

INVESTIGATIONS COUNCILLOR CONDUCT POLICY

SCOPE

This investigation policy applies to investigations and determinations by Council about the suspected conduct breach of a Councillor/s including a Mayor, which has been referred by the Independent Assessor. However, this policy does not relate to more serious Councillor conduct.

LEGISLATION

Local Government Act 2009 (LGA)
Local Government Regulation 2012 (LGR)
Crime and Corruption Act 2001
Public Interest Disclosure Act 2010
Public Sector Ethics Act 1994

OBJECTIVE

To manage complaints about the conduct breach of Councillors as required by section 150AE of the *Local Government Act 2009*.

DEFINITIONS

Assessor	means the Independent Assessor appointed under section 150CT of the LGA,
Behavioural standard	means a standard of behaviour for Councillors set out in the Code of Conduct approved under section 150D and 150E of the LGA conduct includes - (a) failing to act; and (b) a conspiracy, or attempt, to engage in conduct
Council	means Banana Shire Council
Councillor conduct register	means the register required to be kept by Council as set out in section 150DX and 150DY of the LGA.
Conduct	includes: (a) failing to act; and (b) a conspiracy, or attempt, to engage in conduct.
Conduct Breach	see section 150K of the LGA.
Investigation policy	Refer to this policy, as required by section 150AE of the LGA.

Investigator	means the person responsible under this investigation policy for carrying out the investigation of the suspected conduct breach of a Councillor or Mayor.
Summary of investigation report	means a summary of the full investigation report prepared before making a decision about the outcome of the investigation that must be publicly available on or before the day prescribed by regulation.
Investigation report	means a report provided by the investigator to the local government that must be publicly available within 10 business days after the local government makes a decision about the outcome of the investigation.
LGA	means the <i>Local Government Act 2009</i>
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 meeting 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 150AB, AC and AD of the LGA.
Tribunal	means the Councillor Conduct Tribunal as established under section 150DK of the LGA.
Unsuitable meeting conduct	see section 150H of the LGA.

POLICY

1. Confidentiality

Matters relating to the investigation of suspected conduct breach of a Councillor/s 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 details 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.

Once the conduct is investigated and an investigation report is received, a summary of the investigation report must be made publicly available before any discussion is undertaken by Council. The published summary report must not contain any names or identifying information about the complainant and persons who were interviewed or a transcript of interview, or provided a statement or affidavit, unless

the complainant is a Councillor or Chief Executive Officer, whose identity was disclosed at the meeting at which the investigation report was considered.

Once the matter has been investigated and a report has been provided to Council, the matter will be placed on the Council meeting agenda and the investigation report and any recommendations of the investigator may be debated in the Council meeting, which may be in a closed session under section 254J(3)(j) of the LGR. At this point, the summary investigation report is not treated as confidential as it must be publicly available and attached to the agenda documents that are circulated before the meeting.

A final decision by resolution of the Council in an open Council meeting must take place when the decision is made about whether a Councillor engaged in a conduct breach and if so any decision about orders that are made under section 150AH of the LGA. Any decision that is not consistent with the recommendation of the investigation report must state in the meeting minutes, the reasons for the decision. The minutes must give sufficient information to demonstrate the logic that has been applied to justify the decision not to follow the recommendation of the investigation report.

The full investigation report must be made publicly available within 10 business days of Council making a decision by resolution about whether the Councillor engaged in a conduct breach and if so, any orders made in relation to the matter. The published report must not contain any names or identifying information about the complainant, persons who were interviewed or a transcript of interview, or provided a statement or affidavit unless the complainant is a Councillor or Chief Executive Officer whose identity was disclosed at the meeting at which the investigation report was considered.

When deciding what action to take, Council may consider any previous conduct breach of the Councillor, any allegation made in the investigation that was admitted or not challenged, and that Council is reasonably satisfied is true.

A notice about the outcome of the investigation must be given to the Assessor as soon as practicable, that states the decision, the reasons for the decision and the details of any orders made under section 150AH of the LGA.

2. Natural justice

Any investigation of suspected conduct breach 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:

- that the Councillor/s who is the subject of the suspected conduct breach matter 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)
- any actions taken, or decisions made are based on evidence (not suspicion or speculation)

A fair hearing means the Councillor/s who are the subject of the suspected conduct breach matter must be told of the suspected breach including:

- the preliminary findings of the investigation before the preparing of an investigation report about the investigation; and
- a notice if an investigation is not started or is discontinued including the reasons for the decision

- allow the Councillor/s to give evidence or a written submission to Council about the suspected conduct breach and preliminary findings; and
- require Council to consider the evidence or written statement from the Councillor/s in preparing the investigation report, and
- include, if evidence is given by the Councillor/s, a summary of the evidence and, if a written submission is provided, a full copy of the written submission, in the investigation report.

Council must give the following notices to the other parties:

- the person who made the complaint if an investigation is not started or dismissed including the reasons for the decision.
- the Assessor if an investigation is not started or dismissed including the reasons for the decision.

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 proper and genuine consideration to each party's case.

3. Standard of proof

The civil standard of proof is applied by the Investigator when determining whether a Councillor/s has engaged in a conduct breach.

The civil 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, and the Investigator and/or Council, is reasonably satisfied that its existence is more probable than not.

4. Timeline

The Councillor conduct framework must 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 Council's meeting within eight weeks of commencing the investigation, after the receipt of the complaint from the Assessor.

5. Expenses

Council must pay the expenses associated with the investigation of suspected conduct breach of a Councillor/s including any costs of:

- an independent investigator engaged on behalf of Council
- travel where the investigator needed to travel to undertake the investigation, or to interview witnesses
- obtaining legal or expert advice.

Note: Council may order the subject Councillor/s 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. Any costs incurred by complainants, or the subject Councillor/s will not be met by Council. 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.

6. Independent Assessor's referral

The Council may receive from the Assessor a referral notice about the suspected conduct breach of a Councillor/s. The referral notice will include details of the conduct and any complaint received about the conduct, state why the Assessor reasonably suspects that the Councillor/s have engaged in a conduct breach and include information about the facts and circumstances that form the basis of the Assessor's reasonable suspicion.

Council must deal with the matter and the investigation must be conducted in a way that is consistent with this policy.

The Assessor must also give a notice to the Councillor/s that states the Councillor's conduct has been referred to Council to deal with and a copy of the referral notice must be attached. The Council may also receive referrals directly.

7. Receipt of Assessor's referral

On receipt of a referral notice about the suspected conduct breach of a Councillor/s from the Assessor, the Council's Chief Executive Officer will forward a copy of that referral notice to the Mayor and all Councillors, including the subject Councillor, as a confidential document.

The Councillor/s who is the subject of the complaint 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 Council's Model Meeting Procedures Policy.

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/s 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 the Council's meeting procedure requirements.

8. Investigations

Unless otherwise resolved by Council, the Mayor will manage the investigation process. The Mayor may undertake the investigation themselves, or engage an external investigator, to investigate the suspected conduct breach. An investigation report is prepared with recommendations about whether the Councillor engaged in a conduct breach and how the conduct may be dealt with.

If the Mayor has a conflict of interest in the matter, the Mayor's powers to manage the investigation must be delegated by council resolution to the Deputy Mayor, or if the Deputy Mayor is conflicted, another unconflicted Councillor must be appointed from the other Councillors by resolution, to manage the investigation.

Where the local government meeting loses quorum due to conflicts of interest of Councillors or absent Councillors, then the conduct matter must be delegated to the Mayor or a standing committee to decide.

If the referral notice is about the suspected conduct breach by the Mayor, then the matter must be delegated to a standing committee.

The Council will consider establishing a standing committee under section 264 of the LGR to deal with decisions about conduct breach matters which are delegated by resolution 10 to a standing committee.

The standing committee will decide about the Mayor's conduct in all circumstances where there is a loss of quorum or more generally, may also deal with Councillors' conduct.

While section 12(4)(f) of the LGA provides that the Mayor has the extra responsibility of being a member of each standing committee, the Mayor could not be a decision-making member of a standing committee dealing with decisions about the Mayor's conduct because of the conflict of interest. The remainder of the unconflicted members of the committee will decide the matter.

The standing committee must be in existence before receiving the referral notice from the Assessor, in circumstances where there is no quorum to decide a matter under sections 150AEA or 150AG of the LGA due to conflicts of interest.

9. When the local government may decide not to start, or to discontinue, an investigation

On receipt of the referral notice from the Assessor, the Mayor will manage the investigation unless it is delegated. If there are circumstances for considering not starting or discontinuing an investigation, the matter will be placed on the agenda for the next Council meeting. The Council may decide by resolution to not start, or discontinue, a suspected conduct breach matter. The resolution must state the decision and the reasons for the decision.

The only circumstances in which the Council can formally not start or discontinue a matter are under section 150AEA of the LGA.

The matters not started or discontinued must be reported in the annual report (including the reasons) and recorded in the Councillor conduct register.

10. 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 policy.

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.

11. Assistance for investigator

If the Mayor is the investigator of a matter of suspected conduct breach, 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.

12. 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 Chief Executive Officer. The Chief Executive Officer 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 Chief Executive Officer. The Chief Executive Officer will then notify the Crime and Corruption Commission of the suspected corrupt conduct.

Instances 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 a breach of conduct.

13. Completion of investigation

On the completion of an investigation, the investigator will provide an investigation report under section 150AFA of the LGA to the Council outlining the investigation process, the investigation findings, a summary of the evidence and a full copy of any written submission in the investigation report given by the Councillor/s, and any recommendations about dealing with the conduct and a record of the investigation costs.

If there is a risk to the health and safety of the complainant, under section 254J of the LGR the Council may resolve that the meeting be closed to the public for the Councillors to consider the investigation report and any recommendations.

The Council will consider the findings and recommendations of the investigator's report and decide whether the Councillor/s have engaged in a conduct breach and, if so, what action it will take under section 150AH of the LGA.

In accordance with section 254J(6) of the LGR, the resolution in relation to what action is to be taken because of the investigation must be made after the meeting has been re-opened to the public and the decision recorded in the meeting minutes. The Chief Executive Officer is also required to ensure the details are entered into the Councillor Conduct Register.

Provisions for internal and external review of decisions are set out in sections 150CO to 150CS Chapter 5A, Division 2 and 3 of the LGA.

14. Notice about the outcome of investigation

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

Council must make the investigation report for the investigation publicly available after the meeting at which the decision about the outcome of the investigation is made by:

- on or before the day and time prescribed by the LGR section 254C, or 5pm on the tenth day, or
- the day and time that the meeting minutes are made publicly available.

Council must prepare a summary of the investigation report that must include:

- 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.

The following information contained in the investigation report must not be made publicly available:

- if the investigation relates to the conduct of a Councillor that was the subject of a complaint:
 - the name of the person who made the complaint or any other person, other than the Councillor even if that person has a declarable conflict of interest; or
 - information that could reasonably be expected to result in identifying a person.
- if a person, other than the Councillor, provided information for the purposes of the investigation including, for example, by giving an interview or making a submission or affidavit:
 - the name of the person; or
 - information that could reasonably be expected to result in identifying the person or any other person, other than the Councillor;
 - the submission or affidavit of, or a record or transcript of information provided orally by, a person, including, for example, a transcript of an interview;
 - any other information the local government is entitled or required to keep confidential under a law e.g. documents subject to legal professional privilege or information that is part of a public interest disclosure under the *Public Interest Disclosure Act 2010*.
- The report made publicly available must include the name of the person who made the complaint if:
 - the person is a Councillor or the Chief Executive Officer of the local government; and
 - the person's identity as the complainant was disclosed at the meeting at which the report for the investigation was considered.

15. Disciplinary action against councillors

If Council decides at the completion of the investigation that the Councillor/s have engaged in a conduct breach, Council may:

- order that no action be taken against the Councillor/s; or
- make an order outlining action the Councillor/s must undertake in accordance with section 150AH(1)(b) of the LGA.

16. Councillor conduct register

The Chief Executive Officer of Council must ensure decisions and any orders under section 150AH of the LGA made about a conduct breach by a Councillor or any decision to not start, or to discontinue an investigation of suspected conduct breach under section 150AEA of the LGA, are entered into the relevant Councillor conduct register.

This Council policy acknowledges the importance of fundamental human rights.

Council is committed to recognising and protecting these rights when creating policies and procedures that shape the frameworks, standards, behaviors, and actions of the Banana Shire Council.

An assessment of this Policy determined that it does not limit or affect any human rights under the *Human Rights Act 2019*.

PROCEDURE

Procedures as approved and issued by the Chief Executive Officer, and subject to further revision, amendment and issue under the authority of the Chief Executive Officer.

CERTIFICATION



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CHIEF EXECUTIVE OFFICER
BANANA SHIRE COUNCIL

29 July 2025

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DATE