



STATUTORY POLICY
MOUNT ISA CITY COUNCIL
Councillor Investigation Policy

RESOLUTION NO. **OM08/12/2018** VERSION **V1**

APPLIES TO STATUTORY POLICIES ONLY

This an official copy of the **Councillor Investigation Policy**, made in accordance with the provisions of *Local Government Act 2009*, *Local Government Regulation 2012* and other current Council Policies.

Statutory Policies comply with a legislative requirement; the **Councillor Investigation Policy** is approved by the Mount Isa City Council for the operations and procedures of Council.

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 Sharon Ibardolaza
Chief Executive Officer

DOCUMENT VERSION CONTROL				
Governance/Policies/Statutory 14991			POLICY TYPE	Statutory (Council)
VERSION	DATE	RESOLUTION NO.	DETAILS	
V1	15.11.2018	OM08/12/2018	Responsible Officer – Chief Executive Officer	
			REVIEW DUE	11.2020

DISTRIBUTION AND DISSEMINATION			
Internal email to all employees		Section meetings / Toolbox talks	
Internal email to all Councillors	X	Included in employee inductions	
Staff noticeboards		Uploaded to Council website	X
Internal training to be provided		External training to be provided	
Registered in Magiq	X		

1. PURPOSE

The Councillor Investigation Policy is in place to outline how complaints about inappropriate conduct of Mount Isa City Council ("Council") councillors will be dealt with as required by s150AE of the *Local Government Act 2009* ("the LG Act"). However, this policy does not relate to more serious councillor conduct.

2. COMMENCEMENT

This Policy will commence on and from 12 December 2018. It replaces all other policies or arrangements governing councillor investigations (whether written or not).

3. APPLICATION

This Policy applies to investigations and determinations of a complaint about the alleged inappropriate conduct of a councillor/s which has been reviewed by the Independent Assessor.

4. CONFIDENTIALITY

Matters of suspected inappropriate conduct of a councillor are confidential except as otherwise specifically provided for either in the LG Act 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 LG Act and dealt with as misconduct.

5. NATURAL JUSTICE

5.1 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.

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

1. 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);
2. The investigator(s) should be objective and impartial (absence of bias); and
3. Any action taken is based on evidence and not suspicion or speculation.

5.3 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 at least two business days before the investigation report is provided to the councillors as part of the meeting agenda.

5.4 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.

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

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

6. INDEPENDENT ASSESSOR'S REFERRAL

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

7. RECEIPT OF INDEPENDENT ASSESSOR'S REFERRAL

7.1 On receipt of a referral notice about the suspected inappropriate conduct of a councillor/s from the Independent Assessor, the Council's Chief Executive Officer will forward a copy of that referral notice to the mayor and all councillors.

7.2 Should the mayor or a councillor/s (other than the subject of the complaint or the complainant) disagree with any recommendation accompanying the Independent 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 the Council's meeting procedure requirements.

8. INVESTIGATOR

- 8.1 Unless otherwise resolved by Council, the mayor will manage the investigation of suspected inappropriate conduct of other councillors.
- 8.2 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 Chief Executive Officer 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.
- 8.3 If the suspected inappropriate conduct involves:
 - a) an allegation about the conduct of the Mayor, or
 - b) the Mayor as the complainant, then

The Chief Executive Officer 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.

9. EARLY RESOLUTION

- 9.1 Before any investigation of suspected inappropriate conduct is commenced, the investigator must consider whether it is appropriate for the parties to attempt to resolve the matter informally. This consideration includes any recommendation made by the Independent Assessor.
- 9.2 A matter is only appropriate for early resolution if the parties to the matter agree to explore early resolution.
- 9.3 The investigator may engage an independent person with suitable qualifications or experience to facilitate this process.
- 9.4 If the matter cannot be informally resolved, the matter will then be investigated as outlined in this investigation policy.
- 9.5 If the matter is resolved, the investigator will advise the Chief Executive Officer of this outcome. In turn, 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.

10. TIMELINESS

- 10.1 It is expected that the investigator will complete the investigation and provide a report for inclusion on the agenda of a Council meeting no 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 at the next Council meeting to seek an extension of time.

11. ASSISTANCE FOR INVESTIGATOR

- 11.1 If the mayor is the investigator of a matter of suspected inappropriate conduct, the mayor may use section 170A of the LG Act to seek assistance during the investigation.
- 11.2 The mayor is authorised by Council to expend money as reasonably needed to engage contractors in accordance with Council's Procurement Policy.

12. POSSIBLE MISCONDUCT OR CORRUPT CONDUCT

- 12.1 If during the course of 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 Independent Assessor of the possible misconduct.

12.2 If during the course of 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 possible corrupt conduct.

12.3 Instances of suspected misconduct or corrupt conduct may be referred back to the Council if determined by the Independent Assessor or Crime and Corruption Commission to be inappropriate conduct.

13. COMPLETION OF INVESTIGATION

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

13.2 Council will consider the finding and 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 s 150AH of the LG Act.

13.3 Provisions for internal and external review of decisions are set out in sections 150CO to 150CS of the LG Act.

14. NOTICE ABOUT THE OUTCOME OF INVESTIGATION

14.1 After an investigation is finalised, the Council must give written 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.

15. DECISION ABOUT INAPPROPRIATE CONDUCT

15.1 Pursuant to section 150AG of the LG Act, on conclusion of the investigation Council must decide;

- a) Whether or not the councillor has engaged in inappropriate conduct; and
- b) If the councillor has engaged in inappropriate conduct, what action Council will take under section 150AH of the LG Act to discipline the councillor.

16. COUNCILLOR CONDUCT REGISTER

16.1 The Chief Executive Officer must ensure decisions about suspected inappropriate conduct of a councillor/s are entered into the Councillor Conduct Register.

16.2 Where a complaint has been resolved under section 9 of this policy, the Chief Executive Officer will update the register to reflect that the complaint was withdrawn.

17. EXPENSES

17.1 Council must pay any reasonable expenses of Council that is associated with the informal resolution or investigation of suspected inappropriate conduct of a councillor including any costs of:

- a) the president of the Tribunal in undertaking an investigation for Council;
- b) a mediator engaged under this investigation policy;
- c) a private investigator engaged by the investigator;
- d) travel where the investigator needed to travel to undertake the investigation or to interview witnesses;
- e) seeking legal advice; or
- f) engaging an expert.

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

17.2 Any costs incurred by complainants or the subject councillors will not be met by Council.

18. COMMUNICATION AND DISTRIBUTION

18.1 Council will make available to the public, the Councillor Investigation Policy on our website at www.mountisa.qld.gov.au.

19. DEFINITIONS

- a) **Independent Assessor** – means the independent assessor appointed under section 150CV of the LG Act.
- b) **Behavioural Standard** – means a standard of behaviour for Councillor set out in the Code of Conduct approved under section 150E of the LG Act.
- c) **Conduct** – includes failing to act and a conspiracy or attempt to engage in conduct.
- d) **Councillor Conduct Register** – means the register required to be kept by Council as set out in section 150DX of the LG Act.
- e) **Inappropriate conduct** – see section 150K of the LG Act.
- f) **Investigation policy** – refers to this policy, as required by section 150AE of the LG Act.
- g) **Investigator** – means the person responsible under this investigation policy for carrying out the investigation of the suspected inappropriate conduct of a councillor or mayor.
- h) **Local government meeting** – means a meeting of;
 - a) A local government; or
 - b) A committee of a local government.
- i) **Misconduct** – see section 150L of the LG Act.
- j) **Model procedures** – see section 150F of the LG Act.
- k) **Natural justice** – a set of principles to ensure fair and just decision making, including a fair hearing, an absence of bias, decision based on evidence, and the proper examination of all issues.
- l) **Referral notice** – see section 150AC of the LG Act.
- m) **Tribunal** – means the Councillor Conduct Tribunal as established under section 150DK of the LG Act.
- n) **Unsuitable meeting conduct** – see section 150H of the LG Act.

ASSOCIATED LEGISLATION AND POLICIES

- *Local Government Act 2009*
- *Crime and Corruption Act 2001*
- Code of Conduct for Councillors
- Model Meeting Procedures
- MICC Standing Orders Policy
- Procurement Policy