

**NUMBER:** S0063/OFFICE OF THE CHIEF EXECUTIVE OFFICER

**ACT:** *Local Government Act 2009*  
*Local Government Legislation (Councillor Complaints and other Matters) Amendment Regulation 2018*

**POLICY TITLE:** INVESTIGATING COMPLAINTS OF INAPPROPRIATE COUNCILLOR CONDUCT

## 1. PURPOSE AND SCOPE

This policy sets out a process for dealing with complaints about inappropriate Councillor conduct as required by the section 150AE of the *Local Government Act 2009* (the LGA).

This policy does not relate to more serious Councillor conduct such as corrupt conduct or misconduct (Refer to Attachment “A” for further explanation).

This policy applies to investigations and determinations of a complaint about the alleged inappropriate conduct of a Councillor/s which has been referred by the Independent Assessor.

For the purpose of this policy, a complaint includes information or matter.

## 2. COMMENCEMENT OF POLICY

This policy applies from 12 December 2018 and replaces all other policies, written or not, relating to the investigation of Councillor complaints.

## 3. APPLICATION OF POLICY

This policy applies to all elected members of the Charters Towers Regional Council.

## 4. DEFINITIONS

Assessor	The Independent Assessor appointed under section 150CV of the LGA
Behavioural standard	means a standard of behaviour for Councillors set out in the Code of Conduct approved under section 150E of the LGA
Conduct	Includes— (a) failing to act; and (b) a conspiracy, or attempt, to engage in conduct
Councillor Conduct Register	The register required to be kept by Council as set out in section 150DX of the LGA - See Attachment “B”
Inappropriate conduct	see section 150K of the LGA
Investigation policy	Refers to this policy, as required by section 150AE of the LGA
Investigator	means the person responsible under this investigation policy for carrying out the investigation of the suspected inappropriate conduct of a Councillor or Mayor
LGA	means the <i>Local Government Act 2009</i>
Local government meeting	means a meeting of— (a) a local government; or (b) a committee of a local government.
Misconduct	see section 150L of the LGA

Model procedures	see section 150F of the LGA
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	see section 150AC 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

## 5. POLICY PROVISIONS

### 5.1 Confidentiality

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

*Note: 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 the Local Government. Any release of confidential information that a Councillor knows, or should reasonably know, to be confidential to the local government may be contrary to section 171(3) of the LGA and dealt with as misconduct.*

### 5.2 Natural Justice

Any investigation of suspected inappropriate conduct of a Councillor/s must be carried out in accordance with natural justice. An overview of the principles of natural justice follows.

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

- 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)
- the investigator(s) should be objective and impartial (absence of bias), and
- any action taken is based on evidence (not suspicion or speculation).

A fair hearing means the Councillor who is the subject of the suspected inappropriate conduct matter must be told of the case against them including any evidence and be provided with an opportunity to put their case in writing with the investigation report provided to the Councillors as part of the meeting agenda.

An absence of bias means that any investigation must not be biased or be seen to be biased in any way. This principle embodies the concept of impartiality.

Decisions based on evidence requires that the investigation should not be based on mere speculation or suspicion but instead must be based upon evidence material.

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

### 5.2 Assessor’s referral

The Council may receive from the Assessor a referral notice about the suspected inappropriate conduct of a Councillor/s. Council may also receive referrals directly.

### 5.3 Receipt of Assessor's referral

On receipt of a referral notice about the suspected inappropriate conduct of a Councillor/s from the Assessor, the Council's Chief Executive Officer will forward a copy of that referral notice to the Mayor and all Councillors as a confidential document.

Should the Mayor or a Councillor/s (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's meeting procedure requirements.

### 5.4 Investigator

Unless otherwise resolved by Council, the Mayor will manage the investigation of suspected inappropriate conduct of other Councillors.

If the suspected inappropriate conduct involves conduct that in the circumstances, the Mayor believes, it is in the best interests of the investigation to refer the matter for external investigation, then the Chief Executive Officer must refer the suspected inappropriate conduct to the President of the Tribunal to investigate and make recommendations to the Council about dealing with the conduct.

If the suspected inappropriate conduct involves:

- an allegation about the conduct of the Mayor, or
- the Mayor as the complainant;

the Chief Executive Officer must refer the suspected inappropriate conduct to the President of the Tribunal to investigate and make recommendations to the Council about dealing with the conduct.

### 5.5 Early resolution

Before beginning an investigation, the investigator must consider whether the matter is appropriate for resolution prior to the investigation. This consideration includes any recommendation made by the Assessor.

A matter is only appropriate for early resolution if the parties to the matter agree to explore early resolution.

The investigator may engage an independent person with suitable qualifications or experience to facilitate this process.

If the matter cannot be resolved, the matter will then be investigated as outlined in this investigation policy.

If the matter is resolved prior to investigation, the investigator will advise the Chief Executive Officer of this outcome. In turn, the Chief Executive Officer will advise the Mayor (if the Mayor is not the investigator) and all Councillors that the matter has been resolved. The Chief Executive Officer will also update the Councillor Conduct Register to reflect this (Attachment "B").

### 5.6 Timeliness

The investigator will make all reasonable endeavors to complete the investigation and provide a report for inclusion on the agenda of a Council meeting no more than eight weeks after the receipt of the

complaint.

*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 (if the Mayor is not the investigator) to seek an extension of time.*

### **5.7 Assistance for investigator**

If the Mayor is the investigator of a matter of suspected inappropriate conduct, the Mayor may use section 170A of the LGA to seek assistance during the investigation.

The Mayor is authorised by Council to expend money as reasonably needed to engage contractors in accordance with the Council's procurement policy.

### **5.8 Possible misconduct or corrupt conduct**

If during the course of an investigation the investigator obtains information which indicates a Councillor/s may have engaged in misconduct, the investigator must cease the investigation and advise the Chief Executive Officer. The Chief Executive 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 Chief Executive Officer. The Chief Executive Officer will then notify the Crime and Corruption Commission of the possible corrupt conduct.

Instances of suspected misconduct or corrupt conduct may be referred back to the Council if determined by the Assessor or Crime and Corruption Commission to be inappropriate conduct.

### **5.9 Completion of investigation**

On the completion of an investigation, the investigator will provide a report to the Council outlining the investigation process, the investigation findings, any recommendations about dealing with the conduct and a record of the investigation costs.

The Council will consider the findings and recommendations of the investigator's report and decide whether the Councillor has engaged in inappropriate conduct and, if so, what action it will take under section 150AH of the LGA.

Provisions for internal and external review of decisions are set out in sections 150CO to 150CS of the LGA.

### **5.10 Notice about the outcome of investigation**

After an investigation is finalised, the Council must give notice about the outcome of the investigation to the person who made the complaint about the Councillor/s' conduct that was the subject of the investigation.

### **5.11 Councillor conduct register**

The Chief Executive Officer of the respective Council must ensure decisions about suspected inappropriate conduct of a Councillor/s must be entered into the Councillor conduct register (Attachment "B").

Where a complaint has been resolved under section 10 of this policy, the Chief Executive Officer will

update the register to reflect that the complaint was withdrawn.

### 5.12 Expenses

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

- the president of the Tribunal in undertaking an investigation for Council
- a mediator engaged under this investigation policy
- a private investigator engaged on behalf of or by the investigator
- travel where the investigator needed to travel to undertake the investigation or to interview witnesses
- seeking legal advice
- engaging an expert.

*Note: Council may order the subject Councillor reimburse it for all or some of the costs arising from the Councillor's inappropriate conduct.*

Any costs incurred by complainants or the subject Councillors will not be met by Council.

## 6. POLICY REVIEW

The policy is to be reviewed whenever legislation changes, OR every two years if no changes have been required to be enacted, at the direction of the Chief Executive Officer.

### Variations

*The Council reserves the right to vary, replace or terminate this policy from time to time.*

### Associated Documents

- *Local Government Act 2009*
- *Local Government Regulation 2012*
- *Crime and Corruption Act 2001*
- Strategic Policy Fraud and Corruption Prevention Framework STRAT0025
- Statutory Policy Management of Fraud and Corruption (S0054)
- Statutory Policy Minister's Code of Conduct for Queensland Councillors (S0056)
- Councillor Conduct Register F0456/CEO

## STATUTORY POLICY

**OFFICE USE ONLY:**

**POLICY VERSION AND REVISION INFORMATION**

Policy Authorised by: Aaron Johansson	Original issue: 12 December 2018
Title: Investigating Complaints of Inappropriate Councillor Conduct	
Policy Maintained by: Governance Compliance Officer	Current version: [1]
Review date: December 2020	CEO Signature:

A Johansson  
12 December 2018

Key Stakeholders identified and engaged within this development process	(Names/Sections here):

**Distribution & Dissemination of approved Policy:**

Process	Stakeholders identified	Date completed
Email		
Notices		
Noticeboards		
P&C Newsletter		
Corporate Newsletter		
Payslips		
Section/Toolbox meetings		
Other:		
Other:		

## Councillor Conduct Examples

Attachment "A"

### For Queensland Local Governments

#### Purpose

This document is aimed at providing working examples of the types of conduct of Local Government Councillors.

This document is to be read in conjunction with the Code of Conduct for Queensland Local Governments.

#### Complaints about Councillor Conduct

A complaint about the conduct of a Councillor must be submitted to the Independent Assessor who will assess the complaint and determine the category of the allegation.

In order of most to least serious, the categories of complaint are *corrupt conduct*, *misconduct*, *inappropriate conduct* and then *unsuitable meeting conduct*.

#### Unsuitable meeting conduct

Under section 150H of the *Local Government Act 2009* (the Act), any conduct, but not inappropriate, misconduct or corruption, by a Councillor that is contrary to the standards of behavior in the Code of Conduct that occurs within a meeting of Council, is dealt with as *unsuitable meeting conduct*.

Examples of unsuitable meeting conduct by a Councillor may include:

- a Councillor behaves in a Council meeting, in a way that intimidates, bullies or harasses a member of the community, another Councillor or a Council employee
- a Councillor continually interrupts or disrupts a speaker at a Council meeting
- a Councillor behaves in an offensive or disorderly way in a Council meeting.

#### Inappropriate conduct

Under section 150K of the Act, any conduct by a Councillor that is contrary to standards of behaviour in the Code of Conduct or a policy, procedure or resolution of a Council and is not unsuitable meeting conduct (i.e. occurs outside of a meeting of Council), misconduct or corrupt conduct is dealt with as *inappropriate conduct*.

Examples of inappropriate conduct of a Councillor may include:

- a Councillor publicly makes derogatory comments about staff
- a Councillor purports to speak to the media on behalf of Council when not properly authorised under a Council policy
- a Councillor fails to comply with an order made by the Chairperson of a meeting to leave and stay away from the place at which the meeting is being held
- a Councillor has been reprimanded 3 times in 12 months for interrupting other Councillors during meetings.

#### Misconduct

Councillors are required to comply with all laws that apply to Local Governments. This includes

refraining from engaging in *misconduct*.

Examples of misconduct of a Councillor may include:

- a Councillor knowingly provides false or misleading information during a meeting of the Council in order to affect a decision
- a Mayor fails to carry out the performance evaluation of the Chief Executive Officer in the manner determined by Council
- a Councillor releases private information about a member of the community acquired as a Councillor
- a Councillor directs a Council employee (other than the Mayor directing the Chief Executive Officer or other senior executive employees) to perform a duty
- a Councillor provides confidential information to the media that came from a closed meeting of Council
- a Councillor has a reasonable suspicion that another Councillor has a material personal interest or conflict of interest but did not disclose it to the presiding officer when the other Councillor failed to disclose it
- a Councillor fails to pay a fine ordered by the Tribunal
- a Councillor sought assistance or advice from an officer that is not in accordance with Council's acceptable request guidelines
- a Councillor uses a Council vehicle for private use that is not authorised by Council's expenses policy.

### Corrupt conduct

**Corrupt conduct** is defined by, and dealt with, under the *Crime and Corruption Act 2001* and must be referred to the Crime and Corruption Commission.

Examples of corrupt conduct of a Councillor may include:

- a Councillor fails to declare a material personal interest in a Council meeting
- a Councillor intentionally fails to update a register of interests in order to hide an interest that could gain a benefit or a loss to the person
- a Councillor engages in fraud against the Council
- a Councillor uses information acquired by a Councillor to gain a financial benefit for the Councillor or someone else
- a Councillor directs a Local Government employee to gain a benefit or cause a detriment to the Councillor or another person
- a Councillor engages in the act of stealing against the Local Government.

### More information

The Department's website provides further information and resources for Councillors.

The Department also provides and facilitates training for Councillors and Local Government employees to assist them to develop the knowledge, skills and understanding necessary to undertake their roles and responsibilities effectively and in the best interests of their communities.

For more information, please contact your regional office within Local Government and Regional Services in the Department on:

**Telephone:** 13 QGOV (13 74 68)

**Post:** PO Box 15009, City East, Queensland 4002

**Website:** [www.dlgrma.qld.gov.au](http://www.dlgrma.qld.gov.au)



### References:

Department of Local Government Racing & Multicultural Affairs publication:  
Councillor Conduct Examples for Queensland Local Governments

