

## COUNCILLOR COMPLAINTS INVESTIGATION POLICY

### Purpose

The purpose of this Policy is to determine how complaints about a Councillor conduct breach will be dealt with as required by the section 150AE of the *Local Government Act 2009* (the LGA). This policy does not relate to more serious Councillor conduct.

### Scope

This Policy applies to investigations and determinations by Council about a suspected Councillor conduct breach which has been referred to Council by the Independent Assessor.

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

### 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 sections 150D and 150E of the LGA.
<b>Conduct</b>	Includes – a) Failing to act; and b) A conspiracy, or attempt, to engage in conduct.
<b>Conduct breach</b>	Means a conduct breach set out in section 150K of the LGA.
<b>Councillor Conduct Register</b>	Means the register required to be kept by Council as set out in sections 150DX and 150DY 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 Policy for carrying out the investigation of the suspected conduct breach by a Councillor or Mayor.
<b>LGA</b>	Means the <i>Local Government Act 2009</i> .
<b>LGR</b>	Means the <i>Local Government Regulation 2012</i> .

TERM	DEFINITION
<b>Local Government Meeting</b>	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 meeting 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 sections 150AB, 150AC and 150AD of the LGA.
<b>Summary of investigation report</b>	Means a summary of the full investigation report prepared before Council makes a decision about the outcome of the investigation that must be publicly available on or before the day prescribed by the LGR.
<b>Tribunal</b>	Means the Councillor Conduct Tribunal as established under section 150DK of the LGA.
<b>Unsuitable Meeting Conduct</b>	See section 150H of the LGA.

## Policy statement

Chapter 5A of the LGA prescribes the Councillor conduct management system. Section 150CT of the LGA establishes 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 Council to deal with under sections 150SD(4)(a) or 150W(b) of the LGA.

Upon receipt of the referral notice of a complaint of suspected conduct breach, Council 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 Act. In conducting the investigation, Council must comply with this Policy.

Council may decide not to start or discontinue an investigation if:

- the complaint is withdrawn by the complainant
- the complainant consents to the matter being withdrawn. For example, the matter has been resolved and it is unnecessary for Council to investigate the matter

- the complainant refuses to cooperate by providing additional information during the investigation phase and insufficient information is available to proceed
- 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.

## Confidentiality

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

- to give the Councillor information about the suspected conduct, including details about the evidence of the conduct, and
- to give the Councillor the preliminary findings of the investigation before preparing an investigation report about the investigation, 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, 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 Council. 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 Council, 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 Council, the matter will be placed on Council's meeting agenda and the investigation report and any recommendations of the investigator may be debated in the Ordinary 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 Council in an open session of an Ordinary 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 the reasons for the decision in the meeting minutes. 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 Council 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, that 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 Appendix 1 - Report template & summary report template, and Appendix 3 - Statement of Preliminary Findings Template. These templates must be used by the Investigator.

## Natural Justice

Any investigation of suspected inappropriate conduct of a Councillor/s must be carried out in accordance with natural justice. Natural justice or procedural fairness refers to three key principles:

1. That the person being investigated has a chance to have their say before adverse formal findings are made and before any adverse action is taken (fair hearing)
2. That the investigator(s) should be objective and impartial (absence of bias), and
3. 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 conduct breach will receive information about the suspect conduct including:

- the preliminary findings of the investigation before the preparation of an investigation report about the investigation outcome, and
- a notice if an investigation is not started or is discontinued including the reasons for the decision, and
- allowing the councillor to give evidence or a written submission to Council about the suspected conduct breach and preliminary findings, and
- requiring Council to consider the evidence or written statement from the councillor in preparing the investigation report, and
- 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.

Council must give the following parties a notice if an investigation is not started or discontinued including the reasons for the decision:

- the person who made the complaint, and
- the Assessor.

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 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.

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

## 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 Council'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 Council.

## Expenses

Council must 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 Council
- travel where the Investigator needed to travel to undertake the investigation, or to interview witnesses, and
- obtaining legal or expert advice.

**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, or the subject Councillor will not be met by Council. 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 that deal with conduct matters.

## 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.

## **PROCEDURES FOR THE INVESTIGATION**

### **Assessor's referral**

Council 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.

Council must deal with the matter and the investigation must be conducted in a way that is consistent with this Policy.

The Assessor must also give a notice to the Councillor that states the Councillor's conduct has been referred to Council to deal with and a copy of the referral notice must be attached.

### **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 Declarable Conflict of Interest as set out in the Standing Orders for Council Meeting General Policy.

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 to manage the investigation must be delegated by Council resolution to the Deputy Mayor, or if the Deputy Mayor is conflicted, then an acting Mayor must be appointed from the other Councillors by resolution, to manage the investigation.

Where a meeting loses quorum due to conflicts of interest of Councillors or absent Councillors, then the conduct matter must be delegated to the Mayor or a standing committee to make a decision. If the referral notice is about the suspected conduct breach by the Mayor, then the matter must be delegated to a standing committee.

Council will consider establishing a standing committee under section 264 of the LGR to deal with decisions about a conduct breach matters which are delegated by resolution to a standing committee. The standing committee will decide about the Mayor's conduct in all circumstances where there is a loss of quorum or more generally, may also deal with Councillors' conduct.

While section 12(4)(f) of the LGA provides that the Mayor has the extra responsibility of being a member of each standing committee, the Mayor could not be a decision-making member of a standing committee dealing with decisions about their own conduct because of the conflict of interest. The remainder of the unconflicted members of the committee will decide the matter.

The standing committee must be in existence before receiving the referral notice from the Assessor, in circumstances where there is no quorum to decide a matter under sections 150AEA or 150AG of the LGA due to conflicts of interest. Terms of Reference for Council's Standing Committee accompany this Policy.

### **When 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.

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 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.

### **Investigating the suspected conduct breach of a Councillor**

Unless the matter has been delegated by Council, 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 Council to consider. The Mayor is authorised by Council to expend money as reasonably needed to engage contractors in accordance with 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.

### **Engaging an Investigator**

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

Once the investigation is finalised the Investigator will prepare a report for Council including the following 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, and
- a record of the investigation costs.

## **COMPLETION OF INVESTIGATION**

### **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.

### **Investigation Report**

The Investigator must prepare an investigation report about the investigation of a suspected conduct breach matter referred by the Assessor to Council 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 Council (see Appendix 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 section 254C of the LGR, 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.

Council must prepare a summary of the investigation report that 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 Council is entitled or required to keep confidential under a law.

## **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 chair 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.

Should the complainant be a Councillor, that Councillor has a declarable conflict of interest in the matter and must follow the declarable conflict of interest procedures set out in the Standing Orders for Council Meetings General Policy.

If the Council has lost quorum due to the number of conflicted Councillors or another reason, the matter must be delegated consistent with section 257 of the LGA, or deferred to another date when a quorum will be present.

If a decision is reached that the Councillor has engaged in a conduct breach, 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, 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:

- on or before the day and time prescribed by the LGR, or 5pm on the tenth day, or
- by 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 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 Council; and
- the person's identity as the complainant was disclosed at the meeting at which the report for the investigation was considered.

## Disciplinary action against Councillors

If Council decides at the completion of the investigation that the Councillor has engaged in a conduct breach, Council may:

- order that no action be taken against the Councillor, or
- 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 Appendix 4 - Conduct Breach Disciplinary Action Guideline

## Notice about the outcome of investigation

After an investigation is finalised, Council must give a notice about the outcome decision of the investigation if Council decides not to start or discontinue an investigation under section 150AEA of the LGA, or makes a decision about whether the Councillor has engaged in a conduct breach under section 150AG of the LGA including the reasons for the decision and any orders made under section 150AH of the LGA to:

- the Assessor, and
- the person who made the complaint about the Councillor's conduct that was the subject of the investigation, and
- the subject Councillor who was investigated.

## Legislation

*Local Government Act 2009*

*Local Government Regulation 2012*

*Crime and Corruption Act 2001*

*Public Interest Disclosure Act 2010*

*Public Sector Ethics Act 1994*

## 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

<b>Policy Name</b>	<b>Councillor Complaints Investigation Policy</b>
<b>Policy Number</b>	11
<b>Policy Version</b>	5
<b>Document Number</b>	923935

<b>Endorsed by</b>	Chief Executive Officer
<b>Policy Type</b>	Statutory
<b>Approval Authority</b>	Council
<b>Date of Approval</b>	29/10/2024
<b>Time Period</b>	2 Years
<b>Review Date</b>	29/10/2026
<b>Policy Department</b>	Governance
<b>Link to Corporate Plan</b>	Robust Governance and Efficient Service Delivery
<b>Revoked/Superseded</b>	Nil

## APPENDIX 1 – Report template and summary report template

**Conduct Breach Complaint Investigation and Recommendation Report to  
Douglas Shire Council**

**Reference number:**

**Date received:**

**1. The complaint**

Description of the alleged conduct.

(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**

Name of the complainant who made the complaint about 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**

The summary to include:

- scope of the investigation
- interviews conducted
- documents examined
- facts identified
- category of the conduct breach, and
- set out relevant standards of sections considered.

**6. Investigation Report**

The Investigation Report to include:

- 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.

It is recommended that:

- a) This report be submitted to Council for consideration, pursuant to section 150AG of the *Local Government Act 2009* (the Act), as to whether or not the councillor has engaged in a conduct breach; and if they are found to have so engaged, what action Council will take to discipline the councillor pursuant to section 150AH of the Act; or
- 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. Or
- c) If Council finds the Councillor has engaged in a conduct breach, 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, or
- d) If Council finds the Councillor has engaged in a conduct breach, the following disciplinary action under section 150AH of the Act is recommended (refer to the 'Guideline – conduct breach disciplinary action').

..... (INVESTIGATOR SIGNATURE)

INVESTIGATOR NAME:

ATTACHMENTS:

## **8. Summary Report Template**

The Summary Report to 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.

## **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 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 Council to consider on the template attached (Appendix 1).

If during the course of an investigation, the Investigator obtains new information that a Councillor may have engaged in 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 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 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 and/or Crime and Corruption Commission.

## APPENDIX 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:	Substantiated/Not Substantiated
Particulars:	Summary of Evidence:
	Summary of reasons for finding:

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Date

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Investigator's signature and name

**APPENDIX 4 – Conduct breach disciplinary action guideline****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 Act, 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 local government 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. Section 150J of the Act provides that Council is not required to notify the OIA of these matters and may deal with the conduct under section 150AG of the Act as if an investigation has been undertaken.

**2. Decision**

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

1. whether or not the councillor has engaged in a conduct breach, and,
2. what action Council will take under section 150AH of the Act 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 Act provides a list of the types of orders that the local government may make where it has found that a councillor has engaged in a conduct breach:

- An order that no action be taken against the Councillor
- An order that the Councillor make a public apology, in the way decided by Council, 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 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 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 Act provides that in 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 was not challenged and
  - Council is reasonably satisfied is true.

#### 5. Guidance on appropriate disciplinary action

It is open to Council to decide which order/s in section 150AH of the Act 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 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, second, or third time.

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

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

Order	First instance engaged in conduct breach	Second instance engaged in conduct breach	Third instance engaged in conduct breach
No action be taken against the Councillor	✓		
An order for the Councillor to make a public apology in the way decided by Council, 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 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	✓^	✓	

Order	First instance engaged in conduct breach	Second instance engaged in conduct breach	Third instance engaged in conduct breach
An order that the Councillor reimburse Council for all or some of the costs arising from the Councillor's conduct breach**		✓	✓

\*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.