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## 1. Statement

Council is committed to providing a statutory complaints process for dealing with complaints relating to alleged inappropriate conduct of a Councillor.

## 2. Purpose and Principles

The purpose of this policy is to outline the process that applies to investigations and determinations of a complaint about the alleged inappropriate conduct of a Councillor which has been referred by the Independent Assessor.

Council will achieve its policy commitment by:

- Complying with legislation;
- Maintaining ethical and legal behaviour of councillors;
- Ensuring transparent and effective processes and decision making in the public interest.

## 3. Strategic Plan Links

This policy aligns with the following iFuture 2021-2026 Corporate Plan theme:

- A Trusted and Leading Organisation

## 4. Regulatory Authority

Section 150AE of the *Local Government Act 2009*

Councillors Code of Conduct

*Crime and Corruption Act 2001*

Ipswich City Council Meeting Procedures Policy

## 5. Human Rights Commitment

Ipswich City Council (Council) has considered the human rights protected under the *Human Rights Act 2019 (Qld)* (the Act) when adopting and/or amending this policy. When applying this policy, Council will act and make decisions in a way that is compatible with human rights and give proper consideration to a human right relevant to the decision in accordance with the Act.

## 6. Scope

This investigation policy applies to the management of how complaints about the inappropriate conduct of Councillors will be dealt with as required by the *Local Government Act 2009*; however this policy does not relate to more serious Councillor conduct such as misconduct or corrupt conduct.

## 7. Roles and Responsibilities

Under this policy the Chief Executive Officer has responsibility:

- to advise the Mayor and Councillors on receipt of a referral notice from the Independent Assessor;
- to refer suspected inappropriate conduct that the Mayor believes is in the best interest to refer to the President of the Tribunal;
- for updating the councillor conduct register;
- for advising the assessor about instances of possible misconduct;
- for advising the Crime and Corruption Commission about instances of possible corrupt conduct.

## 8. Confidentiality

Matters of suspected inappropriate conduct of a Councillor are confidential except as otherwise specifically provided for either in the *Local Government Act 2009* 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 Local Government Act 2009 and dealt with as misconduct.*

## 9. Natural Justice

Any investigation of suspected inappropriate conduct of a Councillor must be carried out in accordance with 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).

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.

#### **10. Assessor's Referral**

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

#### **11. Receipt of Assessor's Referral**

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

Should the Mayor or a Councillor (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 the Council's meeting procedure requirements.

#### **12. 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 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.

If the suspected inappropriate conduct involves:

- an allegation about the conduct of the Mayor, or
- 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.

#### **13. 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.

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.

#### **14. Timeliness**

The investigator will make all reasonable endeavors to complete the investigation and provide a report for inclusion on the agenda of a Council meeting no more than eight (8) weeks after the receipt of the complaint.

*Note: If the investigator is of the opinion that it may take longer than eight (8) 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.*

#### **15. Assistance for Investigator**

If the Mayor is the investigator of a matter of suspected inappropriate conduct, the Mayor may use section 170A of the *Local Government Act 2009* 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.

#### **16. Possible Misconduct or Corrupt Conduct**

If during the course of an investigation the investigator obtains information which indicates a Councillor 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 the course of an investigation, the investigator obtains information which indicates a Councillor may have, on reasonable suspicion, 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.

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 inappropriate conduct.

#### **17. 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 about dealing with the conduct and a record of the investigation costs.

The Council will consider the findings 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 section 150AH of the *Local Government Act 2009*.

Provisions for internal and external review of decisions are set out in sections 150CO to 150CS of the *Local Government Act 2009*.

#### **18. 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.

#### **19. Councillor Conduct Register**

The Chief Executive Officer of the respective Council must ensure decisions about suspected inappropriate conduct of a Councillor must be entered into the Councillor Conduct Register.

Where a complaint has been resolved under section 12 of this policy, the Chief Executive Officer will update the register to reflect that the complaint was withdrawn.

#### **20. 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.

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

#### **21. Monitoring and Evaluation**

This policy will be reviewed by the Coordination and Performance Department when any of the following occur:

- As required by legislation;
- The related information is amended or replaced; or
- Other circumstances as determined from time to time by the Council.

22. Definitions

Assessor	means the Independent Assessor appointed under section 150CV of the <i>Local Government Act 2009</i>
Behavioural Standard	means a standard of behaviour for Councillors set out in the Code of Conduct approved under section 150E of the <i>Local Government Act 2009</i>
Conduct	includes— (a) failing to act; and (b) a conspiracy, or attempt, to engage in conduct
Corrupt Conduct	As per the <i>Crime and Corruption Act 2001</i> , conduct of a person regardless of whether the person holds or held an appointment that fulfils each of the following elements: (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; and (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.
Councillor Conduct Register	As required under section 150DX of the Act and is a record of all written complaints about councillors and the outcome of each complaint, including any disciplinary or other action.
Councillor Misconduct	As per section 150L the <i>Local Government Act 2009</i> (1) The conduct of a councillor is misconduct if the conduct— (a) adversely affects, directly or indirectly, the honest and impartial performance of the councillor’s functions, or the exercise of the councillor’s powers; or (b) is or involves— (i) a breach of the trust placed in the councillor, either knowingly or recklessly; or

	<p>(ii) a misuse of information or material acquired in, or in connection with, the performance of the councillor’s functions, whether the misuse is for the benefit of the councillor or for the benefit, or to the detriment, of another person; or</p> <p>(c) contravenes any of the following—</p> <p>(i) an order of the local government or the conduct tribunal;</p> <p>(ii) the acceptable requests guidelines of the local government under section 170A;</p> <p>(iii) a policy of the local government about the reimbursement of expenses;</p> <p>(iv) section 150R, 170(2), 171(3) or 175G.</p> <p>(2) Also, the conduct of a councillor is misconduct if the conduct—</p> <p>(a) is part of a course of conduct leading to the local government deciding to take action under section 150AG to discipline the councillor for inappropriate conduct on 3 occasions within a period of 1 year; or</p> <p>(b) is of the same type stated in an order of the local government that if the councillor engages in the same type of conduct again, it will be dealt with as misconduct.</p> <p>(3) For subsection (2)(a), the conduct that led to the 3 occasions of disciplinary action, taken together, is the misconduct.</p>
Chairperson	The person presiding at a meeting of the local government or committee
Chief Executive Officer or CEO	The Chief Executive Officer of the local government A person who holds an appointment under section 194 of the Act.
Inappropriate conduct	<p>As per section 150K of the Local Government Act 2009</p> <p>(1) The conduct of a councillor is <b><i>inappropriate conduct</i></b> if the conduct contravenes—</p> <p>(a) a behavioural standard; or</p> <p>(b) a policy, procedure or resolution of the local government.</p> <p>(2) Also, the conduct of a councillor is <b><i>inappropriate conduct</i></b> if—</p> <p>(a) the conduct contravenes an order of the chairperson of a local government meeting for the councillor to leave and stay away from the place at which the meeting is being held; or</p> <p>(b) it is part of a course of conduct at local government meetings leading to orders for the councillor’s unsuitable meeting conduct being made on 3 occasions within a period of 1 year.</p> <p>(3) For subsection (2)(b), the conduct that led to the orders being made, taken together, is the inappropriate conduct.</p>

	<p>(4) However, inappropriate conduct does not include conduct that is—</p> <p>(a) unsuitable meeting conduct, to the extent the conduct is not conduct mentioned in subsection (2); or</p> <p>(b) misconduct; or</p> <p>(c) corrupt conduct</p>
Investigation policy	refers to this policy, as required by section 150AE of the <i>Local Government Act 2009</i>
investigator	means the person responsible under this investigation policy for carrying out the investigation of the suspected inappropriate conduct of a Councillor or Mayor
Local Government Meeting	<b>local government</b> meeting means a meeting of—
	<p>(a) a local government; or</p> <p>(b) a committee of a local government.</p>
misconduct	see section 150L of the <i>Local Government Act 2009</i>
Model procedures	see section 150F of the <i>Local Government Act 2009</i>
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 <i>Local Government Act 2009</i>
Tribunal	means the Councillor Conduct Tribunal as established under section 150DK of the <i>Local Government Act 2009</i>
Procedural Motion	A set of motions that can be employed in specific ways to control the conduct of meetings
Regulation	<i>Local Government Regulation 2012</i>
Unsuitable meeting conduct	<p>As per section 150H of the <i>Local Government Act 2009</i></p> <p>The conduct of a councillor is <b>unsuitable meeting conduct</b> if the conduct—</p> <p>(a) happens during a local government meeting; and</p> <p>(b) contravenes a behavioural standard.</p>

### 23. Policy Owner

The Executive Services Branch (Office of the CEO) is the policy owner and the Manager, Executive Services is responsible for authoring and reviewing this policy.