

## Investigations - Councillor Conduct Policy

<b>Policy Number:</b> BSC-049	<b>Version:</b> 1
<b>Classification:</b> Statutory	<b>Section:</b> Executive - Governance
<b>Date Approved:</b> 15 July 2020	<b>Resolution Number:</b> 2020.07.009
<b>Policy Replacement:</b>	<b>Review Note:</b> This policy is reviewed when any of the following occur: 1. The related information is amended or replaced. 2. Other circumstances as determined from time to time by the Chief Executive Officer.  Notwithstanding the above, this policy is to be reviewed at intervals of no more than twelve (12) months.
<b>Responsible Officer:</b> Chief Executive Officer	
<b>Legislation:</b> <a href="#">Crime and Corruption Act 2001</a> ; <a href="#">Local Government Act 2009</a> ; <a href="#">Ombudsman Act 2001</a> ; <a href="#">Public Interest Disclosure Act 2010</a> ; <a href="#">Public Records Act 2002</a> ; <a href="#">Public Sector Ethics Act 1994</a>	

### Purpose and Scope

The Barcoo Shire Council's investigation policy defines how complaints about 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.

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.

### Reference

Model Councillor Code of Conduct  
*Local Government Act 2009*

### Definitions

**Behavioural Standard** means a standard of behaviour for Councillors set out in the Code of Conduct approved under section 150E of the LGA.

**CEO** refers to Chief Executive Officer

**Conduct** includes –

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

**Council** refers to the Barcoo Shire Council

**Councillor Conduct Register** means the register required to be kept by Council as set out in section 150DX of the LGA.

**Inappropriate Conduct** see section 150K of the LGA

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

**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 Procedures** see section 150F of the LGA

**Natural Justice** – a set of principles to ensure fair and just decision making, including a fair hearing, an absence of bias, decisions based on evidence, and the proper examination of all issues.

**Referral Notice** see section 150AC of the LGA

**The Act** shall mean the *Local Government Act 2009* (as amended)

**The Regulation** shall mean the *Local Government Regulation 2012* (as amended)

**Tribunal** means the Councillor Conduct Tribunal as established under section 150DK of the LGA

**Unsuitable Meeting Conduct** see section 150H of the LGA

## **Policy Statement**

### **Confidentiality**

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.

### **Natural Justice**

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. “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).

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.

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 requires that the investigation should not be based on mere speculation or suspicion but instead must be based upon evidence material. A proper examination of all issues means the investigation must give proper and genuine consideration to each party’s case.

### **Assessor's referral**

The Council may receive from the Assessor a referral notice about the suspected inappropriate conduct of a Councillor/s. Council may also receive referrals directly.

### **Receipt of Assessor's referral**

On receipt of a referral notice about the suspected inappropriate conduct of a Councillor/s from the Assessor, the Council's CEO will forward a copy of that referral notice to the mayor and all Councillors as a confidential document.

Should the Mayor or a Councillor/s (other than the subject of the complaint or the complainant) 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 may request the matter be placed on the agenda of the next Council meeting to decide on the appropriate process to investigate the complaint. Such a request must be made in accordance with Council's meeting procedure requirements.

### **Investigator**

Unless otherwise resolved by Council, the Mayor will manage the investigation of suspected inappropriate conduct of other Councillors. If the suspected inappropriate conduct involves conduct that in the circumstances, the Mayor believes, it is in the best interests of the investigation to refer the matter for external investigation, then the CEO must refer the suspected inappropriate conduct to the President of the Tribunal to investigate and make recommendations to the Council about dealing with the conduct.

If the suspected inappropriate conduct involves:

- an allegation about the conduct of the Mayor, or
- the Mayor as the complainant, then
- the CEO must refer the suspected inappropriate conduct to the President of the Tribunal to investigate and make recommendations to the Council about dealing with the conduct.

### **Early resolution**

Before beginning an investigation, the investigator must consider whether the matter is appropriate for resolution prior to the investigation. This consideration includes any recommendation made by the Assessor. A matter is only appropriate for early resolution if the parties to the matter agree to explore early resolution. The investigator may engage an independent person with suitable qualifications or experience to facilitate this process. If the matter cannot be resolved, the matter will then be investigated as outlined in this investigation policy.

### **Timeliness**

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.

### **Assistance for investigator**

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

### **Possible misconduct or corrupt conduct**

If during 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 CEO. The CEO will then notify the Assessor of the possible misconduct.

If during 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 CEO. The CEO will then notify the Crime and Corruption Commission (CCC) of the possible corrupt conduct. Instance of suspected misconduct or corrupt conduct may be referred to the Council if determined by the Assessor or CCC to be inappropriate conduct.

### **Completion of investigation**

On the completion of an investigation, the investigator will provide a report to the Council outlining the investigation process, the investigation findings, any recommendations of the investigator's report and decide whether the Councillor has engaged in inappropriate conduct and, if so, what action it will take under section 150AH of the LGA. Provisions for internal and external review of decisions are set out in sections 150CO to 150CS of the LGA.

### **Notice about the outcome of investigation**

After an investigation is finalised, the Council must give notice about the outcome of the investigation to the person who made the complaint about the Councillor/s' conduct that was the subject of the investigation.

### **Councillor Conduct Register**

The CEO must ensure decisions about suspected inappropriate conduct of a Councillor/s must be entered into the Councillor Conduct Register. Where a complaint has been resolved under the 'Completion of investigation' section of this policy, the CEO will update the register to reflect that the complaint was withdrawn.

### **Expenses**

Council must pay any reasonable expenses of Council associated with the informal 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 investigation policy
- a private investigator engaged on behalf of or by the investigator
- travel where the investigator needed to travel to undertake the investigation or to interview witnesses
- seeking legal advice
- 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.

### **Policy Review**

This policy will be reviewed when any of the following occur:

1. As required by Legislation.
2. The related documents are amended or replaced.
3. Other circumstances as determined from time to time by a resolution of Council

Notwithstanding the above, this policy is to be reviewed at intervals of no more than four (4) years.

**Related Policies and Procedures**

*Complaints, Customer Requests & Feedback Policy*  
*Employee Code of Conduct*  
*Risk Management Policy*  
*Workplace Discrimination & Harassment Policy*  
*Public Interest Disclosure Policy and Procedures*