



Murweh Shire Council

Investigation Policy

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Responsible Officer:	Director Corporate Services

1. Authority

This is Murweh Shire Council's investigation policy for how complaints about the suspected conduct breach of councillors will be dealt with as required by section 150AE of the *Local Government Act 2009* (LGA)

2. Commencement

This Policy will commence on adoption by resolution of Council. It replaces all other policies (whether written or not). Council may amend this policy by resolution.

4. Related Policies and Legislation

Standing Orders for Council Members GOV- 003

Acceptable Request Guidelines GOV-004

Information Management Policy

Information Security Policy IT 001

Whistleblowers (Public Interest Disclosure) Policy GOV-006

Standing Order for Council and Committee meetings GOV-008

Code of Conduct for Councillors in Queensland-www.local.gov.uk/publications

5. Policy Statement

Chapter 5A of the LGA prescribes the councillor conduct management system. Section 150CT of the LGA establishes an Independent Assessor (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 Murweh Shire Council (Council) to deal with under section 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 LGA. In conducting the investigation, Council must comply with this investigation policy.

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

- if the complaint is withdrawn by the complainant
- if the complainant consents to the matter being withdrawn.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

- if the complainant refuses to cooperate by providing additional information during the investigation phase and not enough information is available to proceed
- if 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.

6. Scope

This investigation policy applies to investigations and determinations by Council about the suspected conduct breach of a councillor including a mayor, which has been referred by the Independent Assessor. The policy must:

- include a procedure for investigating the suspected conduct breaches of councillors (see Addendum 3 – Investigation Standards; and
- state the circumstances in which another entity may investigate the conduct; and
- be consistent with the principles of natural justice; and
- require the local government to prepare a report about each investigation (see Addendum 2 - Report template and summary report template); and
- require a notice about the outcome of investigations be provided to the Assessor, councillor and persons who made complaint about the councillors' conduct; and
- include a procedure about when the local government may decide not to start, or to discontinue, an investigation under section 150AEA.

The policy must require Murweh Shire Council -

- to give the councillor information about the suspected conduct, including details about the evidence of the conduct; 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, if the contact details of the person are known, a notice if an investigation is not started or is discontinued; and
- to give the councillor the preliminary findings of the investigation before preparing an investigation report about the investigation (see Addendum 4 - Statement of Preliminary Findings Template); and
- to allow the councillor to give evidence or a written submission to the local government about the suspected conduct and preliminary findings; and
- to consider any evidence and written submission given by the councillor in preparing the investigation report for the investigation; and
- to include in the investigation report -
 - i. if evidence is given by the councillor—a summary of the evidence; and
 - ii. if the councillor gives a written submission—a full copy of the written submission.

Out of Scope

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

This 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.

7. Confidentiality

Matters relating to the investigation of suspected conduct breach of a councillor are confidential to the local government during the investigation period, except:

- to give the councillor information about the suspected conduct, including details about the evidence of the conduct
- to give the councillor the preliminary findings of the investigation before preparing an investigation report about the investigation
- 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 Murweh Shire 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 the local government, 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 the local government, the matter will be placed on the council meeting agenda and the investigation report and any recommendations of the investigator may be debated in the 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 the council in an open 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 in the meeting minutes, the reasons for the decision. 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 the local government whose identity was disclosed at the meeting at which the investigation report was considered.

When deciding what action to take, the local government may consider any previous conduct breach of the councillor, any allegation made in the investigation that was admitted or not challenged, and the local government 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 Addendum 2 - Report template & summary report template, and Addendum 4 - Statement of Preliminary Findings Template. These templates must be used by the investigator.

8. Natural Justice

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

Natural justice or procedural fairness refers to three key principles:

- that the councillor who is the subject of the suspected conduct breach matter has a chance to have his or her say before adverse formal findings are made and before any adverse action is taken i.e., fair hearing
- that the investigator should be objective and impartial i.e., absence of bias
- that any actions taken, or decisions made are based on evidence i.e., not on suspicion or speculation.

A fair hearing means the councillor who is the subject of the suspected conduct breach matter will receive information about the suspected conduct, including;

- the preliminary findings of the investigation before the preparing of an investigation report about the investigation; and
- a notice if an investigation is not started or is discontinued including the reasons for the decision
- allow the councillor to give evidence or a written submission to the local government about the suspected conduct breach and preliminary findings; and
- require the local government to consider the evidence or written statement from the councillor in preparing the investigation report, and
- include, 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.

The local government must give the following notices to the other parties;

- the person who made the complaint if an investigation is not started or dismissed including the reasons for the decision
- the Assessor if an investigation is not started or dismissed including the reasons for the decision.

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.

A proper examination of all issues means the investigation must give a 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.

9. 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 local government, is reasonably satisfied that its existence is more probable than not.

10. 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 the local government'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 the local government.

11. Expenses

Local Governments 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 Murweh Shire Council
- travel where the investigator needed to travel to undertake the investigation, or to interview witnesses
- 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 who deal with conduct matters.

12. 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

13. Independent 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 investigation policy.

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

14. 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 the [model meeting procedures](#) section 5.

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 the local government 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 establish 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 the mayor's 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.

15. When the local government 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. The local government 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 the local government 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.

16. Local government investigating the suspected conduct breach of a councillor

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

17. Engaging an Investigator

Once an investigator has been selected to undertake the investigation, that investigator will follow the investigation standards of the local government (see Addendum 3– Investigation Standards) e.g. an investigation plan and file management system will be established.

Once the investigation is finalised the investigator will prepare a report for the local government including the following the 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
- a record of the investigation costs.

18. Completion of investigation

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 the local government under section 150AFA of the LGA. (However, this does not apply to a decision by the Establishment and Coordination Committee under the COBA). 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 the local government (see Addendum 2 – 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 the LGR section 254C and the COBR section 242C, 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.

Murweh Shire 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 the local government is entitled or required to keep confidential under a law.

Making a decision about the investigation

Murweh Shire 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 chairperson 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 [model meeting procedures](#) section 5.

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 section 238 of the COBA, 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, by;

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

19. Disciplinary action against councillors

If Council decides that the councillor has engaged in a conduct breach, any of the following orders may be imposed:

- 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.

Note: For further information refer to Addendum 5 - Conduct Breach Disciplinary Action Guideline

20. Notice about the outcome of the investigation

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

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

ADDENDUMS –

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- Assessor means the Independent Assessor appointed under section 150CT of the LGA
- Behavioural standard means a standard of behaviour for councillors set out in the [Code of Conduct for Councillors in Queensland](#) approved under section 150D and 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 the local government as set out in section 150DX and 150DY of the LGA
- Conduct breach as set out in 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 conduct breach of a councillor or mayor
- Summary of investigation report means a summary of the full investigation report prepared before making a decision about the outcome of the investigation that must be publicly available on or before the day prescribed by regulation.
- Investigation report means a report provided by the investigator to the local government that must be publicly available within 10 business days after the local government makes a decision about the outcome of the investigation.
- LGA means the *Local Government Act 2009*
- Local government meeting means a meeting of—
 - (a) a local government; or
 - (b) a committee of a local government
- Misconduct see section 150L of the LGA
- [Model meeting procedures](#) see section 150F of the LGA
- Council – Murweh Shire Council
- Referral notice see section 150AB, AC and AD 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

2 Report template and summary report template

Conduct Breach Complaint Investigation and Recommendation Report to Murweh Shire Council

Reference number:

Date received from council:

1. The complaint

(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

Description of 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

- Scope of the investigation:
- Interviews conducted:
- Documents examined:
- Facts identified:
- Category of the conduct breach:
Set out relevant standards of sections considered.

6. Investigation Report

- 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 who investigated the conduct.

It is recommended that:

a) This report be submitted to the [council name] for consideration, pursuant to section 150AG of the *Local Government Act 2009* (the LG Act), as to whether or not the councillor has engaged in inappropriate conduct; and if they are found to have so engaged, what action the local government will take to discipline the councillor pursuant to section 150AH of the LG Act;

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:

c) If Murweh Shire Council finds the councillor has engaged in inappropriate conduct, 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.*

d) If council finds the councillor has engaged in a conduct breach, the following disciplinary action under section 150AH LGA is recommended (refer to the 'Guideline – conduct breach disciplinary action)

..... (SIGN)

NAME:

ATTACHMENTS:

8. Summary Report Template

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.

3 – 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 in 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 the local government to consider on the template attached (Addendum 2).

If during the course of an investigation, the Investigator obtains new information that a Councillor may have engaged 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 the local government in relation to the investigation. For example, the Investigator will be informed in the event the finalisation of a matter is delayed, or if the Local Government 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/Crime and Corruption Commission.

4 - 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: Particulars:	Substantiated/Not Substantiated Summary of Evidence: Summary of reasons for finding:

Date

Investigator's signature and name

5 - 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 *Local Government Act 2009* (LGA), 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. The local government is not required to notify the OIA of these matters and may deal with the conduct as if an investigation has been undertaken section 150J and make a decision under section 150AG of the *Local Government Act 2009* (including Brisbane City Council). Below are some examples of conduct which may constitute a conduct breach:

2. Decision

Section 150AG of the LGA 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, the local government must decide:

1. whether or not the councillor has engaged in a conduct breach, and,
2. what action the local government will take under section 150AH of the LGA 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 LGA provides a list of the types of orders that the local government may make where it 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 apology, in the way decided by the local government, 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 the local government 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 LGA provides that in deciding what action to take, the local government may consider:

- Any previous conduct breach of the councillor

- Any allegation made in the investigation that-
 - was admitted, or was not challenged and
 - the local government is reasonably satisfied is true.

5. Guidance on appropriate disciplinary action

It is open to local governments to decide which order/s in section 150AH of the LGA /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 the local government 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 time, or for a second, or third time.

Section 150L of the LGA 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 a conduct breach on three occasions within a 1 year period.

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

Order	First instance engaging in a conduct breach	Second instance engaging in a conduct breach	Third instance engaging in a conduct breach
No action be taken against the councillor	✓		
An order for the councillor to make a public apology in the way decided by the local government, 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 the local government for all or some of the costs arising from the councillor's inappropriate conduct **		✓	✓

*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.

Audit and Review

This policy shall be reviewed every **three years** or as required due to changes to in legislation.

References

Local Government Act 2009 (LGA)

Local Government Regulation 2012 (LGR)

City of Brisbane Act 2010 (COBA)

City of Brisbane Regulation 2012

Crime and Corruption Act 2001

Public Interest Disclosure Act 2010 (PIDA)

Public Sector Ethics Act 1994 (PSEA)

Version Control

Version No.	Date	Approved	Amendment
1.0	21/05/2020	DCS	New policy
2.0	/05/2024	DCS	Update legislation Local Government (Councillor Conduct) and other Legislation Amendment Act 2023

Approval

Chief Executive Officer		Bruce Scott	
Date:	dd/05/2024	Signature:	

GUIDE ON THE PROVISION OF LEGAL ASSISTANCE FOR DEFAMATION ACTIONS FOR COUNCILLORS AND EMPLOYEES

1. Purpose

- 1.1 The Local Government Association of Queensland (**LGAQ**) is the peak body for local government in Queensland. It is a not-for-profit apolitical association set up solely to serve councils and their individual needs. The LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities.
- 1.2 Against this background, the LGAQ has developed this guide as a framework to assist councils when making decisions or developing a policy for the provision of legal assistance for defamation actions that are commenced by council members and employees. The guide is designed to ensure compliance with council's obligations under the *Local Government Act 2009* and the *Local Government Regulation 2012*.

2. Legislation

- Local Government Act 2009 (Qld) (**LGA**); and
- Local Government Regulation 2012 (Qld) (**LGR**).

3. Introduction

- 3.1 The LGAQ recognises that councillors and employees may at times, as a result of their functions and duties, be the subject to defamatory publications. Depending on the nature of these defamatory publications, councillors and employees may seek to take legal action. In exceptional circumstances, it may be appropriate for a council to provide financial assistance to meet the cost of councillors or employees obtaining the legal representation to institute defamation proceedings against third parties.
- 3.2 Section 9 and 28 of the LGA give a local Council wide powers to take executive action in respect of local government matters, including to fund legal assistance to councillors or employees. Several local governments throughout Australia have adopted legal assistance policies, some of which enable council to provide legal assistance to councillors or employees to commence a defamation action in exceptional circumstances.
- 3.3 Accordingly, the LGAQ has developed this guide to assist councils to identify the exceptional circumstances in which it may fund or partly fund the cost of providing relevant legal representation to councillors and employees to commence a defamation action against third parties in relation to publications made about councillors and employees in connection with their work with council. This guide also sets out the process that a council should follow in dealing with any requests for legal assistance that are received from councillors and employees.

4. Roles and Responsibilities

- 4.1 Councils should adopt a Legal Assistance (Defamation) Policy and appoint the CEO (or another qualified employee) to receive, assess and decide any requests for legal assistance from a councillor or employee in accordance with that policy. The CEO is then to make any other related decisions on behalf of the council under the policy.

- 4.2 If the applicant under the policy is the CEO, the Mayor should receive, assess and decide the request for legal assistance from the CEO. The Mayor is then to make any other related decisions on behalf of the council under the policy.
- 4.3 Any application made under the policy should be assessed in the first instance by an appropriate employee so nominated by either the CEO or the Mayor.
- 4.4 The CEO and the Mayor should be delegated by the Council to make the relevant decisions provided for under the policy and incur the relevant liabilities on behalf of the Council in accordance with the policy

5. **Exceptional Circumstances**

While the categories of exception circumstances are not closed, it will generally be the case that providing financial assistance to a councillor or employee to undertake defamation proceedings will be appropriate only if:

- (a) the publication:
 - (i) is persistent;
 - (ii) would lower or harm the councillor or employees' personal or professional reputation, hold the councillor or employee up to ridicule, or lead others to shun and avoid the person;
 - (iii) is causing, or is likely to cause, the councillor or employee distress in the workplace;
- (b) a concerns notice under the Defamation Act 2005 (**Defamation Act**) has been provided by the councillor or employee to the publisher;
- (c) the councillor or employee has not refused to accept a reasonable offer to make amends by the publisher under the Defamation Act;
- (d) the resources of Council have been, or are likely to be, unreasonably directed towards dealing with the publications; and
- (a) there is no other reasonable legal cause of action or course available to the person to prevent the ongoing publication.

6. **Types of legal representation costs that may be approved**

- 6.1 If the exceptional circumstances outlined in section 5 exist, the CEO or the Mayor may approve the payment of legal representation costs for a councillor or employee to institute or consider the institution of a defamation action against a third party seeking damages under the council's Legal Assistance (Defamation) Policy.
- 6.2 The CEO or the Mayor should not approve a funding decision under clause 6.1, unless there are exceptional circumstances that justify the expenditure of public funds.

Exceptional circumstances - Example

John Smith is a councillor. Terry Murphy is a local environmentalist and has made on-going and persistent publications indicating that the councillor has a drinking problem and alleging that he is drunk at every Council meeting - which he asserts explains Council's pitiful response to environmental issues in the City. He also says that the Councillor has no morals and regularly cheats the people of the City, by accepting bribes and gifts from developers. He says that something serious has to be done about the Councillor to save the City from environmental and economic

ruin. Terry posts these publications on line and also has been leaving flyers around the City.

John has given Terry a concerns notice under the Defamation Act, but has not received any reasonable offer to make amends from Terry. John has also raised the matter with the police, but no action has been taken because Terry's behaviour is not considered sufficiently threatening.

John has indicated to Council that he is concerned about the impact of the publications on his family and that it is causing him stress in performing his duties and functions as a councillor. Council is spending a lot of time responding to John's concerns and in trying to manage the issue. For example, Council is continually fielding calls from journalists and ratepayers about the publications.

Not exceptional circumstances - Example

Mary Bloggs is a councillor. Bob James, her neighbour, was dissatisfied at the state of Mary's garden, which had trees overhanging on Bob's property. Bob sent Mary an email in which he asked her to get the trees cut, but Mary did not respond. Bob then complained about the state of Mary's garden on social media and suggested that the poor delivery of council services was a direct result of Mary's incompetence as a councillor.

Mary is frustrated that the post was made. Some local newspapers have reported the comments about the neighbourly dispute, but the council have not fielded any calls from residents and ratepayers.

- 6.3 The council should not approve for a councillor, unless there are exceptional circumstances, the payment of legal representation costs that arise from, or are associated with, election issues or the conduct of an election campaign especially having regard to the implied freedom of political communication that has been recognised by the Australian Courts.

7. Application for Payment

- 7.1 A councillor or employee who seeks assistance for the payment of legal representation costs under a council's policy should be required to make an application(s) in writing in a form similar to that set out in Schedule 1. If the applicant under the policy is the CEO the application should be made to the Mayor.
- 7.2 A written application under the policy for the payment of legal representation costs should provide the required details which may include:
- (a) the details of the matter for which legal representation is sought;
 - (b) how that matter relates to the council functions and duties of the councillor or employee making the application;
 - (c) the steps that the councillor or employee have taken in respect of the publication (e.g. whether a concerns notice has been served and/or whether an offer to make amends has been received);
 - (d) the lawyer (or law firm) who is to be asked to provide the legal representation;
 - (e) the nature of legal representation to be sought (such as legal advice, representation in court, preparation of legal proceedings etc);
 - (f) an estimate of the cost of the relevant legal representation; and
 - (g) why the council should provide the relevant support and assistance.

- 7.3 The application should include a declaration by the applicant that they have acted in good faith.
- 7.4 Any application should normally be made before the incurring of any legal costs to which the application relates.
- 7.5 The application should be accompanied by a signed written statement by the applicant that he or she:
- (a) has read, and understands the terms of council's Legal Assistance (Defamation) Policy;
 - (b) acknowledges that any approval of legal representation costs is conditional on the repayment provisions (see guidance in clauses 10.1 - 10.2) and any other conditions which are provided for in any approval given under the policy; and
 - (c) the applicant undertakes to repay to the council any legal representation costs (see guidance in clauses 10.1 - 10.2).
- 7.6 In relation to clause 7.5(c), if the amount of the legal assistance is material, then an applicant should be requested to sign a more formal document which requires repayment of monies to the council in return for the provision of assistance under the terms of the policy.
8. **Limitation of Legal Representation Costs**
- 8.1 Council should require the CEO or the Mayor in approving an application to set a limit on the legal costs that will be paid.
- 8.2 A councillor or employee should be allowed to make a further or subsequent application to the council under the policy in respect of the same matter.
9. **Possible Decisions**
- 9.1 Under the council's Legal Assistance (Defamation) Policy, the CEO or the Mayor may:
- (a) refuse;
 - (b) grant; or
 - (c) grant subject to conditions,
- an application for the payment of legal representation costs.
- 9.2 The CEO or the Mayor may, in appropriate circumstances decide to approve the provision of legal representation to a councillor or employees but may require that the council's legal team provide the relevant advice or representation using internal or external resources.
- 9.3 The conditions that may be imposed under clause 9.1 may include, but are not restricted to, setting a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment of the legal representation costs paid for by the council under the policy.
- 9.4 In assessing an application, the policy may provide that the CEO or the Mayor can have regard to any insurance benefits that may be available to the applicant under the council's insurance policies or other similar arrangements.
- 9.5 The policy should provide that the CEO or the Mayor may, subject to clause 9.6, determine that a councillor or employee whose application for legal representation costs has been approved:

- (a) did not act in good faith; or
 - (b) provided false or misleading information in respect of their application for assistance under this policy.
- 9.6 A determination under clause 9.5 should be made only on the basis of, and consistently with, the findings of a court, tribunal inquiry, regulatory investigation or other similar independent body.
- 9.7 Where a determination is made under clause 9.5, the legal representation costs paid by the council should be required to be repaid by the councillor or employee in accordance with clauses 10.1 - 10.2.
10. **Repayment of Legal Representation Costs**
- 10.1 A councillor or employee whose legal representation costs have been paid by the council should be required to repay to the council:
- (a) all or part of those legal costs - in accordance with a determination made under clause 9.7; and
 - (b) if the councillor or employee receives monies from costs orders, damages, or any settlement, in respect of the matter for which the council has paid legal representation costs then the councillor or employee is to repay such sum to the council up to the amount of legal representation costs that have been paid by the council under the policy.
- 10.2 The council should reserve its rights to take action in a court of competent jurisdiction to recover any monies due and owing to it by a councillor or employee under its policy.
11. **Definitions**
- 11.1 **approved lawyer** is to be —
- (a) an 'Australian legal practitioner' under the *Legal Profession Act 2007* (Qld);
 - (b) from a law firm on the Council's panel of legal service providers, unless the Council considers that this is not appropriate in the circumstances; and
 - (c) as otherwise approved in writing by the Council or the CEO under delegated authority.
- 11.2 **councillor** or **employee** means a current or former councillor, non-elected member of a council committee or employee of the Council.
- 11.3 **legal representation costs** are the costs, including reasonable professional fees and disbursements, that are properly incurred in providing the approved legal representation and the associated legal costs arising therefrom.
- 11.4 **legal services** includes advice, representation or the preparation of documentation that is provided by an approved lawyer.
- 11.5 **payment** by the Council of the legal representation costs may be either by:
- (a) a direct payment to the approved lawyer; or
 - (b) a reimbursement to the councillor or employee.

Policy Author: **[insert]**

Date of Council resolution:

No of resolution:

Committee Reference and date:

Date of review:

SCHEDULE 1

APPLICATION FOR LEGAL ASSISTANCE (DEFAMATION)

FROM: Name of Councillor or Employee:

- Current Position:
- Current Department or entity:
- Position at the time of the incident:
- Department at the time of the incident:
- Address:
- Telephone:
- Fax:
- Email:
- Include brief details of assigned duties and functions:
- If applicable, include details of legal representatives:

TO: Name of Decision Maker:

- Position:
- Department or entity:
- Address:

Details of matter

I am applying for Legal Assistance in relation to the following matter/s:

- (a) [insert the details of the matter for which legal representation is sought];
- (b) [how that matter relates to the council functions and duties of the councillor or employee making the application];
- (c) [the steps that the councillor or employee have taken in respect of the publication (e.g. whether a concerns notice has been served and/or whether an offer to make amends has been received)];
- (d) [the lawyer (or law firm) who is to be asked to provide the legal representation];
- (e) [the nature of legal representation to be sought (such as legal advice, representation in court, preparation of legal proceedings etc)];
- (f) [an estimate of the cost of the relevant legal representation]; and
- (g) [why the council should provide the relevant support and assistance].

Undertakings by Councillor or Employee:

1. I have diligently and conscientiously endeavoured to carry out my Council functions and duties in good faith.
2. I have not been convicted of a criminal offence nor had a finding of official misconduct against me in relation to this matter.
3. I am / am not aware of any criminal, official misconduct or disciplinary proceedings being brought against me in relation to this matter. Include details if applicable.
4. I have attached a copy of any relevant documents (e.g. copies of publications, concerns notice, offer to make amends, cost estimate from legal representative etc).
5. I agree to provide any further information requested by the decision maker and to keep the decision maker informed of any change in circumstances which may affect my application.



I agree that any grant that I receive of legal assistance under this policy will be subject to any terms and conditions placed on the grant by the relevant decision maker as well as the terms and conditions of the Policy on the Provision of Legal Assistance for Councilors and Employees

Signature of councillor/employee: _____

Date: _____