

Program:	Office of the Mayor and CEO
Date of Adoption:	26 October 2022
Resolution Number:	ORD-2022-308
Review Date:	26 October 2025

Scope

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.

However, this policy does not relate to the more serious categories of Councillor conduct (i.e. corrupt conduct and misconduct).

Objective

To outline how complaints about the inappropriate conduct of Councillor/s will be dealt with as required by the section 150AE of the *Local Government Act 2009* (the LGA).

Policy Statement

MRC is committed to meeting its statutory obligations in dealing with complaints relating to alleged inappropriate conduct of a Councillor.

MRC acknowledges the right of a person to lodge a complaint and is committed to upholding its duty of care by aiming to provide an effective process to all complaints received.

This process to remain in force until otherwise determined
by Mackay Regional Council

Contents

1.0	Principles	3
1.1	Confidentiality	3
1.2	Natural Justice	3
1.3	Assessor's Referral	3
1.4	Receipt of Assessor's Referral	4
1.5	Completion of Investigation	4
1.6	Early Resolution	4
1.7	Councillor Conduct Register	4
1.8	Expenses	5
2.0	Definitions	5
3.0	Review of Policy	7
4.0	Reference	7

1.0 Principles

1.1 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.)

1.2 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 a proper and genuine consideration to each party's case.

1.3 Assessor's Referral

All complaints about the conduct of a Councillor/s that MRC received directly must be submitted to the Assessor who will assess the complaint and determine the category of allegation.

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.

1.4 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 Chief Executive Officer will forward that referral notice to the President of the Councillor Conduct Tribunal ('the Investigator') to investigate.

1.5 Completion of Investigation

On the completion of the investigation the Investigator will provide a report to the Council outlining the investigation findings, any recommendations about dealing with the conduct and any record of the investigation costs.

The Council will consider the findings and recommendations of the Investigators 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.

1.6 Early Resolution

Prior to referral to the Investigator to investigate the Chief Executive Officer must consider whether the matter is appropriate for early 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.

If the matter is resolved prior to the referral to the Investigator the Chief Executive Officer will advise the Mayor and all Councillors that the matter has been resolved. The Chief Executive Officer will also update the Councillor Conduct Register to reflect this.

1.7 Councillor Conduct Register

The Chief Executive Officer of the respective Council 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 paragraph 1.6 of this policy, the Chief Executive Officer will update the register to reflect that the complaint was withdrawn.

1.8 Expenses

Council must pay any reasonable expenses of Council associated with the informal early resolution or investigation of suspected inappropriate conduct of a Councillor.

(Note: Council may order the subject Councillor reimburse it for all or some of the costs arising from the Councillor's inappropriate conduct.)

Payment of incurred costs by the subject Councillor will be considered in accordance with the Legal Assistance for Councillors and Employees Policy.

2.0 Definitions

To assist in interpretation the following definitions shall apply:

Assessor shall mean means the Independent Assessor appointed under section 150CV of the LGA.

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

Conduct shall include—

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

Corrupt Conduct has the same meaning as 'corrupt conduct' under the *Crime and Corruption Act 2001* being conduct of a person, regardless of whether the person holds or held an appointment, that:

- (a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of –
 - (i) a unit of public administration; or
 - (ii) a person holding an appointment; and
- (b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that –
 - (i) is not honest or is not impartial; or
 - (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or

- (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment.
- (c) is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and
- (d) would, if proved, be –
 - (i) a criminal offence; or
 - (ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

Corrupt conduct may include, but is not limited to:

- (a) abuse of public office;
- (b) bribery, including bribery relating to an election;
- (c) extortion;
- (d) obtaining or offering a secret commission;
- (e) fraud;
- (f) stealing;
- (g) forgery;
- (h) perverting the course of justice;
- (i) an offence relating to an electoral donation;
- (j) loss of revenue of the State;
- (l) homicide, serious assault or assault occasioning bodily harm or grievous bodily harm;
- (m) obtaining a financial benefit from procuring prostitution or from unlawful prostitution engaged in by another person;
- (n) illegal drug trafficking;
- (o) illegal gambling.

Councillor conduct register shall mean the register required to be kept by Council as set out in section 150DX of the LGA.

Council shall mean the Mayor and Councillors of Mackay Regional Council.

Councillor shall mean the Mayor or a Councillor of Mackay Regional Council.

Inappropriate conduct see section 150K of the LGA.

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

Investigator shall mean the Councillor Conduct Tribunal **see Tribunal below**.

LGA shall mean the *Local Government Act 2009*.

Local government meeting shall mean a meeting of—

- (a) a local government; or
- (b) a committee of a local government.

Misconduct see section 150L of the LGA.

Model procedures shall mean the procedures to ensure the Local Government principles are reflected in the conduct of Council Meetings (including committee Meetings) as required by section 150F of the LGA.

MRC shall mean Mackay Regional Council.

Natural justice shall mean 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.

Tribunal shall mean the Councillor Conduct Tribunal as established under section 150DK of the LGA.

Unsuitable meeting conduct see section 150H of the LGA.

3.0 Review of Policy

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

- The related documents are amended or replaced.
- 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 three (3) years.

4.0 Reference

- *Local Government Act 2009*

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New Policy		Council	13.02.19
2	Review	Amendments	Council	26.10.22