

6.5. ADOPTION OF INVESTIGATION POLICY

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DEPARTMENT Governance

RECOMMENDATION

That Council adopts the Investigation Policy

EXECUTIVE SUMMARY

Council's Investigation Policy has been reviewed in accordance with the Corporate Policy Framework.

BACKGROUND

The Investigation Policy is a requirement of s 150AE of the *Local Government Act 2009* to deal with suspected inappropriate conduct of Councillors.

The relevant section of the act is below:

150AE Local government must adopt investigation policy

(1) A local government must adopt, by resolution, a policy (an investigation policy) about how it deals with the suspected inappropriate conduct of councillors referred, by the assessor, to the local government to be dealt with.

(2) The policy must—

(a) include a procedure for investigating the suspected inappropriate conduct of councillors; and

(b) state the circumstances in which another entity may investigate the conduct; and

(c) be consistent with the principles of natural justice; and

(d) require councillors and persons who make complaints about councillors' conduct to be given notice about the outcome of investigations.

Council has had an Investigation Policy since this requirement was made mandatory.

COMMENTS

The current policy has been reviewed to ensure that it still meets the requirements of s 150AE of the *Local Government Act 2009*.

There are no recommended changes to be made to this policy, noting that the original policy was based on a best practice sample provided by the State Government following the introduction of the Office of the Independent Assessor.

PROPOSAL

That Council adopts the Investigation Policy.

FINANCIAL/RESOURCE IMPLICATIONS

Council will have to pay any reasonable expenses of council associated with the investigation of suspected inappropriate conduct of a Councillor.

RISK MANAGEMENT IMPLICATIONS

The policy ensures that inappropriate conduct of Councillors will be dealt with in a controlled process in accordance with the investigation policy thus reducing the reputational risk of council.

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

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

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

Operational Plan 2022-2023 Actions:

Legislative requirement.

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: Councillor workshop held on 27 June 2023.
Management Team meeting.

External: Nil

COMMUNITY ENGAGEMENT

Nil

ATTACHMENTS

1. Investigation Policy [6.5.1 - 6 pages]



11. INVESTIGATION POLICY

Authority

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 |
|------------------------------------|--|
| Assessor | Means 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 | Means the register required to be kept by Council as set out in section 150DX of the LGA. |
| 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. |

| TERM | DEFINITION |
|-----------------------------------|---|
| 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 |

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 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:

- That 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)
- That the investigator(s) should be objective and impartial (absence of bias)
- That 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.

Ensuring decisions are 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 will receive from the assessor a referral notice about the suspected inappropriate conduct of a Councillor/s. The referral notice will include details of the conduct and any complaint received about the conduct, state why the assessor reasonably suspects that the Councillor has engaged in inappropriate conduct, and include information about the facts and circumstances that form the basis of the assessor's reasonable suspicion.

The referral notice may be accompanied by a recommendation from the assessor about how the local government may investigate or deal with the conduct. The recommendation of the assessor may be inconsistent with this policy.

The investigation must be conducted in a way consistent with:

- (i) any recommendation of the assessor
- (ii) to the extent that this policy is not inconsistent with the recommendation of the assessor – this Investigation Policy, or
- (iii) in another way the local government decides by resolution.

A resolution under subsection (iii) must state the decision and the reasons for the decision.

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, other than the Councillor who is the subject of the complaint, or the complainant if the complainant is a Councillor, as a confidential document.

Should the Mayor or a Councillor/s 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 for the council to decide, by resolution, 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 where, 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 may refer the suspected inappropriate conduct to the president of the Councillor Conduct Tribunal (the Tribunal) or other entity 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 may refer the suspected inappropriate conduct to the president of the Tribunal, or another entity, to investigate and make recommendations to the council about dealing with the conduct.

Early Resolution

Before beginning an investigation, the investigator should consider whether the matter is appropriate for resolution prior to the investigation. This consideration can include any recommendations made by the

assessor.

A matter is only appropriate for early resolution if the parties to the matter both voluntarily 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 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.

Assistance for Investigator

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.

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 that 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 a council meeting outlining as appropriate:

- 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 gathered
- the investigation findings
- a statement of any relevant previous disciplinary history
- any recommendations about dealing with the conduct
- a record of the investigation costs.

If there is a risk to the health and safety of the complainant, under s 254J of the LGR the council may resolve that the meeting be closed to the public for the Councillors to consider the investigation report and any recommendations.

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 whether the Councillor has engaged in inappropriate conduct and, if so, what action it will take under section 150AH of the LGA. In accordance with s275(3) of the LGR, the resolution in relation to what action is to be taken as a result of the investigation must be made after the meeting has been re-opened to the public and the decision recorded in the meeting minutes. The Chief Executive Officer is also required to ensure the details are entered into the Councillor Conduct Register.

Disciplinary action against Councillors

If the council decides at the completion of the investigation that the Councillor has engaged in inappropriate conduct, the council may:

- (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.

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 and the subject Councillor.

Councillor Conduct Register

The Chief Executive Officer must ensure decisions about suspected inappropriate conduct of a Councillor/s are entered into the Councillor Conduct Register.

Where a complaint has been resolved under the Early Resolution section of this policy, or otherwise withdrawn by the complainant, 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 investigation of suspected inappropriate conduct of a Councillor including any costs of:

- the president of the Tribunal in undertaking an investigation for council
- an independent investigator engaged on behalf of, or by the Tribunal
- an independent investigator engaged on behalf of the local government

- 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.

Policy Review

This policy is to be reviewed whenever legislation changes, or every 2 years if no changes have been required to be enacted, at the direction of the Chief Executive Officer.

Policy Details

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| Policy Name | Investigation Policy |
| Policy Number | 11 |
| Policy Version | 2 |
| Document Number | 923935 |
| Endorsed by | Chief Executive Officer |
| Policy Type | Statutory |
| Approval Authority | Council |
| Date of Approval | 27/10/2020 |
| Time Period | 2 Years |
| Review Date | 01/10/2022 |
| Policy Department | Governance |
| Link to Corporate Plan | Robust Governance and Efficient Service Delivery |
| Revoked/Superseded | Nil |