

## AP247 COUNCILLOR CONDUCT ASSESSMENT AND INVESTIGATION POLICY

### OVERVIEW

This is Council's assessment and investigation policy which details how complaints about the Inappropriate Conduct of Councillors are dealt with as required by the *Local Government Act 2009* (the LGA) and the requirements of the *City of Brisbane Act 2010* (CoBA).

### APPLICABILITY

This policy applies to all investigations and determinations of a complaint about suspected Inappropriate Conduct of a Councillor, which has been referred to Council by the Assessor.

### LEGISLATION

*Local Government Act 2009*

*City of Brisbane Act 2010*

### DEFINITIONS

*Assessor* means the Independent Assessor appointed under the LGA.

*Conduct* has the same meaning as set out in the LGA.

*Corrupt Conduct* has the same meaning as set out in the *Crime and Corruption Act 2001*.

*Councillor Conduct Register* means the register required to be kept by Council as set out in the LGA.

*Council official* means a Councillor or the Chief Executive Officer, as set out in CoBA.

*Inappropriate Conduct* has the same meaning as set out in the LGA.

*Local Law* means the *Meetings Local Law 2001*, as amended or replaced from time to time.

*Misconduct* has the same meaning as set out in the LGA.

*Referral Notice* has the same meaning as set out in the LGA.

*Tribunal* means the independent Councillor Conduct Tribunal established under the LGA.

*Unsuitable meeting conduct* has the same meaning as set out in the LGA.

### RESPONSIBILITIES

Tribunal

Disputes Commissioner, Governance, Council and Committee Services

Chief Executive Officer

Councillor Ethics Committee



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## Confidentiality

Matters of suspected Inappropriate Conduct of a Councillor are confidential except as otherwise specifically provided for either in the LGA or this policy.

*Note: It must be kept in mind that the matter is an allegation only and not yet proven. Further, there may be circumstances where the detail of the referral will need to remain confidential to Council. Any release of confidential information that a Councillor knows, or should reasonably know, to be confidential to Council may be contrary to CoBA and dealt with as Misconduct.*

## Natural Justice

Any investigation of suspected Inappropriate Conduct of a Councillor/s must be carried out in accordance with the principles of natural justice.

Natural justice or procedural fairness, refers to three key principles:

- 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)
- the investigator/s should be objective and impartial (absence of bias) and
- any action taken is based on evidence (not suspicion or speculation).

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.

Decisions based on evidence require that the investigation should not be based on mere speculation or suspicion but instead must be based upon evidence material.

A proper examination of all issues means the investigation must give a proper and genuine consideration to each party's case.

## POLICY

All Councillor conduct referrals to Council must adhere to the following.

### 1. Referral (other than from the Assessor)

If a Council official is made aware of a complaint about Councillor conduct (made either orally or in writing) or becomes aware of Inappropriate Conduct, the Council official must refer the matter to the Assessor.

*Note: A Council official must not give the notice vexatiously or other than in good faith.*

Council will take no further action in relation to the complaint unless the Assessor refers the complaint back to Council (outlined in 4. Referral from the Assessor for more information or investigation).

*Note: Unsuitable meeting conduct will not be referred to the Assessor, however Council may decide to investigate and determine what action, if any, may be taken.*

### 2. Referral from the Assessor for more information or investigation

In some instances, the Assessor will determine that more information is required from Council, or that Council should assess the complaint about a Councillor. In these instances, the CEO will receive from the Assessor a Referral Notice about the suspected Inappropriate Conduct of a Councillor/s (or previous Councillor). The Referral Notice will include:

- details of the suspected Inappropriate Conduct and any complaint received about the conduct
- why the Assessor reasonably suspects the Councillor has engaged in Inappropriate Conduct
- information about the facts and circumstances forming the basis for the Assessor's reasonable suspicion.

Additionally, the Referral Notice may include recommendations about how to assess/investigate the conduct (i.e. by another entity, by acquiring additional information, or via mediation).

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*Note: In all cases, Council will investigate in a way that is consistent with any recommendation of the Assessor and this policy, or, in another way Council decides by resolution (as outlined in section 3).*

On occasion, the Assessor may determine, following receipt of information about the conduct of a Councillor, that no further investigation or action is required by Council due to the complaint being frivolous or vexatious. In this case, the Assessor will advise Council of the outcome that no further action is required. Council will note the correspondence received from the Assessor and no further action will be taken.

### *3. Actions following receipt of referral*

If the Assessor reasonably suspects a Councillor has engaged in Inappropriate Conduct and decides to refer the conduct to the Council, the Assessor will notify the Council by giving a Referral Notice to the Council.

The CEO will forward a copy of the Referral Notice to the Lord Mayor and all Councillors as a confidential document and acknowledge receipt to the Assessor.

The Referral Notice will then be actioned in either of the following ways:

- (a) In the ordinary course and seven days after a copy of the Referral Notice is forwarded to the Lord Mayor and Councillors, the CEO will refer the matter to the President of the Tribunal to investigate and make recommendations to Council about dealing with the conduct.

The Tribunal will manage the assessment/investigation of suspected Inappropriate Conduct of Councillors.

The Tribunal will advise the CEO if the matter is resolved, either by resolution or withdrawal of the complaint. The CEO will then advise the Lord Mayor and all Councillors that the matter has been resolved, and the Councillor Conduct Register will be updated to reflect this.

- (b) The Lord Mayor and Councillors will be afforded a period to determine whether any disagreement or objection to any recommendation within the Assessor's Referral Notice is identified. Should the Lord Mayor or Councillor/s (other than the subject Councillor/s or complainant/s) disagree with any recommendation accompanying the Assessor's Referral Notice or form the opinion that the complaint should be dealt with in any way other than under this policy, the Lord Mayor or Councillor/s may require the matter be placed on the agenda of the next Council meeting to decide on the appropriate process to investigate the complaint. Any such request must be made in accordance with the Local Law and within seven days of being provided the Referral Notice (seven-day period).

### *4. Possible misconduct or corrupt conduct*

If during an investigation the Tribunal obtains information which indicates a Councillor/s may have engaged in misconduct, the Tribunal will advise the CEO. The CEO will refer the matter back to the Assessor as possible misconduct.

If during an investigation the Tribunal obtains information which indicates a Councillor/s may have engaged in alleged corrupt conduct, the Tribunal will advise the CEO. The CEO will then notify the Crime and Corruption Commission of the possible corrupt conduct. Instances of suspected corrupt conduct may be referred to the Tribunal if determined by the Crime and Corruption Commission to be Inappropriate Conduct.

### *5. Completion of investigation*

On completion of an investigation, the Tribunal will provide a report to the CEO outlining the investigation process, the investigation findings, and any recommendations about dealing with the conduct and a record of the investigation's costs.

The CEO will consider the findings and recommendations of the Tribunal's report and arrange, in consultation with the Chair of the Councillor Ethics Committee, a date, time and place for a committee meeting for the Councillor Ethics Committee. The Councillor Ethics Committee will consider the Tribunal

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Report and decide on whether a Councillor has engaged in Inappropriate Conduct and, if so, what disciplinary action will be taken under the LGA.

If during this process a Councillor is aggrieved by the outcome of the investigation, the Councillor may be entitled to apply for a judicial review of Council's decision or make a complaint to the Queensland Civil and Administrative Tribunal (QCAT).

*Note: Should Council decide to take action to discipline a Councillor for either Inappropriate Conduct on three occasions during a period of one year, or Council has previously made an order that a particular type of conduct engaged in by a Councillor will be dealt with as misconduct and there is reasonable suspicion that the Councillor has engaged in the same conduct, the CEO must give the Assessor a notice about the Councillor's conduct, and all information held by Council that relates to the conduct.*

#### 6. Notice about the outcome of investigation

After an investigation is finalised and the matter has been determined by the Councillor Ethics Committee, the CEO will give written notice about the outcome of the investigation to Councillors and the person who made the complaint.

A complainant is unable to appeal a decision made by Council, other than via a judicial review or via QCAT.

#### 7. Councillor conduct register

The CEO must ensure decisions about suspected Inappropriate Conduct of a Councillor/s are entered into the Councillor Conduct Register. Where a complaint has been resolved under section 3(a) of this policy, the CEO or a person with delegated responsibility will update the register to reflect that the complaint was withdrawn.

#### 8. Expenses

The payment of costs relating to an investigation is subject to normal budget and approval processes.

Council must pay any reasonable expenses associated with the early resolution or investigation of suspected Inappropriate Conduct of a Councillor including any costs of:

- the President of the Tribunal in undertaking an investigation for Council
- a mediator engaged under this policy
- a private investigator engaged on behalf of or by the Tribunal
- travel where the Tribunal is needed to travel to undertake the investigation or to interview witnesses
- seeking legal advice
- engaging an expert.

*Note: Costs incurred by a Councillor in responding to formal allegations of Inappropriate Conduct, including costs incurred in responding to a notice given to a Councillor by the Assessor, as outlined in the LGA, will be managed in accordance with current Council practice. Costs incurred by a Councillor arising from disciplinary action (as determined by Council in accordance with the LGA) will not be reimbursed.*

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