fraudulently causing a loss of State revenue; (v) Fraudulently obtaining or retaining an appointment; and (c) Would, if proved, be a criminal offence; or a disciplinary breach providing reasonable grounds for terminating a person's services, if the person is or were the holder of an appointment.
Council	Rockhampton Regional Council
Councillor/s	The Mayor and Councillors of Council, within the meaning of the Act.

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Councillor Conduct Register	The register required to be kept by Council as set out in section 150DX of the Act.
Councillor Misconduct	<p>As defined in the <i>Local Government Act 2009</i>:</p> <p>(1) The conduct of a Councillor is misconduct if the conduct:</p> <ul style="list-style-type: none"> <li>(a) Adversely affects, directly or indirectly, the honest and impartial performance of the Councillor's functions, or the exercise of the councillor's powers; or</li> <li>(b) Is or involves: <ul style="list-style-type: none"> <li>(i) A breach of the trust placed in the Councillor, either knowingly or recklessly; or</li> <li>(ii) A misuse of information or material acquired in, or in connection with, the performance of the Councillor's functions, whether the misuse is for the benefit of the councillor or for the benefit, or to the detriment, of another person; or</li> </ul> </li> <li>(c) Contravenes any of the following: <ul style="list-style-type: none"> <li>(i) An order of Council or the conduct tribunal;</li> <li>(ii) The acceptable requests guidelines of Council under section 170A;</li> <li>(iii) A policy of Council about the reimbursement of expenses;</li> <li>(iv) Sections 150R(2), 150EK, 150EL, 150EQ, 150EW, 150EZ, 170(3), 171(3), 201A, 201B or 201C of the Act.</li> </ul> </li> </ul> <p>(2) Also, the conduct of a Councillor is misconduct if the conduct is:</p> <ul style="list-style-type: none"> <li>(a) Part of a course of conduct leading to Council deciding to take action under section 150AG to discipline the Councillor for inappropriate conduct on three occasions within a period of one year; or</li> <li>(b) Of the same type stated in an order of Council that if the Councillor engages in the same type of conduct again, it will be dealt with as misconduct.</li> </ul> <p>(3) For subsection (2)(a), the conduct that led to the three occasions of disciplinary action, taken together, is the misconduct.</p> <p>(4) It does not matter if the conduct happened outside the State.</p>
Councillor Inappropriate Conduct	<p>As defined in the <i>Local Government Act 2009</i>:</p> <p>(1) The conduct of a Councillor is inappropriate conduct if the conduct contravenes:</p> <ul style="list-style-type: none"> <li>(a) A behavioural standard; or</li> <li>(b) A policy, procedure or resolution of Council.</li> </ul> <p>(2) Also, the conduct of a Councillor is inappropriate conduct if:</p> <ul style="list-style-type: none"> <li>(a) The conduct contravenes an order of the Chairperson of a Council meeting for the Councillor to leave and stay away from the place at which the meeting is being held; or</li> <li>(b) It is part of a course of conduct at Council meetings leading to orders for the Councillor's unsuitable meeting conduct being made on three occasions within a period of one year.</li> </ul> <p>(3) For subsection (2)(b), the conduct that led to the orders being made, taken together, is the inappropriate conduct.</p> <p>(4) However, inappropriate conduct does not include conduct that is:</p> <ul style="list-style-type: none"> <li>(a) Unsuitable meeting conduct, to the extent the conduct is not conduct mentioned in subsection (2); or</li> <li>(b) Misconduct; or</li> <li>(c) Corrupt conduct.</li> </ul>

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Investigation Policy	This policy as required by section 150AE of the Act.
Investigator	The person responsible under this policy for carrying out the investigation of the suspected inappropriate conduct of a Councillor or Mayor.
Local Government Meeting	A meeting of: (a) A local government; or (b) A committee of a local government.
Mayor	An elected member of Council, also referred to as a Councillor, with additional responsibilities as outlined in section 12(4) 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	The notice the Assessor refers to the local government about a Councillor/s conduct as required by section 150AC of the Act.
Regulation	<i>Local Government Regulation 2012</i>
Tribunal	The Councillor Conduct Tribunal as established under section 150DK of the Act.
Unsuitable Meeting Conduct	As defined in the Act, the conduct of a Councillor is unsuitable meeting conduct if the conduct: (a) Happens during a local government meeting; and (b) Contravenes a behavioural standard.
UPA	Unit of Public Administration As defined in the <i>Crime and Corruption Act 2001</i> , includes the following: (a) The Legislative Assembly, and the parliamentary service; (b) The Executive Council; (c) A department; (d) The police service; (e) A local government; (f) A corporate entity established by an Act or that is of a description of a corporate entity provided for by an Act which, in either case, collects revenues or raises funds under the authority of an Act; (g) A noncorporate entity, established or maintained under an Act, that is: (i.) Funded to any extent with State moneys; or (ii.) Financially assisted by the State; (h) A State court, of whatever jurisdiction, and its registry and other administrative offices; and (i) Another entity prescribed under a regulation.

## 5 Policy Statement

Council is committed to providing a contemporary and statutory compliant process for dealing with complaints relating to alleged inappropriate conduct of a Councillor.

Council acknowledges the right of a person to lodge a complaint and is committed to upholding its duty of care by aiming to provide an effective process to all complaints received.

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## **5.1 Confidentiality**

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

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 Council. Any release of confidential information that a Councillor knows, or should reasonably know, to be confidential to Council may be contrary to section 171(3) of the Act and be dealt with as misconduct.

## **5.2 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 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.

## **5.3 Assessor's Referral**

Council will receive from the Assessor a referral notice about the suspected inappropriate conduct of a Councillor/s.

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 inappropriate conduct, and include information about the facts and circumstances that form the basis of the Assessor's reasonable suspicion.

The referral notice may be accompanied by a recommendation from the Assessor about how the Council may investigate or deal with the conduct. The recommendation from the Assessor may be inconsistent with this policy.

The investigation must be conducted in a way consistent with:

- (a) Any recommendation of the Assessor;
- (b) To the extent that this policy is not inconsistent with the recommendation of the Assessor – this policy; or
- (c) In another way the Council decides by resolution.

A resolution under part (c) above must state the decision and the reasons for the decision.

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#### **5.4 Receipt of Assessor's Referral**

On receipt of a referral notice about the suspected inappropriate conduct of a Councillor from the Assessor, the CEO or a delegated 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; 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 Meeting Procedures Policy.

#### **5.5 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 CEO 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 CEO must refer the suspected inappropriate conduct to the President of the Tribunal, or another entity, to investigate and make recommendations to the Council about dealing with the conduct.

#### **5.6 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 voluntarily 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 policy.

If the matter is resolved prior to investigation, the Investigator will advise the CEO of this outcome. In turn, the CEO will advise the Mayor; if the Mayor is not the Investigator; and all Councillors that the matter has been resolved. The CEO or a delegated officer will also update the Councillor Conduct Register accordingly.

#### **5.7 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.

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.

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## **5.8 Assistance for the Investigator**

If the Mayor, or another Councillor appointed by Council resolution is the Investigator of a matter of suspected inappropriate conduct, the Mayor or Councillor may use section 170A of the Act to seek assistance during the investigation. The CEO or the Workforce Relations and Ethics unit via the CEO may provide assistance as required.

The Mayor is authorised by Council to expend money as reasonably needed to engage contractors/specialists in accordance with Council's Purchasing Policy.

The Assessor may make a recommendation for an external investigator to be engaged to undertake the investigation. The Assessor may provide a panel of external investigators for the Council to engage to undertake the investigation.

## **5.9 Possible Misconduct or 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 CEO. The CEO or a delegated 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 CEO. The CEO or a delegated 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 the CCC to be inappropriate conduct.

## **5.10 Completion of Investigation**

On the completion of an investigation, the Investigator or the CEO on the Investigator's behalf will provide a report to the Council outlining as appropriate:

- (a) The investigation process;
- (b) Any witnesses interviewed;
- (c) Documents or other evidence obtained;
- (d) A statement of the relevant facts ascertained;
- (e) Confirmation that the subject Councillor has been provided with an opportunity to respond to the complaint and evidence gathered;
- (f) The investigation findings;
- (g) A statement of any relevant previous disciplinary history;
- (h) Any recommendation about dealing with the conduct; and
- (i) A record of investigation costs.

If there is a risk to the health and safety of the complainant, under section 254J of the Regulation, Council may resolve that the meeting be closed to the public for the Councillors to consider the investigation report and any recommendations.

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 Act.

In accordance with section 254J(6) of the Regulation, 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.

The CEO is also required to ensure the details are entered into the Councillor Conduct Register.

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## **5.11 Disciplinary Action Against Councillors**

If the Council decides at the completion of the investigation that the Councillor has engaged in inappropriate conduct, the Council may:

- (a) Order that no action be taken against the Councillor; or
- (b) Make an order outlining action the Councillor must undertake in accordance with section 150AH(1)(b) of the Act.

## **5.12 Notification About the Outcome of the 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.

## **5.13 Councillor Conduct Register**

The CEO must ensure decisions about suspected inappropriate conduct of a Councillor/s be entered into the Councillor Conduct Register.

Where a complaint has been resolved under paragraph 5.6 of this policy, the CEO or a delegated officer will update the register to reflect that the complaint was withdrawn.

## **5.14 Expenses**

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

- (a) The President of the Tribunal undertaking an investigation for Council;
- (b) An independent investigator engaged on behalf of, or by the Tribunal;
- (c) An independent investigator engaged on behalf of Council;
- (d) A mediator engaged under this policy;
- (e) Travel where the Investigator needed to travel to undertake the investigation or to interview witnesses;
- (f) Seeking legal advice; and
- (g) Engaging an expert.

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.

## **5.15 Publication**

This policy is made available to the public via Council's website.

## **6 Review Timelines**

This policy is reviewed when any of the following occur:

- (a) As required by legislation;
- (b) The related information is amended or replaced; or
- (c) Other circumstances as determined from time to time by the Council.

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## 7 Document Management

Sponsor	Chief Executive Officer
Business Owner	Chief Executive Officer
Policy Owner	Executive Manager Workforce and Governance
Policy Quality Control	Legal and Governance

### OUR VALUES



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