

COUNCILLOR INVESTIGATION POLICY

STATUTORY POLICY



1 Scope

This policy applies to complaints about suspected conduct breaches 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 conduct breaches 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

Public Sector Ethics Act 1994

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:

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Act	<i>Local Government Act 2009</i>
Assessor	As defined in the Act, the Independent Assessor appointed under section 150CV.
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 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; (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 each 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

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Councillor/s	The Mayor and Councillors of Council, within the meaning of the Act.
Councillor Conduct Register	The register required to be kept by Council as set out in section 150DX and 150DY of the Act.
Conduct Breach	<p>As defined in the Act:</p> <p>(1) The conduct of a Councillor is a conduct breach if the conduct contravenes:</p> <ul style="list-style-type: none"> (a) A behavioural standard; or (b) A policy, procedure or resolution of Council. <p>(2) Also, the conduct of a Councillor is a conduct breach if:</p> <ul style="list-style-type: none"> (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 (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. <p>(3) For subsection (2)(b):</p> <ul style="list-style-type: none"> (a) The conduct that led to the orders being made, taken together, is the conduct breach; and (b) Orders for the Councillor's unsuitable meeting conduct include any orders made against the Councillor as the chairperson of a Council meeting. <p>(4) However, a conduct breach does not include conduct that is:</p> <ul style="list-style-type: none"> (a) Unsuitable meeting conduct, to the extent the conduct is not conduct mentioned in subsection (2); or (b) Misconduct; or (c) Corrupt conduct.
Councillor Misconduct	<p>As defined in the Act:</p> <p>(1) The conduct of a Councillor is misconduct if the conduct:</p> <ul style="list-style-type: none"> (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 (b) Is or involves: <ul style="list-style-type: none"> (i) Non-compliance with an Act by the Councillor; or (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 (c) Contravenes any of the following: <ul style="list-style-type: none"> (i) An order of Council or the conduct tribunal; (ii) A policy of Council about the reimbursement of expenses; (iii) Sections 150R(2), 150EK, 150EL, 150EPA, 150EQ, 150EW, 150EZ, 170(4), 171(3), 201A, 201B or 201C of the Act. <p>(2) Also, the conduct of a Councillor is misconduct if the conduct is:</p> <ul style="list-style-type: none"> (a) Part of a course of conduct leading to Council deciding to take action under section 150AG to discipline the Councillor for conduct breaches on three occasions within a period of one year; or (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. <p>(3) For subsection (2)(a), the conduct that led to the three occasions of disciplinary action, taken together, is the misconduct.</p>

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	(4) It does not matter if the conduct happened outside the State.
Delegated Officer	An employee appointed to a position with the relevant sub-delegation under the Act.
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 conduct breach 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 a suspected conduct breach 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 a suspected conduct breach of a Councillor are confidential to the Council during the investigation period, except to give the:

- (a) Subject Councillor information about the suspected conduct, including details about the evidence of the conduct
- (b) Subject Councillor the preliminary findings of the investigation before preparing an investigation report about the investigation
- (c) Subject Councillor, the complainant and the Assessor a notice if an investigation is not started or is discontinued.

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.

Council will release information about the matter including a summary investigation report, investigation report and report on matters to Council meetings, on Council's website and in the Annual Report in accordance with the Act, the Regulation and this policy.

5.2 Natural Justice

Any investigation of a suspected conduct breach 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 or decision made is based on evidence (not 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 breach, including:

- (a) Information about the suspected conduct breach and details about the evidence of the suspected conduct breach;
- (b) A notice if an investigation is not started or is discontinued including the reasons for the decision;
- (c) The preliminary findings of the investigation before the preparation of an investigation report about the investigation outcome;
- (d) Affording the subject Councillor the opportunity to respond to the preliminary findings by the giving of evidence or a written submission;
- (e) Ensuring the evidence and written submission from the subject Councillor is considered in preparing the investigation report, and
- (f) Ensuring a summary of any evidence and a full copy of any written submission by the subject Councillor is provided 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.

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.

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5.3 Assessor's Referral

Council will receive from the Assessor a referral notice about the suspected conduct breach 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 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 policy.

5.4 Receipt of Assessor's Referral

On receipt of a referral notice about the suspected conduct breach of a Councillor from the Assessor, the CEO will forward a copy of that referral notice to the Mayor and all Councillors, including the Councillor who is the subject of the complaint, 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 Conflicts of Interest

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 Council Meeting Procedures Policy.

5.6 Investigator

The Mayor will manage the investigation process and may undertake the investigation themselves 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 believes it is in the best interests of the investigation, or if the Councillor conduct complaint is complex, they may direct the CEO to engage an external suitably qualified investigator. In such matters the external investigator will investigate the suspected conduct breach and prepare an investigation report with recommendations about whether the subject Councillor engaged in a conduct breach and how the conduct may be dealt with in accordance with this policy.

If the conduct complaint is about the Mayor or the Mayor otherwise has a conflict of interest in the matter, the Deputy Mayor will be the investigator, manage the investigation process and may undertake the investigation. If the Deputy Mayor also has a conflict of interest, an investigator will be appointed by resolution of Council.

5.7 Decision Not to Start, or to Discontinue an Investigation

On receipt of a referral notice about the suspected conduct breach of a Councillor from the Assessor, Council may decide not to start or to discontinue the investigation in accordance with section 150AEA of the Act if:

- (a) The complainant withdraws the complaint or consents to the investigation not being started or being discontinued, or
- (b) The complainant does not comply with a request from Council for further information, or
- (c) There is insufficient information to investigate the conduct; or
- (d) The office of the Councillor becomes vacant for any reason after receiving the referral notice, during the investigation process.

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If the investigator considers there are circumstances for not starting or discontinuing an investigation, the matter will be placed on the agenda for the next available 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.

5.8 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.

5.9 Assistance for the Investigator

If the Mayor, or another Councillor appointed by Council resolution, is the investigator of a matter of a suspected conduct breach, the Mayor or Councillor may use section 170A of the Act to seek assistance during the investigation. The CEO or the People and Capability 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 for the purposes of paragraph 5.9.

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.

5.10 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 a conduct breach.

5.11 Completion of Investigation

5.11.1 Preliminary Statement of Findings

The investigator, or the CEO on the investigator's behalf, must prepare a Preliminary Statement of Findings and must give the Preliminary Statement of Findings to the subject Councillor before preparing the Investigation Report.

The Investigator must allow the subject Councillor to give evidence or a written submission about the suspected conduct breach and preliminary findings.

The investigator must consider any evidence or written submission given by the Councillor in preparing the investigation report and include a summary of the evidence and full copy of any written submission in the investigation report.

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5.11.2 Summary Investigation Report

The investigator, or the CEO on the investigator's behalf, must prepare a summary of the investigation report that must include:

- (a) The name of the councillor whose conduct has been investigated;
- (b) Description of the alleged conduct;
- (c) A statement of the facts established by the investigation;
- (d) A description of how natural justice was afforded to the Councillor during the conduct of the investigation;
- (e) A summary of the findings of the investigation; and
- (f) Any recommendations made by the investigator who investigated the conduct.

The summary investigation report must be made publicly available in the same manner the Council agenda is made publicly available before the meeting where the investigation report will be considered on or before the day and time prescribed by section 254C of the Regulation.

The published summary investigation report must not contain any names or identifying information about the complainant or other persons who provided information for the purposes of the investigation, including being interviewed, other than the Councillor subject of the complaint, unless the complainant is a Councillor or the CEO whose identity was disclosed at the meeting at which the investigation report was considered, or any other information Council is entitled or required to keep confidential under a law.

5.11.3 Investigation Report

The investigator must prepare an investigation report that includes:

- (a) The findings of the investigation;
- (b) A summary of the evidence;
- (c) A full copy of any written submission given by the Councillor, and
- (d) Recommendations for consideration by Council.

The investigation report must be made publicly available within 10 business days after the meeting at which Council decided whether the Councillor engaged in a conduct breach.

The published full investigation report must not contain any names or identifying information about the complainant or other persons who provided information for the purposes of the investigation, including any transcript of interview, statement or affidavit by a witness or person interviewed, or any other information Council is entitled or required to keep confidential under a law, unless the complainant is a Councillor or the CEO and their identity as the complainant was disclosed at the meeting at which the investigation report was considered.

5.12 Making a Decision About the Investigation

Council must decide by resolution whether the subject Councillor has engaged in a conduct breach.

When debating the matter any Councillors who have a declarable conflict of interest, must declare the conflict of interest. All other Councillors are eligible Councillors at the meeting.

Eligible Councillors may decide by resolution if the subject Councillor may remain in the meeting during the debate to answer questions to assist Council in making a decision.

Eligible Councillors may resolve that the subject Councillor must leave the place where the meeting is being held, including any area set aside for the public, during discussion and or voting on the matter.

If the eligible Councillors do not make a quorum due to the number of conflicted Councillors or another reason, the matter is to be deferred to another date when a quorum will be present; or the matter is to be delegated consistent with section 257 of the Act.

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If the Council decides at the completion of the investigation that the Councillor has engaged in a conduct breach, 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(b) of the Act.

Under section 254J(3)(j) of the Regulation, Council may resolve that the meeting be closed to the public for the Councillors to discuss the investigation report and any recommendations.

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.

5.13 Notification About the Outcome of the Investigation

After an investigation is finalised, the Council must give notice about the outcome of the investigation to:

- (a) The Assessor; and
- (b) The person who made the complaint about the Councillor's conduct that was the subject of the investigation; and
- (c) The subject Councillor who was investigated.

5.14 Councillor Conduct Register

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

Where a complaint has been resolved under paragraph 5.7 of this policy, the CEO or a delegated officer will update the register to reflect that the complaint was withdrawn.

5.15 Expenses

Council must pay any reasonable expenses of Council associated with the informal early resolution or the investigation of a suspected conduct breach 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 sustained conduct breach. Any costs incurred by complainants or the subject Councillors will not be met by Council.

5.16 Publication

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

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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.

7 Document Management

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



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