

Logan City Council

Councillor Conduct Complaints Investigation Procedure

Logan City Council
2019

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1 Procedure Objective

This procedure sets out the process for how complaints about the inappropriate conduct of councillors will be dealt with as required by the section 150AE of the *Local Government Act 2009* (the LGA). This procedure does not relate to more serious councillor conduct such as misconduct.

This procedure applies to all investigations and determinations of a complaint about the alleged inappropriate conduct of a councillor which has been referred to Council by the Independent Assessor.

2 Confidentiality

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

It must be kept in mind that the complaint is an allegation only and not yet proven. 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 the local government may be contrary to section 171(3) of the LGA and dealt with as misconduct.

3 Natural justice

Any investigation of suspected Inappropriate Conduct of a councillor must be carried out in accordance with natural justice.

"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
- given an opportunity to put their case in writing, which should be provided with the investigation report to the councillors as part of the meeting agenda to decide the matter.

An absence of bias means that any investigation must not be biased or be seen to be biased in anyway. 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.

4 Independent Assessor Referral

If Council receives a complaint about the conduct of a councillor, Council must refer the complaint to the Independent Assessor in accordance with section 150P of the LGA.

Council may then receive a referral notice from the Independent Assessor about the suspected inappropriate conduct of a councillor. On receipt of a referral notice about the suspected inappropriate conduct of a councillor from the Independent Assessor, 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 (other than the councillor who is the subject of the complaint or the complainant, if the complainant is another councillor):

- disagree with any recommendation accompanying the Independent Assessor's referral notice; or
- form the opinion that the complaint should be dealt with in a way other than under this Procedure

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 Investigator

Unless otherwise resolved by Council, the Chief Executive Officer will manage the investigation of suspected inappropriate conduct of councillors.

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.

If the Chief Executive Officer believes it is in the best interests of the investigation to refer the matter to the President of the Tribunal to investigate and make recommendations to the Council about dealing with the conduct, the Chief Executive Officer must do so.

6 Early Resolution

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

A matter is only appropriate for early resolution if the councillor the subject of the complaint and the complainant both agree to explore early resolution.

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

If the matter cannot be resolved by early resolution, the matter will then be investigated as outlined in this procedure.

If the matter is resolved by early resolution, the Investigator must advise the Chief Executive Officer of this outcome. The Chief Executive Officer must advise the Mayor and all councillors that the matter has been resolved. The Chief Executive Officer will also update the councillor conduct register to reflect this.

7 Investigation

Investigation of the complaint will be done with consideration for:

- the principles of natural justice;
- the obligation to protect confidential information;
- fairness to the councillor who is the subject of the complaint, the complainant and any other witnesses;
- the local government principle of transparent and accountable decision making; and
- any recommendation of the Independent Assessor.

In undertaking the investigation, the following steps must be taken:

1. contact the complainant to:
 - a. ascertain what further information if any may be necessary, including any documentation or further evidence that the complainant wishes to add;
 - b. ascertain further details on the issues advanced in the complaint, including the impact of the alleged conduct;
 - c. ascertain the outcome that the complainant seeks as a consequence of submitting the complaint (e.g. an apology);
 - d. outline the investigation process;
 - e. invite the complainant to contact the investigating officer if the complainant wishes at any time to check on progress with the complaint;
 - f. determine whether early resolution is an option.
2. conduct a confidential interview and meeting with the councillor who is the subject of the complaint, to give the councillor the opportunity to provide their view and any evidence they have in relation to the alleged conduct;
3. conduct confidential interviews and meetings with relevant witnesses about the alleged conduct;
4. request files and gather all documentation relevant to the alleged conduct; and
5. take detailed investigation notes.

It is the responsibility of the investigator to:

- conduct the investigation impartially, confidentially and in a timely manner;
- conduct the investigation according to the above investigation process;
- prepare regular updates on the progress of the investigation to the Chief Executive Officer; and
- prepare a final report on the findings of the investigation for the Chief Executive Officer, Mayor and councillors.

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 by Council.

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 Chief Executive Officer to seek an extension of time.

The Chief Executive Officer will keep the complainant and all councillors informed of any extensions of time for the investigation.

Where an investigation is not completed within six months after receipt of the complaint, the Mayor or a councillor may request the matter be placed on the agenda of the next Council meeting to decide:

- whether the current investigation should continue; or
- whether the matter should be referred to the President of the Tribunal to investigate and make recommendations to the Council about dealing with the conduct.

Such a request must be made in accordance with the Council’s meeting procedure requirements.

9 Possible misconduct and 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 Chief Executive Officer. The Chief Executive Officer must then notify the Independent Assessor of the suspected misconduct.

If during the course of an investigation, the investigator obtains information which indicates a councillor may have engaged in corrupt conduct, the investigator must cease the investigation and advise the Chief Executive Officer. The Chief Executive Officer must 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 Independent Assessor or Crime and Corruption Commission to be inappropriate conduct.

10 Notice about the outcome of investigations

After an investigation is finalised, and at least four weeks prior to the Council meeting at which a decision is to be made about the matter, the investigator must give notice about the outcome of the investigation to both the councillor who is the subject of the complaint, and the complainant.

The councillor who is the subject of the complaint will then be given an opportunity to provide the investigator with written submissions in response to the investigation findings. The response must be provided to the investigator within 2 weeks of the councillor receiving the investigation findings.

11 Completion of the investigation

On the completion of an investigation, the investigator must provide a report to the Chief Executive Officer, the Mayor and all councillors which includes:

1. the investigation process;
2. the investigation findings;
3. any written submissions made by the councillor who is the subject of the complaint, in response to the investigation findings;
4. any recommendations about dealing with the conduct; and
5. a record of the investigation costs.

Council will consider the findings and recommendations of the investigator’s report and will decide at a Council meeting within two (2) Council meetings and in accordance with guidelines, whether the councillor has engaged in inappropriate conduct and, if so, what action it will take under section 150AH of the LGA. The guidelines are attached in appendix 1.

If the councillor who is the subject of the complaint is dissatisfied with the decision made by Council under section 150AH of the LGA, the councillor may seek a judicial review of the decision or seek a review of the decision by the Queensland Ombudsman.

12 Councillor conduct register

The Chief Executive Officer must ensure decisions about suspected inappropriate conduct of a councillor are entered into the councillor conduct register as required by section 150DX of the LGA.

Where a complaint has been resolved by way of early resolution in accordance with this procedure, the Chief Executive Officer will update the register to reflect that the complaint was withdrawn.

13 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 but not limited to any costs of:

- the president of the Tribunal in undertaking an investigation for Council;
- a mediator engaged under this procedure;
- 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; or
- engaging an expert.

Council may order the subject councillor to reimburse it for all or some of the costs arising from the councillor's inappropriate conduct.

Any costs incurred by complainants or subject councillors will only be met by Council in accordance with Council's Insurance and Indemnity for Councillors Policy.

14 Definitions

Definitions for terms used within the Procedure can be found in the Councillor Conduct Complaints Investigation Policy (DM: 13315154).

Appendix 1 - Inappropriate Conduct Disciplinary Action Guideline

This guideline has been developed to assist Council in making decisions about the appropriate disciplinary action to be taken against a councillor who is found to have engaged in inappropriate conduct.

Examples of Inappropriate Conduct

The Department of Local Government, Racing and Multicultural Affairs has published Councillor Conduct Examples for Queensland Local Governments to provide working examples of the types of councillor conduct which may constitute inappropriate conduct:

- 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.

Decision

Section 150AG of the *Local Government Act 2009* (LGA) provides that where an allegation of inappropriate conduct has been referred by the Office of the Independent Assessor to Council for investigation, the local government must decide:

1. Whether or not the councillor has engaged in inappropriate conduct; and
2. What action the local government will take under s150AH to discipline the councillor if they have been found to have engaged in inappropriate conduct.

Types of Orders that may be made

Section 150AH of the LGA provides a list of the types of orders that the local government may make where the local government 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 admission that the councillor has engaged in inappropriate 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 local government meeting*
- *An order that the councillor is removed or must resign from a position representing the local government 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 local government for all or some of the costs arising from the councillor's inappropriate conduct

Section 150AH92 provides that Council may not make the above orders in *italics* in relation to a person who is no longer a councillor.

Factors that may be taken into account

Section 150AG(2) provides that in deciding what action to take, the local government may consider:

- Any previous inappropriate conduct of the councillor
- Any allegation made in the investigation that was admitted
- Any allegation made in the investigation that was not challenged
- Any allegation made in the investigation that the local government is reasonably satisfied is true

The Independent Assessor has advised that a local government may also consider:

- Whether the conduct was accidental, reckless or deliberate
- What the impact of the conduct (financial and reputational) has been on Council or others
- Whether the councillor has demonstrated insight into their conduct
- Whether the councillor cooperated with the investigation or not
- The level of experience of the councillor
- Whether the councillor has had the benefit of relevant training or not

Guidance on appropriate disciplinary action

It is open to Council to decide which of the orders in section 150AH of the LGA it is appropriate to make when a councillor is found to have engaged in inappropriate conduct. The particular circumstances of a case must always be taken into consideration.

It is suggested that as a guide, it may be appropriate for the local government to consider making an order or combination of orders depending on whether a councillor has been found to have engaged in inappropriate conduct for the first time, or for a second or third time.

Section 150L provides that conduct is misconduct if the conduct is part of a course of conduct leading the local government to take action under s150AG to discipline the councillor for inappropriate conduct on 3 occasions within a period of 1 year.

| Order | First instance engaging in inappropriate conduct | Second instance engaging in inappropriate conduct | Third instance engaging in inappropriate conduct |
|---|--|--|--|
| No action be taken against the councillor | ✓ | | |
| The councillor make a public admission that the councillor has engaged in inappropriate conduct | ✓* | ✓* | ✓* |
| A reprimand be recorded against the councillor for the conduct | ✓# | ✓# | ✓# |
| The councillor attend training or counselling addressing the councillor's conduct | ✓# | ✓# | ✓# |
| The councillor be excluded from a stated local government meeting | | ✓ | ✓ |
| the councillor is removed or must resign from a position representing the local government other than the office of councillor | | | ✓ |
| if the councillor engages in the same type of conduct again, it will be treated as misconduct | ✓^ | ✓ | |
| The councillor reimburse the local government 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 |

⌘ Costs arising from the councillor's inappropriate conduct includes investigative costs, legal costs and support 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 inappropriate conduct by an experienced councillor

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 inappropriate 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 councillor is an experienced 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.