

	<b>CENTRAL HIGHLANDS REGIONAL COUNCIL POLICY</b>	
	Investigations – Councillors Conduct	<b>POLICY REF NO</b> CHRCP: 0046

## 1.0 Policy Purpose

- 1.1. The purpose of this policy is to determine how the inappropriate conduct of Councillors will be dealt with as required by the section 150AE of the *Local Government Act 2009* (the LGA). However, this policy does not relate to more serious Councillor conduct.
- 1.2. This investigation policy applies to investigations and determinations of a complaint about the alleged inappropriate conduct of a Councillor(s) which has been referred by the Independent Assessor.

## 2.0 Confidentiality

- 2.1. Matters of suspected inappropriate conduct of a Councillor are confidential except as otherwise specifically provided for either in the LGA or this investigation policy.

*Note: it must be kept in mind that the matter is an allegation only and not yet proven. Further, there will be circumstances where the detail of the referral will need to remain confidential to the Local Government. Any release of confidential information that a Councillor knows, or should reasonably know, to be confidential to the local government may be contrary to section 171(3) of the LGA and dealt with as misconduct.*

## 3.0 Natural Justice

- 3.1. Any investigation of suspected inappropriate conduct of a Councillor(s) must be carried out in accordance with natural justice. An overview of the principles of natural justice follows.
- 3.2. “Natural justice” or procedural fairness, refers to three key principles:
  - 3.2.1. The person being investigated has a chance to have his or her say before adverse formal findings are made and before any adverse action is taken (fair hearing)
  - 3.2.2. The investigator(s) should be objective and impartial (absence of bias), and
  - 3.2.3. Any action taken is based on evidence (not suspicion or speculation).
- 3.3. A fair hearing means the Councillor who is the subject of the suspected inappropriate conduct matter must be told of the case against them including any evidence and be provided with an opportunity to put their case in writing with the investigation report provided to the Councillors as part of the meeting agenda.
- 3.4. 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.
- 3.5. Ensuring decisions are based on evidence requires that the investigation should not be based on mere speculation or suspicion but instead be based upon evidence material. A proper examination of all issues means the investigation must give a proper and genuine consideration to each party’s case.

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#### 4.0 Assessor's referral

- 4.1. The council will receive from the assessor a referral notice about the suspected inappropriate conduct of a Councillor(s). The referral will include details of the conduct and any complaint received about the conduct, state why the assessor reasonably suspects that the Councillor has engaged in inappropriate conduct, and include information about the facts and circumstances that form the basis of the assessor's reasonable suspicion.
- 4.2. The referral notice may be accompanied by a recommendation from the assessor about how the local government may investigate or deal with the conduct. The recommendation of the assessor may be inconsistent with this policy.
- 4.3. The investigation must be conducted in a way consistent with:
  - 4.3.1. any recommendation of the assessor
  - 4.3.2. to the extent that this policy is not inconsistent with the recommendation of the assessor - this investigation policy, or
  - 4.3.3. in another way the local government decides by resolution.
- 4.4. A resolution under subsection (4.3.3) must state that the decision and the reasons for the decision.

#### 5.0 Receipt of Assessor's referral

- 5.1. On receipt of a referral notice about the suspected inappropriate conduct of a Councillor(s) from the assessor, Council's Chief Executive Officer will forward a copy of that referral notice to the Mayor and all Councillors, other than the Councillor who is the subject of the complaint, or the complainant if the complainant is a Councillor, as a confidential document.
- 5.2. Should the Mayor or a Councillor(s) disagree with any recommendation accompanying the assessor's referral notice, or form the opinion that the complaint should be dealt with in a way other than under this policy, the Mayor or Councillor(s) may request the matter be placed on the agenda of the next General Council Meeting for the Council to decide, by resolution, the appropriate process to investigate the complaint. Such request must be made in accordance with the Council's meeting procedure requirements.

#### 6.0 Investigator

- 6.1. Unless otherwise resolved by Council, the Mayor will manage investigation of suspected inappropriate conduct of other Councillors.
- 6.2. If the suspected inappropriate conduct involves conduct where, in the circumstances, the Mayor believes it is in the best interests of the investigation to refer the matter for external investigation, then the Chief Executive Officer must refer the suspected inappropriate conduct to the president of the Councillor Conduct Tribunal(the Tribunal) or other entity to investigate and make recommendations to Council about dealing with the conduct.
- 6.3. If the suspected inappropriate conduct involves an allegation about the conduct of the Mayor or the Mayor as a complainant, then the Chief Executive Officer may refer the suspected inappropriate conduct to the president of the Tribunal, or another entity, to investigate and make recommendations to the Council about dealing with the conduct.

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## 7.0 Early resolution

- 7.1. Before beginning an investigation, the investigator should consider whether the matter is appropriate for resolution prior to the investigation. This consideration includes any recommendation made by the Assessor.
- 7.2. A matter is only appropriate for early resolution if the parties to the matter both voluntarily agree to explore early resolution. The investigator may engage an independent person with suitable qualifications or experience to facilitate this process.
- 7.3. If the matter cannot be resolved, the matter will then be investigated as outlined in this investigation policy.
- 7.4. If the matter is resolved prior to investigation, the investigator will advise the Chief Executive Officer of this outcome. In turn, the Chief Executive Officer will advise the Mayor (if the Mayor is not the investigator) and all Councillors that the matter has been resolved. The Chief Executive Officer will also update the Councillor Conduct Register to reflect this.

## 8.0 Timeliness

- 8.1. The investigator will make all reasonable endeavours to complete the investigation and provide a report for inclusion on the agenda of a Council meeting not more than eight weeks after the receipt of the complaint.

*Note: if the investigator is of the opinion that it may take longer than eight weeks to complete the investigation, the matter should be raised with the Mayor (if the Mayor is not the investigator) to seek an extension of time.*

## 9.0 Assistance for investigator

- 9.1. If the Mayor, or another Councillor is appointed by Council resolution, is the investigator of a matter of suspected inappropriate conduct, the Mayor or Councillor may use section 170A of the LGA to seek assistance during the investigation.
- 9.2. The Mayor is authorised by Council to expend money as reasonably needed to engage contractors in accordance with the Council's procurement policy.

## 10.0 Possible misconduct or corrupt conduct

- 10.1. If during the course of an investigation the investigator obtains information which indicates a Councillor(s) may have engaged in misconduct, the investigator must cease the investigation and advise the Chief Executive Officer. The Chief Executive Officer will then notify the assessor of the possible misconduct.
- 10.2. If during the course of an investigation, the investigator obtains information which indicates a Councillor(s) may have engaged in corrupt conduct, the investigator must cease the investigation and advise the Chief Executive Officer. The Chief Executive Officer will then notify the Crime and Corruption Commission of the possible corrupt conduct.
- 10.3. Instance of suspected misconduct or corrupt conduct may be referred back to the Council if determined by the Assessor or Crime and Corruption Commission to be inappropriate conduct.

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## Completion of investigation

### 11.0 Expenses

11.1. Council must pay any reasonable expenses of Council associated with the investigation of suspected inappropriate conduct of a Councillor including any costs of:

- 11.1.1. the president of the Tribunal in undertaking an investigation for Council;
- 11.1.2. an independent investigator engaged on behalf of, or by the Tribunal;
- 11.1.3. an independent investigator engaged on behalf of, or by the local government;
- 11.1.4. travel where the investigator needed to travel to undertake the investigation, or to interview witnesses;
- 11.1.5. seeking legal advice; and
- 11.1.6. engaging an expert.

*Note: Council may order the subject Councillor reimburse it for all or some of the costs arising from the Councillor's inappropriate conduct. Any costs incurred by complainants or the subject Councillors will not be met by Council.*

<b>Strategic Link</b>	Local Government Act 2009 (Qld) Local Government Regulation 2012 (Qld)
<b>Category</b>	Elected Members
<b>Lead Business Unit</b>	Governance
<b>Public Consultation</b>	No
<b>Adoption Date</b>	16 June 2021
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<b>Related Documents</b>	Standing Orders for Council Meetings Councillor Code of Conduct Policy

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