

COUNCILLOR INVESTIGATION POLICY

INTENT

This is Cook Shire Council's investigation policy for how complaints about the suspected conduct breach of Councillors will be dealt with as required by section 150AE of the *Local Government Act 2009* (the LGA). However, this policy does not relate to more serious Councillor conduct, such as misconduct or corrupt conduct, which are dealt with under separate legislative provisions.

SCOPE

This investigation policy applies to investigations and determinations by Council about the suspected conduct breach of a Councillor including a Mayor, which has been referred by the Independent Assessor.

DEFINITIONS

TERM	DEFINITION
Assessor	means Independent Assessor appointed under section 150CT of the LGA
Behavioural standard	means a standard of behaviour for Councillors set out in the Code of Conduct for Councillors in Queensland approved under section 150D and 150E of the LGA
Conduct	includes- <ul style="list-style-type: none"> a) Failing to act; and b) A conspiracy, or attempt, to engage in conduct
Councillor conduct register	means the register required to be kept by Council as set out in section 150DX and 150DY of the LGA
Conduct breach	as set out in section 150K of the LGA
Investigation policy	refers to this policy, as required by section 150AE of the LGA

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TERM	DEFINITION
Investigator	means the person responsible under this investigation policy for carrying out the investigation of the suspected conduct breach of a Councillor or Mayor
Summary of investigation report	means a summary of the full investigation report prepared before making a decision about the outcome of the investigation that must be publicly available on or before the day prescribed by regulation
Investigation report	means a report provided by the investigator to the local government that must be publicly available within 10 business days after the local government makes a decision about the outcome of the investigation
LGA	means <i>Local Government Act 2009</i>
LGR	means <i>Local Government Regulation 2012</i>
Local government meeting	means a meeting of- <ul style="list-style-type: none"> a) A local government; or b) A committee of a local government
Misconduct	see section 150L of the LGA
Model meeting procedures	see section 150F of the LGA
Referral notice	see section 150AB, AC and AD of the LGA
Tribunal	means the Councillor Conduct Tribunal as established under section 150DK of the LGA
Unsuitable meeting conduct	see section 150H of the LGA

1. CONFIDENTIALITY

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

- to give the Councillor information about the suspected conduct, including details about the evidence of the conduct;

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- 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 person who made the complaint, and the Assessor 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 of the investigation report must be made publicly available before any discussion is undertaken by Council. The published summary 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.

Once the matter has been investigated and a report has been provided to the local government, 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 section 254J(j) of the LGR. At this point, the summary investigation report is not treated as confidential as it must be publicly available and attached to the agenda papers that are circulated before the meeting.

A final decision by resolution of 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 section 150AH 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 report must not contain any names or identifying information about the complainant, 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 of the local government whose identity was disclosed at the meeting at which the investigation report was considered.

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

A notice about the outcome of the investigation must be given to the Assessor as soon as practicable that states the decision, the reasons for the decision and the details of any orders made under section 150AH of the LGA.

Note: The following investigation report templates should be used by the investigator: Report template & summary report template (D24/6813) and Statement of Preliminary Findings template (D24/6785).

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2. NATURAL JUSTICE

Any investigation of suspected inappropriate conduct of a Councillor(s) must be carried out in accordance with natural justice.

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

- the Councillor who is the subject of the suspected conduct breach matter has a chance to have his or her say before adverse formal findings are made and before any adverse action is taken (fair hearing);
- the investigator(s) should be objective and impartial (absence of bias); and
- any actions taken, or decisions made are 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, including:

- the preliminary findings of the investigation before the preparing of an investigation report about the investigation;
- a notice if an investigation is not started or is discontinued including the reasons for the decision;
- allow the Councillor to give evidence or a written submission to the local government about the suspected conduct breach and preliminary findings;
- require the local government to consider the evidence or written statement from the Councillor in preparing the investigation report; and
- 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.

The local government must give the following notices to the other parties:

- the person who made the complaint if an investigation is not started or dismissed including the reasons for the decision; and
- the Assessor if an investigation is not started or dismissed including the reasons for the decision.

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.

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

Note: *It must be kept in mind that the matter when referred, is suspected, and not yet proven.*

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3. STANDARD OF PROOF

The civil standard of proof is applied by the Investigator when determining whether a Councillor has engaged in a conduct breach.

The civil standard of proof is 'on the balance of probabilities,' which means the weighing up and comparison of the likelihood of the existence of competing facts or conclusions.

An allegation is sustained 'on the balance of probabilities,' if based on the evidence, the Investigator and/or the local government, is reasonably satisfied that its existence 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 local government's meeting within eight weeks of commencing the investigation, after the receipt of the complaint from the Assessor.

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 or delegate (if the Mayor is managing the investigation) to seek an extension of time. Delay in procuring an investigator to undertake the investigation should be avoided by the local government.

5. EXPENSES

Local Governments must pay the expenses associated with the investigation of suspected conduct breach of a Councillor including any costs of:

- an independent investigator engaged on behalf of Cook Shire Council;
- travel where the investigator needed to travel to undertake the investigation, or to interview witnesses; and
- obtaining legal or expert advice.

Note: Council may order the subject Councillor to reimburse them 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 for the investigator engaged to undertake the investigation. Any costs incurred by complainants, or the subject Councillor, will not be met by Council. Where possible, costs should be kept to a reasonable rate taking into consideration the costs for more serious matters dealt with by, for example, the Councillor Conduct Tribunal or other jurisdictions who deal with conduct matters.

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6. COUNCILLOR CONDUCT REGISTER

The Chief Executive Officer must ensure decisions and any orders under section 150AH of the LGA made about suspected conduct breach of a Councillor or any decision to not start, or to discontinue an investigation of suspected conduct breach under section 150AEA of the LGA, are entered into the relevant councillor conduct register.

7. PROCEDURES FOR THE INVESTIGATION

7.1 Independent Assessor's referral

The Council will receive a referral notice from the Assessor 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 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 investigation policy.

The Assessor must also give a notice to the Councillor that states the Councillor's conduct has been referred to Council to deal with and a copy of the referral notice must be attached.

7.2 Receipt of Assessor's referral

On receipt of a referral notice about the suspected conduct breach of a Councillor(s) from the Assessor, the Chief Executive Officer 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.

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.

The Mayor will manage the investigation process and may undertake the investigation them self, or engage an 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. 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 an acting mayor must be appointed from the other councillors by resolution, to manage the investigation.

Where the local government meeting loses quorum due to conflicts of interest of Councillors or absent Councillors, then the conduct matter must be delegated to the Mayor to make a decision. If the referral notice is about the suspected conduct breach by the Mayor, then the matter must be delegated to a standing committee, established under section 264 of the LGR.

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While section 12(4)(f) of the LGA provides that the Mayor has the extra responsibility of being a member of each standing committee, the Mayor could not be a decision-making member of a standing committee dealing with decisions about the Mayor's conduct because of the conflict of interest. The remainder of the unconflicted members of the committee will decide the matter.

7.3 *When the local government may decide not to start, or to discontinue, an investigation*

On receipt of the referral notice from the Assessor, the Mayor will manage the investigation unless it is delegated. 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. The local government may decide by resolution to not start, or discontinue, a suspected conduct breach matter. The resolution must state the decision and the reasons for the decision.

The only circumstances in which the local government can formally not start or discontinue a matter are under section 150AEA of the LGA.

Note: *The matters not started or discontinued must be reported in the annual report (including the reasons) and recorded in the councillor conduct register.*

7.4 *Local government investigating the suspected conduct breach of a Councillor*

Unless the matter has been delegated by the local government, the Mayor will manage the investigation of suspected conduct breach matters relating to other Councillors by either performing the role of Investigator or engaging a suitably qualified person to undertake the investigation and provide an investigation report for the local government to consider. The Mayor is authorised by Council to expend money as reasonably needed to engage contractors in accordance with Council's procurement policy.

If the investigator obtains information which indicates a Councillor may have engaged in misconduct, the investigator must cease the investigation and advise the Mayor and the Chief Executive Officer. The Chief Executive Officer will determine if the conduct is within the timeframe for reporting the matter. The Chief Executive Officer will then provide an information notice to the Assessor giving the details of the suspected misconduct. The notice must be given within 1 year after the conduct occurred, or within 6 months after the conduct comes to the knowledge of the Chief Executive Officer or another person who gave the information notice to the Assessor, 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 Chief Executive Officer. The Chief Executive Officer will then provide an information notice to the Assessor giving the details of the suspected corrupt conduct or notify the Crime

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and Corruption Commission of the suspected corrupt conduct. There are no reporting time limits for corrupt conduct.

7.5 Engaging an Investigator

Once an investigator has been selected to undertake the investigation, and the investigation is finalised, the investigator will prepare a report for the local government including the following the details:

- the investigation process;
- any witnesses interviewed;
- documents or other evidence obtained;
- a statement of the relevant facts ascertained;
- confirmation that the subject Councillor has been provided with an opportunity to respond to the complaint and the evidence compiled;
- the investigation findings;
- a statement of any relevant previous disciplinary history;
- any recommendations about dealing with the conduct; and
- a record of the investigation costs.

7.6 Completion of investigation

Findings and recommendations

The investigator must prepare a Preliminary Statement of Findings and must give the preliminary findings to the Councillor before preparing the Investigation Report and allow the Councillor to give evidence or a written statement about the conduct 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 a full copy of any written submission in the investigation report.

Investigation Report

The investigator must prepare an investigation report about the investigation of a suspected conduct breach matter referred by the Assessor to the local government under section 150AFA of the LGA.

The investigation report must include the findings of the investigation, a summary of the evidence or a full copy of any written submission given by the Councillor and recommendations for consideration by the local government.

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A summary investigation report with the preliminary Statement of Findings and summary of the outcome of the investigation attached, must be prepared for public availability before the meeting where Councillors will consider the investigation report matter on or before the day and time prescribed by the LGR section 254C, which is:

- 5pm on the next business day after the notice of the meeting at which a decision is to be made has been provided to the councillors; or
- the day and time when the agenda for the meeting at which a decision is to be made is publicly available.

Council must prepare a summary of the investigation report that 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;
- any recommendations made by the investigator who investigated the conduct.

The following information must not be made publicly available:

- if the investigation relates to the conduct of a Councillor that was the subject of a complaint:
 - the name of the person who made the complaint or any other person, other than the Councillor; or
 - information that could reasonably be expected to result in identifying a person who made the complaint or any other person.
- if a person, other than the Councillor, provided information for the purposes of the investigation including, for example, by giving an interview or making a submission or affidavit:
 - the name of the person;
 - information that could reasonably be expected to result in identifying the person or any other person, other than the Councillor; or
- any other information the local government is entitled or required to keep confidential under a law.

Making a decision about the investigation

Council must make a decision as to whether the subject Councillor has engaged in a conduct breach.

When debating this matter the subject Councillor who has a declarable conflict of interest in the matter, must declare the conflict of interest, and the eligible councillors (those who do

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not have a conflict of interest in the matter) can decide by resolution for the subject Councillor to remain in the meeting during the debate and may answer questions put to the subject Councillor through the chairperson to assist the eligible Councillors in making a decision. The resolution can 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 and what, if any, penalty to impose if the Councillor is found to have committed a conduct breach.

Should the complainant be a Councillor, that Councillor 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 section 5.

If the Council has lost quorum due to the number of conflicted Councillors or another reason, the matter must be delegated consistent with section 257 of the LGA, or deferred to another date when a quorum will be present.

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 complainant, if another Councillor), will consider the findings and recommendations of the investigator's report and decide what, if any, action it will take under section 150AH of the LGA.

After making a decision about the conduct breach, Council must make the investigation report for the investigation publicly available after the meeting at which the decision about the outcome of the investigation is made, by:

- on or before the day and time prescribed by regulation, or 5pm on the tenth day; or
- the day and time that the meeting minutes are made publicly available.

The following information contained in the investigation report must not be made publicly available:

- if the investigation relates to the conduct of a Councillor that was the subject of a complaint:
 - the name of the person who made the complaint or any other person, other than the Councillor even if that person has a declarable conflict of interest; or
 - information that could reasonably be expected to result in identifying a person.
- if a person, other than the Councillor, provided information for the purposes of the investigation including, for example, by giving an interview or making a submission or affidavit:
 - the name of the person;
 - information that could reasonably be expected to result in identifying the person or any other person, other than the Councillor;
- the submission or affidavit of, or a record or transcript of information provided orally by, a person, including, for example, a transcript of an interview; or

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- any other information the local government 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.

The report made publicly available must include the name of the person who made the complaint if:

- the person is a Councillor or the Chief Executive Officer of the local government; and
- the person’s identity as the complainant was disclosed at the meeting at which the report for the investigation was considered.

7.7 *Disciplinary action against Councillors*

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

- i. order that no action be taken against the Councillor, or
- ii. make an order outlining action the Councillor must undertake in accordance with section 150AH(1)(b) of the LGA.

7.8 *Notice about the outcome of the investigation*

After an investigation is finalised, Council must give a notice about the outcome decision of the investigation if the local government decides not to start or discontinue an investigation (section 150AEA of the LGA), or makes a decision about whether the Councillor has engaged in a conduct breach (section 150AG of the LGA) including the reasons for the decision and any orders made under section (150AH of the LGA) to:

- the Assessor;
- the person who made the complaint about the Councillor’ conduct that was the subject of the investigation; and
- the subject Councillor who was investigated.

REFERENCES, LEGISLATION AND GUIDELINES

Local Government Act 2009

Local Government Regulation 2012

APPROVED BY

Council Resolution 2024/37

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REVIEW

SPONSOR:	Director Organisational Business Services
OFFICER RESPONSIBLE FOR REVIEW:	Governance Coordinator
ADOPTION DATE:	12 March 2024
REVIEW DATE:	March 2027

THIS POLICY IS TO REMAIN IN FORCE UNTIL OTHERWISE DETERMINED BY COUNCIL

AMENDMENT HISTORY

VERSION	AMENDMENT DETAILS	AMENDMENT DATE	APPROVAL
1.0	New Policy	December 2018	2018/249
2.0	Revision	March 2021	Council resolution 2021/56
3.0	Revision aligns to amended legislation	March 2024	Council Resolution 2024/37

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