

Councillor Conduct Investigations

Endorsed by Council

27 November 2024

1. Purpose

- 1.1 Council is committed to ensuring a statutory complaints process for dealing with complaints relating to alleged conduct breach by a Councillor.
- 1.2 This is Council's investigation policy for how complaints about suspected conduct breach by Councillors should be dealt with as required by section 150AE(1) of the *Local Government Act 2009 (Qld)*.

2. Scope

- 2.1 This policy applies to investigations and determinations by Council about a suspected Councillor conduct breach, which has been referred by the Office of the Independent Assessor. This policy:
 - 2.1.1 includes a procedure for investigating the suspected conduct breaches of councillors (see Addendum 2 – Investigation Standards);
 - 2.1.2 states the circumstances in which another entity may investigate the conduct;
 - 2.1.3 is consistent with the principles of natural justice;
 - 2.1.4 requires Council to prepare a report about each investigation (see Addendum 1 - report template and summary report template);
 - 2.1.5 requires a notice about the outcome of investigations be provided to the Independent Assessor, councillor and persons who made complaint about the councillors' conduct; and
 - 2.1.6 includes a procedure about when Council may decide not to start, or to discontinue, an investigation under section 150AEA of the LGA.
- 2.2 This policy requires Council:
 - 2.2.1 to give the Subject Councillor information about the suspected conduct, including details about the evidence of the conduct; and
 - 2.2.2 to give the Subject Councillor a notice if an investigation is not started or is discontinued; and
 - 2.2.3 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
 - 2.2.4 to give the Subject Councillor the preliminary findings of the investigation before preparing an investigation report about the investigation (see Addendum 3 – Statement of Preliminary Findings Template); and

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- 2.2.5 to allow the Subject Councillor to give evidence or a written submission to the local government about the suspected conduct and preliminary findings; and
- 2.2.6 to consider any evidence and written submission given by the relevant councillor in preparing the investigation report for the investigation; and
- 2.2.7 to include in the investigation report:
 - 2.2.7.1 if evidence if given by the Subject Councillor – a summary of the evidence; and
 - 2.2.7.2 if the Subject Councillor gives a written submission – a full copy of the written submission.

3. Out of Scope

- 3.1 This Policy does not relate to more serious councillor conduct, such as misconduct or corrupt conduct, which are dealt with under separate legislative provisions.
- 3.2 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.

4. Policy Statement

- 4.1 Chapter 5A of the LGA prescribes the councillor conduct management system. Section 150CT of the LGA establishes an Independent Assessor to carry out certain functions including the preliminary assessment, dismissal, referral, or investigation of complaints about councillor conduct.
- 4.2 After undertaking a preliminary assessment of a councillor conduct complaint, if the Independent Assessor reasonably suspects a councillor has engaged in a conduct breach, the Independent Assessor may decide to refer a suspected conduct breach to Council to deal with under section 150SD(4)(a) or 150W(b) of the LGA.
- 4.3 Upon receipt of a referral notice of a complaint of suspected conduct breach, Council must deal with the Subject 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.
- 4.4 Council may decide not to start or discontinue the investigation in accordance with section 150AEA of the LGA.

5. Process

Commencing Investigation

Independent Assessor's referral

- 5.1 If Council receive a notice ('referral notice') from the Independent Assessor about the suspected conduct breach of a councillor (LGA s 150AC). The referral notice will:
 - 5.1.1 include details of the conduct and any complaint received about the conduct;
 - 5.1.2 state why the Independent Assessor reasonably suspects that the Subject Councillor has engaged in a conduct breach; and
 - 5.1.3 include information about the facts and circumstances that form the basis of the Independent Assessor's reasonable suspicion.
- 5.2 The Independent Assessor must also give a notice to the Subject Councillor that states the Subject Councillor's conduct has been referred to Council to deal with, and a copy of the referral notice must be attached.
- 5.3 On receipt of a referral notice, the CEO will forward a copy of that referral notice to the Mayor and all councillors, including the Subject Councillor, as a confidential document.

Not starting or discontinuing an investigation

- 5.4 Pursuant to section 150AEA of the LGA, Council may decide to not start an investigation, or discontinue an investigation if:
 - 5.4.1 the complaint is withdrawn by the complainant;
 - 5.4.2 the complainant consents to the investigation not starting or being discontinued, (for example, the matter has been resolved and it is unnecessary for the local government to investigate the matter);
 - 5.4.3 there is insufficient information to investigate the conduct;
 - 5.4.4 the complainant refuses to cooperate by providing additional information during the investigation phase and not enough information is available to proceed; or
 - 5.4.5 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.
- 5.5 If there are circumstances for considering not starting or discontinuing an investigation, the matter will be placed on the agenda for the next Ordinary Council Meeting. Council may decide by resolution to not start, or to discontinue, a suspected conduct breach matter. The resolution must state the decision and the reasons for the decision.

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[Note: *The matters not started or discontinued must be reported in the annual report (including the reasons) and recorded in councillor conduct register*].

Investigator

- 5.6 The Mayor will manage the investigation process and may either undertake the investigation, or engage a suitably qualified external investigator.
- 5.7 The Mayor is authorised by council to expend money as reasonably needed to engage contractors in accordance with the council's procurement policy.
- 5.8 The Investigator will investigate the suspected conduct breach and prepare an investigation report that includes:
 - 5.8.1 an opinion on whether the Subject Councillor engaged in a conduct breach; and
 - 5.8.2 recommendations on how the conduct breach ought to be dealt with.
- 5.9 The investigation should be conducted in a way that is consistent with this Investigation Policy.

Investigation Process

Investigation

- 5.10 During the course of the investigation, the Investigator should follow the investigation standards of the local government (see Addendum 2– Investigation Standards).
- 5.11 After having assessed the complaint, the Investigator should prepare a Preliminary Statement of Findings.

[Note: *See Addendum 3 - Statement of Preliminary Findings Template.*]

- 5.12 The Investigator should:
 - 5.12.1 give the Preliminary Statement of Findings to the Subject Councillor before finalising the Investigation Report;
 - 5.12.2 allow the Subject Councillor the opportunity to response to the Preliminary Statement of Findings by providing evidence or submissions (orally or in writing) about the findings contained in the Preliminary Statement of Findings;
 - 5.12.3 consider any evidence or submission given by the Subject Councillor in finalising the investigation report; and
 - 5.12.4 include a summary of the Subject Councillor's evidence and a full copy of any written submission in the investigation report.
- 5.13 Once the investigation is finalised the Investigator will prepare a report (Investigation Report) for Council which includes the following details:

- 5.13.1 any witnesses interviewed;
- 5.13.2 documents or other evidence obtained;
- 5.13.3 a statement of the relevant facts ascertained;
- 5.13.4 confirmation that the Subject Councillor has been provided with an opportunity to respond to the complaint and the evidence compiled;
- 5.13.5 the investigation findings;
- 5.13.6 a statement of any relevant previous disciplinary history of the Subject Councillor;
- 5.13.7 any recommendations about dealing with the conduct; and
- 5.13.8 a record of the investigation costs.

[Note: see Addendum 1 – Report Template.]

Completion of investigation – Findings and recommendations

Summary Investigation Report

- 5.14 Upon receipt of an Investigation Report, a Summary Investigation Report should be prepared by Council.
- 5.15 The Summary Investigation Report:
 - 5.15.1 should include:
 - 5.15.1.1 the name of the Subject Councillor;
 - 5.15.1.2 a description of the alleged conduct;
 - 5.15.1.3 a statement of the facts established by the investigation;
 - 5.15.1.4 a description of how natural justice was afforded to the Subject Councillor during the conduct of the investigation;
 - 5.15.1.5 a summary of the findings of the investigation; and
 - 5.15.1.6 any recommendations made by the Investigator;
 - 5.15.2 should not include:
 - 5.15.2.1 the name of the person who made the complaint of a conduct breach, or any information that could reasonably be expected to result in identifying that person; or
 - 5.15.2.2 the name of any person who provided information to the Investigator as part of the investigation, or any information that could reasonably be expected to result in identifying that person; or

5.15.2.3 any other information that Council is entitled or required to keep confidential under a law; and

5.15.3 must be made publicly available pursuant to section 150AFA(3)(b) of the LGA and associated regulation.

Making a decision about the investigation

5.16 Council should decide whether the Subject Councillor has engaged in a conduct breach.

5.17 In deciding whether the Subject Councillor has engaged in a conduct breach, Council should have regard to the Investigation Report.

5.18 A Council meeting may be closed under section 254J(j) of the LGR to consider the Investigation Report (but not make any resolutions in relation to the alleged conduct breach).

5.19 If Council decides the Subject Councillor has engaged in a conduct breach, Council should decide what, if any, action it will take under section 150AH of the LGA to discipline the Subject Councillor.

Disciplinary action against Councillors

5.20 If Council decides the Subject Councillor has engaged in a conduct breach, any of the following orders may be imposed:

5.20.1 an order that no action be taken against the councillor; or

5.20.2 an order that the Subject Councillor must undertake action in accordance with section 150AH(1)(b) of the LGA.

5.21 When deciding what action to take, Council may consider:

5.21.1 any previous conduct breach of the Subject Councillor; and

5.21.2 any allegation made in the investigation that was admitted or not challenged and that Council is reasonably satisfied is true.

[Note: For further information refer to Addendum 4 - Conduct Breach Disciplinary Action Guideline].

Release of Investigation Report

5.22 After making a decision about the conduct breach, Council should make the Investigation Report publicly available:

5.22.1 if the decision is made at a local government meeting—on or before the day and time prescribed by the LGR; or

5.22.2 otherwise—within 10 business days after the decision is made.

5.23 The following information contained in the Investigation Report shall not be publicly released:

- 5.23.1 the name of the person who made the complaint of a conduct breach, or any information that could reasonably be expected to result in identifying that person, unless the complainant was a councillor or CEO of Council and the persons identify as the complainant was disclosed at the Council meeting at which the Investigation Report was considered; or
- 5.23.2 the name of any person who provided information to the Investigator as part of the investigation, or any information that could reasonably be expected to result in identifying that person;
- 5.23.3 the submission or affidavit of, or a record or transcript of information provided orally by, a person who provided information to the Investigator as part of the investigation, including, for example, a transcript of an interview; or
- 5.23.4 any other information that Council is entitled or required to keep confidential under a law.

5.24 If the complainant was a councillor or the CEO of Council and that person's identify was disclosed at the Council meeting at which the Investigation Report was considered, the publicly released report should contain that information.

Notice about the outcome of the investigation

5.25 After an investigation is finalised, (either by not starting or discontinuing, or by Council deciding the outcome of the investigation) Council should give a notice about the outcome of the investigation to:

- 5.25.1 the Independent Assessor;
- 5.25.2 the person who made the complaint about the Subject Councillor's conduct that was the subject of the investigation; and
- 5.25.3 the Subject Councillor.

5.26 The notice should state:

- 5.26.1 the decision; and
- 5.26.2 the reasons for the decision; and
- 5.26.3 if an order is made under section 150AH of the LGA—details about the order.

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Miscellaneous

Conflicts of Interest

- 5.27 The Subject Councillor 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 LGA.
- 5.28 If the Mayor has a conflict of interest in the matter, the Mayor's powers to manage the investigation may be delegated to the Deputy Mayor, or if the Deputy Mayor is conflicted, another Councillor or the CEO.
- 5.29 Where a Council meeting loses quorum due to conflicts of interest of councillors, then the conduct matter may be delegated to:
- 5.29.1 the Mayor; or
 - 5.29.2 if the Mayor is also conflicted, a standing committee constituted to make a decision.
- 5.30 If informed of suspected corrupt conduct, the CEO must give the information to the Crime and Corruption Commission and the Independent Assessor.

[Note: Corrupt conduct may also be misconduct and should be treated as such. The CEO has obligations to report suspected corrupt conduct under the Crime and Corruption Act 2001 (Qld)]

Misconduct or Corrupt Conduct

- 5.31 If during the investigation of the Subject Councillor, the Investigator obtains information indicating the Subject Councillor may have engaged in misconduct, the Mayor and the CEO must be informed and the investigation must cease.
- 5.32 If informed of suspected misconduct, the CEO must give the information to the Independent Assessor.

[Note: See LGA s 150AF]

- 5.33 If during the investigation of the Subject Councillor, the Investigator obtains information indicating the Subject Councillor may have engaged in corrupt conduct, the Mayor and the CEO must be informed and the investigation must cease.

Inconsistent Decisions

- 5.34 If Council makes a decision that is not consistent with the recommendation of the Investigation Report, the reasons for the decision should be recorded in the minutes of the meeting. The minutes should give sufficient information to demonstrate the logic that has been applied to justify a decision not to follow the recommendation of the Investigation Report.

Councillor conduct register

5.35 The CEO must ensure the following decisions are entered into Council's councillor conduct register:

- 5.35.1 any orders under section 150AH of the LGA made about suspected conduct breach of a councillor; and
- 5.35.2 any decision to not start, or to discontinue an investigation of suspected conduct breach under section 150AEA of the LGA.

6. Guiding Principles

Confidentiality

- 6.1 Matters relating to the investigation of a suspected conduct breach are confidential to Council during the investigation period except as otherwise prescribed in this policy.

Natural justice

- 6.2 Any investigation of suspected conduct breach by a councillor should be carried out in accordance with natural justice. Natural justice or procedural fairness refers to three key principles:
 - 6.2.1 that the councillor who is the subject of the suspected conduct breach matter has a chance to have his or her say in an informed manner before adverse formal findings are made and before any adverse action is taken (i.e., fair hearing);
 - 6.2.2 that the investigator should be objective and impartial (i.e., absence of bias); and
 - 6.2.3 that any actions taken, or decisions made are based on evidence rather than speculation or suspicion (i.e., acting on evidence).
- 6.3 A fair hearing means the councillor who is the subject of the suspected conduct breach matter will know the case put against them, and be provided with an opportunity to put their case in response. This includes receive information about the alleged conduct breach, including the preliminary findings of the investigation any other material information.
- 6.4 An absence of bias means that any investigation should not be biased or be seen to be biased in any way. This principle embodies the concept of impartiality.
- 6.5 Acting on evidence means making decisions and acting on the material available without speculation. Acting on evidence also includes:
 - 6.5.1 giving proper and genuine consideration to each party's case;
 - 6.5.2 considering all the relevant material; and

6.5.3 not considering irrelevant material.

[Note: *It must be kept in mind that the matter when referred, is suspected, and not yet proven*].

Standard of Proof

- 6.6 The civil standard of proof is applied by the Investigator when forming a view on whether a councillor has engaged in a conduct breach. The relevant 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 decision maker is reasonably satisfied that its existence is more probable than not.

Timeliness

- 6.7 The councillor conduct framework should 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 a Council meeting within eight weeks of commencing the investigation, after the receipt of the complaint from the Independent Assessor.
- 6.8 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.
- 6.9 Delay in procuring an investigator to undertake the investigation should be avoided.

Expenses

- 6.10 Council will pay the expenses associated with the investigation of suspected conduct breach including any costs of:
- 6.10.1 the Investigator;
 - 6.10.2 travel where the Investigator needed to travel to undertake the investigation, or to interview witnesses; and
 - 6.10.3 obtaining legal or expert advice.
- 6.11 Pursuant to section 150AH(b)(vii) of the LGA, 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.
- 6.12 Any costs incurred by complainants or the subject councillor will not be met by Council.
- 6.13 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.

7. Related Policies and Legislation

Legislation:

Local Government Act 2009 (LGA)

Local Government Regulation 2012 (LGR)

Crime and Corruption Act 2001

Public Interest Disclosure Act 2010 (PIDA)

Public Sector Ethics Act 1994 (PSEA)

Policies:

General Complaints Management Policy

Administrative Action Complaints Management Policy

Information Management Policy

Code of Conduct for Councillors in Queensland

Council Standing Orders (Meetings)

8. Definitions

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.

CEO means the Chief Executive Officer of council.

Conduct includes—

- (a) failing to act; and
- (b) a conspiracy, or attempt, to engage in conduct.

Corrupt Conduct has the meaning given by the *Crime and Corruption Act 2001* (Qld).

Council means Whitsunday Regional Council.

Councillor means the elected representatives who hold (current) office with Council, including the Mayor.

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.

Independent Assessor means the Independent Assessor appointed under section 150CT of the LGA.

Investigation Report means a report provided by the Investigator to Council detailing the outcome of the investigation.

Investigation Policy refers to this policy, as required by section 150AE of the LGA.

STRATEGIC POLICY

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Investigator means the person responsible under this investigation policy for carrying out the investigation of the suspected conduct breach of a councillor, being either the Mayor or an external investigator.

LGA means the *Local Government Act 2009* (Qld).

LGR means the *Local Government Regulation 2012* (Qld).

Misconduct has the meaning given by the LGA.

Preliminary Statement of Findings means the preliminary report given to the Subject Councillor prior to finalisation of the Investigation Report to afford the Subject Councillor an opportunity to respond to the allegations against them.

Referral Notice means a notice from the Independent Assessor under section 150AC of the LGA.

Subject Councillor means a Councillor the subject of a conduct breach complaint.

Summary Investigation Report means a summary of the Investigation Report prepared before Council decides the outcome of a conduct breach complaint.

Unsuitable Meeting Conduct has the meaning given by the LGA.

COUNCIL POLICY

Date Adopted by Council	27 November 2024	Council Resolution	OM2024/11/27.9
Effective Date	27 November 2024	Next Review Date	November 2025
Responsible Officer(s)	Manager Governance and Administration	Revokes	LSP_OMCEO_11
Public Consultation: Yes / No	No		

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Addendum 1

Conduct Breach Complaint Investigation and Recommendation Report to Whitsunday Regional Council

Reference number:

Date received from council:

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)

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*)

The subject councillor

Name (Reference level of experience as a councillor and any past disciplinary history including for like matters)

Conflict of interest considerations

(Declaration of any conflict of interest or 'no conflict of interest' by the investigator)

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.

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.

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[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].

Recommendation to council

Recommendations made by the investigator who investigated the conduct.

It is recommended that:

- a) This report be submitted to the Whitsunday Regional Council 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 Whitsunday Regional 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:

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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.

Addendum 2

Investigation Standards

The investigation shall be managed in a consistent manner. Documentation shall be contained in an efficient records management system. Confidential information must be secured appropriately.

Case Management file

The investigation shall be supported by a recognised case management tool so that emails, letters, statements, and evidence can be stored and secured confidentially. File notes shall 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.

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 shall 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:

- i. Research the legislation and policy framework thoroughly.
- ii. Identify lines of inquiry and record them as a file note in case file management system.
- iii. Present all the evidence the councillor provides or gives in a written statement.
- iv. Gather further evidence (for example, from interviewing other witnesses, obtaining documents, or carrying out site inspections) when necessary.
- v. 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.
- vi. Undertake a proper and impartial examination of the evidence gathered, including expert advice and analysis and / or legal advice if required.

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- vii. Draw conclusions based on the evidence and applying the appropriate legislative and policy frameworks.

Prepare an investigation report

Prepare the investigation report for the local government to consider on the template attached (**Addendum 1**).

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 shall 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.

Addendum 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:

Addendum 4

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.

What is a conduct breach?

According to section 150K of the *Local Government Act 2009* (LGA), a conduct breach occurs when a councillor:

- i. breaches a behavioural standard (Code of Conduct for Councillors in Queensland);
- ii. breaches a council policy, procedure, or resolution;
- iii. 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;
- iv. 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.

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:

- i. whether or not the councillor has engaged in a conduct breach; and
- ii. 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.

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:

- i. An order that no action be taken against the councillor;
- ii. An order that the councillor make a public apology, in the way decided by the local government, for the conduct;

- iii. An order reprimanding the councillor for the conduct;
- iv. An order that the councillor attend training or counselling addressing the councillor's conduct including at the councillor's expense;
- v. An order that the councillor be excluded from a stated local government meeting
- vi. An order that the councillor is removed or must resign from a position representing the local government other than the office of councillor;
- vii. An order that if the councillor engages in the same type of conduct again, it will be treated as misconduct;
- viii. An order that the councillor reimburse the local government for all or some of the costs arising from the councillor's conduct breach.

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:

- i. Any previous conduct breach of the councillor;
- ii. Any allegation made in the investigation that-
 - a. was admitted, or was not challenged; and
 - b. the local government is reasonably satisfied is true.

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 table on the following page 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 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 for the councillor to make a public apology in the way decided by the local government, 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.