

### 5.3. INVESTIGATIONS POLICY

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**DEPARTMENT** Governance

#### RECOMMENDATION

**That, in accordance with s150AE of the *Local Government Act 2009*, Council adopts the Investigation Policy as presented.**

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#### EXECUTIVE SUMMARY

The Investigation Policy is how complaints about the inappropriate conduct of Councillors will be dealt with as required by s150ae of the Local Government Act 2009.

#### BACKGROUND

With the passing of the Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018 on 21 May 2018, the *Local Government Act 2009* now provides for a more effective and streamlined system for dealing with Councilor Complaints and imposes a mandatory Code of Conduct for Councillors.

To prepare for the implementation of the new Councillor complaints system, the Department of Local Government, Racing and Multicultural Affairs prepared a suite of documents in May 2018 and wrote to all Councils seeking comments. These documents were aimed at providing Local Governments and Councillors with assistance in understanding the requirements around handling Councillor's personal interests and conduct while participating in Council and standing committee meetings.

#### COMMENT

The Local Government must adopt an Investigations Policy to deal with suspended inappropriate conduct referred by the Independent Assessor (IA) and publish the Policy on its website.

#### PROPOSAL

The proposal is for Council to:

1. That, in accordance with s150AE of the *Local Government Act 2009*, Council adopts the Investigation Policy as presented.

#### FINANCIAL/RESOURCE IMPLICATIONS

Nil

#### RISK MANAGEMENT IMPLICATIONS

Nil

## SUSTAINABILITY IMPLICATIONS

**Economic:** Nil

**Environmental:** Nil

**Social:** Nil

## CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

### Corporate Plan 2019-2024 Initiatives:

#### Theme 5 - Robust Governance and Efficient Service Delivery

**Goal 1** - *We will conduct Council business in an open and transparent manner with strong oversight and open reporting.*

## COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

**Regulator** Council has a number of statutory obligations detailed in numerous regulations and legislative Acts. Council also makes local laws to ensure that the Shire is well governed. In fulfilling its role as regulator, Council will utilise an outcomes based approach that balances the needs of the community with social and natural justice.

## CONSULTATION

**Internal:** Councillors

**External:** Department of Local Government, Racing and Multicultural Affairs

## COMMUNITY ENGAGEMENT

Nil

## ATTACHMENTS

1. Investigation Policy [5.3.1 - 6 pages]



# INVESTIGATION POLICY

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## Intent

This is Douglas Shire Council’s investigation policy 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). However, this policy does not relate to more serious Councillor conduct.

## Scope

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.

## Definitions

TERM	DEFINITION
<b>Assessor</b>	means the Independent Assessor appointed under section 150CV of the LGA.
<b>behavioural standard</b>	means a standard of behaviour for Councillors set out in the Code of Conduct approved under section 150E of the LGA.
<b>conduct</b>	Includes – a) Failing to act; and b) A conspiracy, or attempt, to engage in conduct.
<b>Councillor conduct register</b>	means the register required to be kept by Council as set out in section 150DX of the LGA.
<b>inappropriate conduct</b>	see section 150K of the LGA.
<b>investigation policy</b>	refers to this policy, as required by section 150AE of the LGA.
<b>investigator</b>	means the person responsible under this investigation policy for carrying out the investigation of the suspected inappropriate conduct of a Councillor or Mayor.
<b>LGA</b>	means the <i>Local Government Act 2009</i> .
<b>local government</b>	meeting means a meeting of – a) A local government; or b) A committee of a local government.
<b>misconduct</b>	see section 150L of the LGA.
<b>model procedures</b>	see section 150F of the LGA.
<b>natural justice</b>	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.
<b>referral notice</b>	see section 150AC of the LGA.
<b>Tribunal</b>	means the Councillor Conduct Tribunal as established under section 150DK of the LGA.

TERM	DEFINITION
<b>unsuitable meeting conduct</b>	see section 150H of the LGA

## 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.*

## 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.

## 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.

## 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.

## 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, 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.

## 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.

## 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.

*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.*

### **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.

### **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 who 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.

### **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.

### **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.

### **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.

Where a complaint has been resolved under the Early Resolution Section of this policy, the Chief Executive Officer will update the register to reflect that the complaint was withdrawn.

## 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 Councillor will not be met by Council.

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This policy is to remain in force until otherwise determined by Council.

Manager Responsible for Review: Manager Governance

ORIGINALLY ADOPTED:

CURRENT ADOPTION: July 2019

DUE FOR REVISION: July 2022

REVOKED/SUPERSEDED: