

Program:	Executive Office
Date of Adoption:	24 April 2024
Resolution Number:	ORD-2024-49
Review Date:	24 April 2027

Scope

In Scope

This investigation policy applies to investigations and determinations by the Mackay Regional Council (MRC) about the suspected conduct breach of a Councillor, including a Mayor, which has been referred by the Independent Assessor. The policy must:

- include a procedure for investigating the suspected conduct breaches of Councillors (see Addendum 2 – Investigation Standards; and
- state the circumstances in which another entity may investigate the conduct; and
- be consistent with the principles of natural justice; and
- require the Council to prepare a report about each investigation (see Addendum 1 - Report template and summary report template); and
- require a notice about the outcome of investigations be provided to the Assessor, Councillor and persons who made complaint about the Councillors' conduct; and
- include a procedure about when the Council may decide not to start, or to discontinue, an investigation under section 150AEA.

The policy must require MRC -

- to give the Councillor information about the suspected conduct, including details about the evidence of the conduct; and
- 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, if the contact details of the person are known, a notice if an investigation is not started or is discontinued; and
- to give the Councillor the preliminary findings of the investigation before preparing an investigation report about the investigation (see Addendum 3 - Statement of Preliminary Findings Template); and
- to allow the Councillor to give evidence or a written submission to the Council about the suspected conduct and preliminary findings; and
- to consider any evidence and written submission given by the Councillor in preparing the investigation report for the investigation; and
- to include in the investigation report -
 - i. if evidence is given by the Councillor—a summary of the evidence; and
 - ii. if the Councillor gives a written submission—a full copy of the written submission.

Out of Scope

This Policy does not relate to more serious Councillor conduct, such as misconduct or corrupt conduct, which are dealt with under separate legislative provisions.

This Policy also does not deal with unsuitable meeting conduct, or any conduct undertaken in a personal capacity by a Councillor, for example, a sitting Councillor campaigning for re-election or attending a private social function.

Objective

To outline how complaints about the inappropriate conduct of Councillor/s will be dealt with as required by the section 150AE of the *Local Government Act 2009* (the LGA).

Policy Statement

Chapter 5A of the LGA prescribes the Councillor conduct management system. Section 150CT of the LGA establishes an Independent Assessor (the Assessor) to carry out certain functions including the preliminary assessment, dismissal, referral, or investigation of complaints about Councillor conduct.

After undertaking a preliminary assessment on a Councillor conduct matter, if the Assessor reasonably suspects a Councillor has engaged in a conduct breach, the Assessor may decide to refer a suspected conduct breach to MRC to deal with under section 150SD(4)(a) or 150W(b) of the LGA.

Upon receipt of the referral notice of a complaint of suspected conduct breach MRC must deal with the Councillor's conduct as prescribed under section 150AF of the LGA unless a decision is made not to start or to discontinue the investigation under section 150AEA of the LGA. In conducting the investigation, MRC must comply with this investigation policy.

MRC may decide not to start or discontinue the investigation if:

- if the complaint is withdrawn by the complainant
- if the complainant consents to the matter being withdrawn. For example, the matter has been resolved and it is unnecessary for the Council to investigate the matter.
- if the complainant refuses to cooperate by providing additional information during the investigation phase and not enough information is available to proceed
- if the office of the Councillor becomes vacant for any reason, i.e., the person has resigned or was not re-elected and is no longer a Councillor.

This process to remain in force until otherwise determined
by Mackay Regional Council

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1.0 Principles

1.1 Confidentiality

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

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

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 the 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 MRC whose identity was disclosed at the meeting at which the investigation report was considered.

When deciding what action to take, Council may consider any previous conduct breach of the Councillor, any allegation made in the investigation that was admitted or not challenged, and Council 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: For investigation report templates please refer to Addendum 1 - Report template & summary report template, and Addendum 3 - Statement of Preliminary Findings Template. These templates must be used by the investigator.

1.2 Natural Justice

Any investigation of suspected conduct breach of a Councillor must be carried out in accordance with natural justice.

Natural justice or procedural fairness refers to three key principles:

- that 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 i.e., fair hearing.
- that the investigator should be objective and impartial i.e., absence of bias.
- that any actions taken, or decisions made are based on evidence i.e., not on 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; and
- 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 Council about the suspected conduct breach and preliminary findings; and
- require the Council 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 Council 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.
- 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.*

1.3 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 Council, is reasonably satisfied that its existence is more probable than not.

1.4 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.*

1.5 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.

1.6 Expenses

MRC will 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 MRC;

- travel where the investigator needed to travel to undertake the investigation, or to interview witnesses.
- obtaining legal or expert advice will be paid in accordance with the Legal Assistance for Councillors and Employees Policy.

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 will not be met by council. Legal Costs incurred for Councillors will be in accordance with the Legal Assistance for Councillors and Employees Policy. 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.

Payment of incurred costs by the subject Councillor will be considered in accordance with the Legal Assistance for Councillors and Employees Policy.

2.0 Procedure for the Investigation

2.1 Independent Assessor's referral

MRC will receive a referral notice from the Assessor about the suspected conduct breach of a Councillor. 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.

MRC 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 MRC to deal with and a copy of the referral notice must be attached.

2.2 Receipt of Assessor's referral

On receipt of a referral notice about the suspected conduct breach of a Councillor from the Assessor, the Chief Executive Officer will forward a copy of that referral notice to the Mayor and all Councillors, including the subject Councillor, 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 section 5 of the Model Meeting procedures.

The Mayor will manage the investigation process and may undertake the investigation themselves, 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 will be assumed by the Deputy Mayor to manage the investigation. If both Mayor and Deputy Mayor are conflicted, then a Councillor will be chosen by resolution, to manage the investigation.

If the subject Councillor agrees to all of the facts presented and accepts complete accountability for the suspected conduct breach, then there would be no requirement for an external investigation; the matter will be presented to the Council for resolution, which must state the decision and reason for the decision.

2.3 When the Council 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 Council 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 Council 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 Councillor conduct register.*

2.4 Council 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 Council to consider. The Mayor is authorised by Council to expend money as reasonably needed to engage contractors in accordance with the 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 and Corruption Commission of the suspected corrupt conduct. There are no reporting time limits for corrupt conduct.

2.5 Engaging an Investigator

Once an investigator has been selected to undertake the investigation, that investigator will follow the investigation standards of the Council (see Addendum 2 – Investigation Standards) e.g. an investigation plan and file management system will be established.

Once the investigation is finalised the investigator will prepare a report for the Council 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.
- a record of the investigation costs.

2.6 Completion of investigation

2.6.1 ***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.

2.6.2 *Investigation Report*

The investigator must prepare an investigation report about the investigation of a suspected conduct breach matter referred by the Assessor to MRC 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 Council (see Addendum 1 – Report Template).

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 the 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.

The summary of the investigation report must include—

- the name of the Councillor whose conduct has been investigated; and
- a description of the alleged conduct; and
- a statement of the facts established by the investigation; and
- a description of how natural justice was afforded to the Councillor during the conduct of the investigation; and
- a summary of the findings of the investigation; and
- 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; or
 - information that could reasonably be expected to result in identifying the person or any other person, other than the Councillor;
 - any other information the Council is entitled or required to keep confidential under a law.

2.6.3 *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 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.

If a decision is reached that the Councillor has engaged in a conduct breach, 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 what, if any, action it will take under section 150AH of the LGA.

After making a decision about the conduct breach, the 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; or
 - 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;
 - any other information the Council 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.

2.7 Quorum

Where the Council 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 the Deputy Mayor.

If the Mayor has a conflict of interest in the matter, the Mayor's powers will be assumed by the Deputy Mayor to manage the investigation. If both Mayor and Deputy Mayor are conflicted, then a Councillor will be chosen by resolution, to manage the investigation.

2.8 Disciplinary action against Councillors

If Council decides that 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.

Note: For further information refer to *Addendum 4 - Conduct Breach Disciplinary Action Guideline*

2.9 Notice about the outcome of the investigation

After an investigation is finalised, the Council must give a notice about the outcome decision of the investigation if the Council 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.

3.0 Definitions

To assist in interpretation the following definitions shall apply:

Assessor shall mean means the Independent Assessor appointed under section 150CT of the LGA.

Behavioural standard shall mean a standard of behaviour for Councillors set out in the Code of Conduct for Councillors in Queensland approved under sections 150D and 150E of the LGA.

Conduct shall include—

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

Conduct breach as set out in section 150K of the LGA.

Corrupt Conduct has the same meaning as 'corrupt conduct' under section 15 of the *Crime and Corruption Act 2001*.

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

Council shall mean the Mayor and Councillors of Mackay Regional Council.

Councillor shall mean the Mayor or a Councillor of Mackay Regional Council.

Inappropriate conduct see section 150K of the LGA.

Investigation policy refers to this policy, as required by section 150AE of the LGA.

Investigation report means a report provided by the investigator to the Council that must be publicly available within 10 business days after the Council makes a decision about the outcome of the investigation.

Investigator means the person responsible under this investigation policy for carrying out the investigation of the suspected conduct breach of a Councillor or Mayor,

LGA shall means the *Local Government Act 2009*.

Council meeting shall mean a meeting of—

- (a) a local government; or
- (b) a committee of a local government.

Misconduct see section 150L of the LGA.

Model procedures shall mean the procedures to ensure the Local Government principles are reflected in the conduct of Council Meetings (including committee Meetings) as required by section see section 150F of the LGA.

MRC shall mean Mackay Regional Council.

Natural justice shall mean 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 see section 150AB, AC and AD of the LGA

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.

Tribunal shall mean the Councillor Conduct Tribunal as established under section 150DK of the LGA.

Unsuitable meeting conduct see section 150H of the LGA.

4.0 Review of Policy

This policy will be reviewed when any of the following occur:

- The related documents are amended or replaced.
- Other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this policy is to be reviewed at intervals of no more than three (3) years.

5.0 Reference

- *Local Government Act 2009*
- *Local Government Regulation 2012*
- *Crime and Corruption Act 2001*
- *Public Interest Disclosure Act 2010*
- *Public Sector Ethics Act 1994*

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New Policy		Council	13.02.19
2	Review	Amendments	Council	26.10.22
3	Review	Amendment made in accordance with Department Template	Council	24.04.24

Addendum 1 - Report template and summary report template

Conduct Breach Complaint Investigation and Recommendation Report to Council

Reference number:

Date received from council:

1. The complaint

(Outline the allegation/s as referred for investigation, including date/s, time/s, place/s, description of alleged conduct. Succinct description of (full title and relevant sections) of policy (e.g. code of conduct) alleged to have been breached)

2. The complainant

Description of the alleged conduct

(Consider if council indicates the matter relates to a public interest disclosure and ensure compliance with the *Public Interest Disclosure Act 2010*)

3. The subject Councillor

Name (Reference level of experience as a Councillor and any past disciplinary history including for like matters)

4. Conflict of interest considerations

(Declaration of any conflict of interest or 'no conflict of interest' by the investigator)

5. Summary of the investigation process

- Scope of the investigation:
- Interviews conducted:
- Documents examined:
- Facts identified:
- Category of the conduct breach:
Set out relevant standards of sections considered.

6. Investigation Report

- Date of the report
- Wording of allegation for consideration
- 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
- A summary of any relevant previous disciplinary history
- Summary of the evidence or a full copy of any written submission given by the Councillor
- Application of facts to the conduct breach outlined above
- A record of the investigation costs.

Note: Insert discussion of sufficiency of evidence to sustain the allegation and whether the evidence is capable of supporting a finding that the Councillor has breached

7. Recommendation to council

- Recommendations made by the investigator who investigated the conduct.

It is recommended that:

a) This report be submitted to the Council for consideration, pursuant to section 150AG of the LGA, as to whether or not the Councillor has engaged in inappropriate conduct; and if they are found to have so engaged, what action the Council will take to discipline the Councillor pursuant to section 150AH of the LG Act;

b) Having analysed the material from this investigation, a conclusion might be drawn that:

Note: make a recommendation as to whether a conduct breach is made or not, with succinct reasons:

c) If Council finds the Councillor has engaged in inappropriate conduct, are there any aggravating or mitigating circumstances that should be taken into account? *For example, any action taken by the Councillor since the conduct, any Aboriginal traditions or Islander customs of the Councillor.*

d) If council finds the Councillor has engaged in a conduct breach, the following disciplinary action under section 150AH LGA is recommended (refer to the 'Guideline – conduct breach disciplinary action')

..... (SIGN)

NAME:

ATTACHMENTS:

Summary Report Template

Include the following:

- the name of the Councillor whose conduct has been investigated; and
- a description of the alleged conduct; and
- a statement of the facts established by the investigation; and
- a description of how natural justice was afforded to the Councillor during the conduct of the investigation; and
- a summary of the findings of the investigation; and
- any recommendations made by the investigator who investigated the conduct.

Addendum 2 – Investigation Standards

The investigation must be managed in a consistent manner.

Documentation must be contained in an efficient records management system.

Confidential information must be secured appropriately.

1. Case Management file

The investigation must be supported by a recognised case management tool so that emails, letters, statements, and evidence can be stored and secured confidentially. File notes must be made in the case management system to document key milestones in the investigation such as when lines of inquiry are identified, witnesses are spoken to, when evidence is secured, and document key decisions.

2. Investigation Plan

The Mayor or delegate will, prior to beginning the investigation, check that the investigator does not have a conflict of interest in the matter. Remove them immediately from the investigation should a conflict of interest become known.

The following investigation process must be followed by the investigator unless the Mayor or delegate agrees to vary the process in a particular case.

Take all necessary steps to protect the identity of the complainant(s) as far as possible during communications with the Councillor.

Consider the following:

- Research the legislation and policy framework thoroughly.
- Identify lines of inquiry and record them as a file note in case file management system.
- Present all the evidence the Councillor provides or gives in a written statement.
- Gather further evidence (for example, from interviewing other witnesses, obtaining documents, or carrying out site inspections) when necessary.
- Secure evidence in case file management system, making a file note when lines of inquiry are followed up and key decisions are made during the course of in the investigation.
- Undertake a proper and impartial examination of the evidence gathered, including expert advice and analysis and / or legal advice if required.
- Draw conclusions based on the evidence and applying the appropriate legislative and policy frameworks.

3. Prepare an investigation report

Prepare the investigation report for the Council to consider on the template attached (Addendum 1).

If during the course of an investigation, the Investigator obtains new information that a Councillor may have engaged conduct that may give rise to a new allegation, the Investigator must obtain particulars related to the conduct and then advise the Mayor and the Chief

Executive Officer who will provide an information notice to the Assessor. The Assessor will undertake a preliminary assessment or alternative action on the matter.

The Investigator will be informed of activities of the Council in relation to the investigation. For example, the Investigator will be informed in the event the finalisation of a matter is delayed, or if the Council has to notify of a fresh allegation identified during the course of an investigation to the Assessor for a preliminary assessment.

If during the course of an investigation, the Investigator obtains new information that a Councillor may have engaged in misconduct or corrupt conduct the investigation will cease and the investigator will notify the Mayor and Chief Executive Officer who will be responsible for providing an information notice to the Assessor/Crime and Corruption Commission.

Addendum 3 - Statement of Preliminary Findings Template

Statement of Preliminary Findings

The Investigator has assessed the evidence set out in the investigation report and, taking into account the seriousness of the allegations, has made findings on the balance of probabilities.

The table below contains a summary of the Allegations and the Investigator’s findings. A detailed summary of the evidence and findings is provided in the full investigation report.

CONDUCT ALLEGATIONS

Allegation	Finding
Allegation: Particulars:	Substantiated/Not Substantiated Summary of Evidence: Summary of reasons for finding:

Date

Investigator’s signature and name

Addendum 4 - Conduct Breach Disciplinary Action Guideline

This guideline is provided to assist Queensland local governments to make consistent decisions about the appropriate disciplinary action to be taken against a Councillor who is found to have engaged in a conduct breach.

1. What is a conduct breach?

According to section 150K of the *Local Government Act 2009* (LGA), a conduct breach occurs when a Councillor:

- breaches a behavioural standard (Code of Conduct for Councillors in Queensland)
- breaches a council policy, procedure, or resolution.
- contravenes an order by a chairperson of a Council to leave a council meeting and stay away from the place at which it is being held.
- is part of a course of unsuitable meeting conduct orders on three occasions within a one-year period, taken together, is a conduct breach. The Council is not required to notify the OIA of these matters and may deal with the conduct as if an investigation has been undertaken section 150J and make a decision under section 150AG of the *Local Government Act 2009* (including Brisbane City Council). Below are some examples of conduct which may constitute a conduct breach:

2. Decision

Section 150AG of the LGA provides that where an allegation of a conduct breach has been referred by the Office of the Independent Assessor (OIA) to a Council for investigation, the Council must decide:

1. whether or not the Councillor has engaged in a conduct breach, and,
2. what action the Council will take under section 150AH of the LGA to discipline the Councillor if the Councillor has been found to have engaged in a conduct breach.

3. Types of orders

Section 150AH of the LGA provides a list of the types of orders that the Council may make where it has found that a Councillor has engaged in inappropriate conduct:

- An order that no action be taken against the Councillor.
- An order that the Councillor make a public apology, in the way decided by the local government, for the conduct.
- An order reprimanding the Councillor for the conduct.

- An order that the Councillor attend training or counselling addressing the Councillor's conduct including at the Councillor's expense.
- An order that the Councillor be excluded from a stated Council meeting.
- An order that the Councillor is removed or must resign from a position representing the Council other than the office of Councillor.
- An order that if the Councillor engages in the same type of conduct again, it will be treated as misconduct.
- An order that the Councillor reimburse the Council for all or some of the costs arising from the Councillor's conduct breach.

4. Factors that may be taken into account

Section 150AG(2) of the LGA provides that in deciding what action to take, the Council may consider:

- Any previous conduct breach of the Councillor
- Any allegation made in the investigation that-
 - was admitted, or was not challenged and
 - the Council is reasonably satisfied is true.

5. Guidance on appropriate disciplinary action

It is open to local governments to decide which order/s in section 150AH of the LGA /are suitable when a Councillor is found to have engaged in a conduct breach. The particular circumstances of a case must always be taken into consideration.

As a guide, it is suggested that it may be appropriate for the Council to consider making an order or combination of orders depending on whether a Councillor has been found to have engaged in a conduct breach for the first time, or for a second, or third time.

Section 150L of the LGA provides that conduct is misconduct if the conduct is part of a course of conduct leading the Council to take action under s150AG to discipline the Councillor for a conduct breach on three occasions within a 1-year period.

The table on the following page may assist councils to decide what disciplinary action is suitable in various circumstances.

Order	First instance engaging in a conduct breach	Second instance engaging in a conduct breach	Third instance engaging in a conduct breach
No action be taken against the Councillor	✓		
An order for the Councillor to make a public apology in the way decided by the local government, for the conduct	✓*	✓*	✓*
An order reprimanding the Councillor for the conduct	✓#	✓#	✓#
An order that the Councillor attend training or counselling addressing the Councillor's conduct including at the Councillor's expense	✓#	✓#	✓#
An order that the Councillor be excluded from a stated Council meeting		✓	✓
An order that the Councillor is removed or must resign from a position representing the Council other than the office of Councillor			✓
An order that if the Councillor engages in the same type of conduct again, it will be treated as misconduct	✓^	✓	
An order that the Councillor reimburse the Council for all or some of the costs arising from the Councillor's inappropriate conduct **	25% of costs ¹ 35% of costs ²	50% of costs ¹ 60% of costs ²	100% of costs

*May be appropriate where there is heightened or particular public interest in the type of conduct or the subject matter relating to the conduct

May be particularly appropriate where the conduct involves bullying or harassment or making inappropriate comments about another person

^ For more serious and deliberate conduct breaches by an experienced Councillor

** Costs arising from the Councillor's conduct breach includes investigative costs, legal costs, and administrative costs. However, costs should be kept to a reasonable rate taking into consideration the costs for more serious matters dealt with by the Councillor Conduct Tribunal.

¹ Where the conduct was accidental rather than deliberate or reckless; the Councillor has demonstrated insight into their conduct; the Councillor cooperated with the investigation.

² Where there has been previous in appropriate conduct by the Councillor; or the conduct was reckless or deliberate; or the Councillor has not demonstrated insight into their conduct; or the Councillor has failed to cooperate with the

investigation; or the Council is an experience Councillor; or the Councillor has had the benefit of relevant training but still engaged in the conduct; or the impact of the conduct (financial and reputational) on Council or others is significant.