

# Investigation Policy

Policy Information			
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## 1. Authority

This is Mornington Shire Council Investigation Policy for how complaints about the suspected conduct breach of councillors will be dealt with as required by section 150AE of the *Local Government Act 2009* (LGA).

A local government must adopt, by resolution, an Investigation Policy (the Policy) about how it deals with the suspected conduct breach of councillors referred, by the independent assessor (the Assessor) under section 150AE (1), LGA, to the local government to be dealt with, and must be published on the local government's website, section 150AE (4), LGA.

## 2. 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 for Councillors in Queensland* 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

**Councillor Conduct Register** means the register required to be kept by the local government as set out in sections 150DX and 150DY of the LGA

**Conduct breach** as set out in section 150K of the LGA

**Investigation policy** refers 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

**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 *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 meeting procedures** see section 150F of the LGA

**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

### 3. Policy Statement

Chapter 5A of the LGA prescribes the councillor conduct management system. Section 150CT of the LGA establishes an Independent Assessor (the Assessor) to carry out certain functions including the preliminary assessment, dismissal, referral, or investigation of complaints about councillor conduct.

After undertaking a preliminary assessment on a councillor conduct matter, if the Assessor reasonably suspects a councillor has engaged in a conduct breach, the Assessor may decide to refer a suspected conduct breach to the Mornington Shire Council to deal with under section 150SD(4)(a) or 150W(b) of the LGA.

Upon receipt of the referral notice of a complaint of suspected conduct breach the Mornington Shire Council must deal with the councillor's conduct as prescribed under section 150AF of the LGA unless a decision is made not to start or to discontinue the investigation under section 150AEA of the LGA. In conducting the investigation, the Mornington Shire Council must comply with this Investigation Policy.

The Mornington Shire Council may decide not to start or discontinue the investigation if:

- The complainant withdraws the complaint.
- The complainant consents to the investigation not being started or being discontinued. For example, the matter has been resolved, and it is unnecessary for the local government to investigate the complaint.

- The complainant does not comply with a request by the local government for further information.
- There is insufficient information to investigate the conduct.
- The local government must discontinue an investigation if the office of the councillor is vacated during the investigation i.e. the person has resigned or was not re-elected and is no longer a councillor for another reason.

The local government must give a notice to the below parties if an investigation is not started or discontinued:

- the councillor
- the person who made the complaint, if known and
- the Assessor, including the reasons for the decision.

#### **4. Related Policies**

- Administrative Action/Complaints Policy
- Information Management Policy
- Information Privacy Policy
- Public Interest Disclosure Policy
- Code of Conduct for Councillors in Queensland
- Model Meeting Procedures/Standing Orders
- Local Government Act 2009
- Local Government Regulation 2012
- Public Interest Disclosure Act 2010
- Public Sector Ethics Act 1994

#### **5. Scope**

##### **In Scope**

This Investigation Policy applies to investigations and determinations by the [local government name] about the suspected conduct breach of a councillor including a mayor, which has been referred by the Independent Assessor. Under the requirements of 150AE LGA the policy must:

- include a procedure for investigating the suspected conduct breaches of councillors (see Addendum 3 – Investigation Standards); and
- state the circumstances in which another entity may investigate the conduct; and
- be consistent with the principles of natural justice; and
- require the local government to prepare a report about each investigation (see Addendum 1 - Report Template - and Addendum 2 -Summary Report Template); and
- require a notice about the outcome of investigations be provided to the Assessor, councillors and persons who made complaint about the councillors' conduct; and
- include a procedure about when the local government may decide not to start, or to discontinue, an investigation under section 150AEA.

Further the policy must require the Mornington Shire Council:

- to give the councillor information about the suspected conduct, including details about the evidence of the conduct; and
- to give the councillor a notice if an investigation is not started or is discontinued; and

- for conduct the subject of a complaint - to give the person who made the complaint, if the contact details of the person are known, a notice if an investigation is not started or is discontinued; and
- to give the councillor the preliminary findings of the investigation before preparing an Investigation Report about the investigation (see Addendum 4 - Statement of Preliminary Findings Template); and
- to allow the councillor to give evidence or a written submission to the local government about the suspected conduct and preliminary findings; and
- to consider any evidence and written submission given by the councillor in preparing the Investigation Report for the investigation; and
- to include in the Investigation Report -
  - if evidence is given by the councillor—a summary of the evidence; and
  - if the councillor gives a written submission—a full copy of the written submission.

### **Out of Scope**

This Policy does not relate to more serious councillor conduct, such as misconduct or corrupt conduct, which are dealt with under separate legislative provisions.

This Policy also does not deal with unsuitable meeting conduct, or any conduct undertaken in a personal capacity by a councillor, for example, a sitting councillor campaigning for re-election or attending a private social function.

## **6. Confidentiality**

Matters relating to the investigation of suspected conduct breach of a councillor are confidential to the local government during the investigation period, except:

- to give the councillor information about the suspected conduct, including details about the evidence of the conduct
- to give the councillor the preliminary findings of the investigation before preparing an Investigation Report about the investigation
- to give the councillor a notice if an investigation is not started or is discontinued and
- for conduct the subject of a complaint - to give the person who made the complaint and the Assessor a notice if an investigation is not started or is discontinued.

However, 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 the Mornington Shire Council. The summary report must be made available at 5pm. on the next business day after notice of the meeting at which the decision is to be made is given. However, if the agenda for the meeting, where the investigation is to be discussed, is already publicly available under section 254D *Local Government Regulation 2012* (LGR), the summary report is to be made available when the agenda is made publicly available.

The published summary report must not contain:

- Any names or identifying information about the complainant or any other persons, other than the councillor.
- If a person other than the councillor provided information for the purposes of the investigation including by giving an interview, a transcript of interview, or provided a

statement or affidavit, the name of the person or information that could identify them or any other person, other than the councillor unless the complainant is a councillor or chief executive officer (CEO) of the local government, 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 the local government, 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 papers 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 that is made at a local government meeting about a conduct breach under section 150AG of the LGA and the decision is:

- inconsistent with a policy of the local government, or
- the approach ordinarily followed by the local government for the type of decision,

must have a statement of reasons for the decision. The CEO must ensure the minutes of the local government meeting include the statement of the reasons for not adopting the recommendation. 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 the Mornington Shire 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, or any other persons including those who were interviewed or a transcript of interview, or provided a statement or affidavit unless the complainant is a councillor or CEO of the local government whose identity was disclosed during the meeting at which the Investigation Report was considered e.g. those councillors or CEO who have a conflict of interest in the matter because they were the complainants and/or are involved in the conduct, and have notified the CEO in writing of their conflict before the meeting and have declared the conflict and the particulars at the council meeting.

When deciding what action to take, the local government may consider any previous conduct breach of the councillor, any allegation made in the investigation that was admitted or not challenged, and the local government 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.

**Note:** For Investigation Report templates please refer to Addendum 1 - Report template & Addendum 2 Summary Report Template, and Addendum 4 - Statement of Preliminary Findings Template. These templates should be used by the investigator.

## 7. Natural Justice

Any investigation of suspected conduct breach of a councillor must be carried out in accordance with natural justice.

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

- that the councillor 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 i.e. fair hearing; and
- that the investigator should be objective and impartial i.e. absence of bias; and
- that any actions taken or decisions made are based on evidence i.e. not on suspicion or speculation.

As part of the fair hearing principle the councillor who is the subject of the suspected conduct breach matter will receive information about the suspected conduct and be given the opportunity to respond to the allegations that have been made, including for example:

- receiving the preliminary findings of the investigation before the preparing of an Investigation Report about the investigation outcome; and
- allowing the councillor to give evidence or a written submission to the local government about the suspected conduct breach and preliminary findings; and
- requiring the local government to consider the evidence or written statement from the councillor in preparing the Investigation Report; and
- if evidence is given by the councillor, a summary of the evidence and, if a written submission is provided, a full copy of the written submission that is to be included, in the Investigation Report.

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.

A proper examination of all issues means the investigation must give a proper and genuine consideration of all information provided during the investigation.

**Note:** *It must be kept in mind that the matter when referred, is suspected, and not yet proven.*

## 8. Standard of Proof

The civil standard of proof is applied by the Investigator when making a recommendation as to whether a councillor 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, the local government, is reasonably satisfied that its existence is more probable than not.

## 9. Timeline

The councillor conduct framework must be effective and efficient. The investigator must make all reasonable endeavours to complete the investigation and provide a report for inclusion on the agenda of the local government's meeting within eight weeks of commencing the investigation, after the receipt of the complaint from the Assessor.

**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 or delegate (if the mayor is managing the investigation) to seek an extension of time. Delay in procuring an investigator to undertake the investigation should be avoided by the local government.*

## 10. Expenses

Local Governments must pay the expenses associated with the investigation of suspected conduct breach of a councillor including any costs of:

- an independent investigator engaged on behalf of the Mornington Shire 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 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 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.*

## 11. Councillor Conduct Register

The CEO 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.

# Procedures for the Investigation

## 12. Independent Assessor's Referral

The Mornington Shire Council will receive a referral notice from the Assessor about the suspected conduct breach of a councillor. 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 has engaged in a conduct breach and include information about the facts and circumstances that form the basis of the Assessor's reasonable suspicion.

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

**Note:** The Assessor must also give a notice to the councillor that states the councillor's conduct has been referred to the Mornington shire Council to deal with and a copy of the referral notice must be attached.

### 13. Receipt of Assessor's Referral

On receipt of a referral notice about the suspected conduct breach of a councillor from the Assessor, the CEO will forward a copy of that referral notice to the mayor and all councillors, including the subject councillor, as a confidential document.

The councillor 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 the **model meeting procedures** section 5 including notifying the CEO in writing before the meeting and declaring the COI in the council meeting and not participating in discussions or influencing any decision makers.

The Mornington Shire Council must follow the Investigation Policy throughout the investigation of the matter.

The mayor will manage the investigation process and may undertake the investigation themselves, or engage an external investigator, to investigate the suspected conduct breach and prepare an Investigation Report 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 Mornington Shire 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 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.

## 14. 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 local government 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 local government can formally not start or discontinue a matter are under section 150AEA of the LGA:

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

## 15. Local Government investigating the suspected conduct breach of a councillor

Unless the matter has been delegated by the local government, the mayor will manage the investigation of suspected conduct breach matters relating to other councillors by either performing the role of Investigator or engaging a suitably qualified person to undertake the investigation and provide an Investigation Report for the Mornington Shire Council to consider. The circumstances under which an external investigator may be engaged must be consistent with this Investigation Policy. The mayor is authorised by council to expend money as reasonably needed to engage contractors in accordance with the council's procurement policy.

The following are examples of circumstances where an investigation is to cease and be referred to another agency:

- If the investigator obtains information which indicates a councillor may have engaged in misconduct, the investigator must cease the investigation and advise the mayor or delegate, if the conduct is about the mayor, and the chief executive officer. The CEO must give the information to the Assessor for preliminary assessment.
- If the investigator obtains information that indicates a councillor may have engaged in corrupt conduct, the investigator must cease the investigation and advise the mayor or delegate, if the alleged conduct is about the mayor, and CEO. The CEO must refer the details of the suspected corrupt conduct to the Crime and Corruption Commission.

## 16. Engaging an Investigator

In deciding whether to engage an external suitably qualified person to investigate the alleged conduct breach, council may take into account the following circumstances:

- conflicts of interest in the matter prevent the investigation being undertaken internally by the local government

- the witnesses and documents to be reviewed are voluminous and the time necessary to undertake the investigation would represent a substantial diversion of local government resources
- the complexity of the issues to be investigated and the report to be prepared would represent a substantial diversion of local government resources
- the local government does not possess relevant skill or expertise to undertake the investigation internally.

The Mornington Shire Council must decide who is undertaking the investigation. If it is an external investigator, then they will determine who will do the investigation and procure that person.

Once an investigator has been selected to undertake the investigation, that investigator will follow the investigation standards of the local government (see Addendum 3– Investigation Standards).

Once the investigation is finalised the investigator will prepare a report for the local government which is to include the following details:

- the investigation process
- any witnesses interviewed
- documents or other evidence obtained
- a statement of the relevant facts ascertained
- confirmation that the subject councillor has been provided with an opportunity to respond to the complaint and the evidence compiled
- the investigation findings
- a statement of any relevant previous disciplinary history
- any recommendations about dealing with the conduct
- a record of the investigation costs.

## 17. Completion of Investigation

### Findings and recommendations

The investigator must prepare a Preliminary Statement of Findings and must give the preliminary findings to the councillor before preparing the Investigation Report and allow the councillor to give evidence or a written statement about the alleged conduct and preliminary findings.

The investigator must consider any evidence or written submission given by the councillor in preparing the Investigation Report and include a summary of the evidence and a full copy of any written submission in the Investigation Report.

### Investigation Report

The investigator must prepare an Investigation Report about the investigation of a suspected conduct breach matter referred by the Assessor to the local government under section 150AFA of the LGA. The Investigation Report must include the findings of the investigation, a summary of the evidence or a full copy of any written submission given by the councillor and

recommendations for consideration by the local government (see Addendum 1 – Report Template).

A summary Investigation Report with the preliminary Statement of Findings and summary of the outcome of the investigation attached, must be prepared for public availability before the meeting where the councillors will consider the Investigation Report matter on or before the day and time prescribed by the LGR section 254C and the COBR section 242C, which is:

- 5pm on the next business day after the notice of the meeting at which a decision is to be made has been provided to the councillors; or
- the day and time when the agenda for the meeting at which a decision is to be made is publicly available.

The Mornington Shire 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 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, or
  - information that could reasonably be expected to result in identifying a person who made the complaint or any other 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 unless the complainant is a councillor or CEO of the local government, whose identity was disclosed at the meeting at which the investigation report was considered
  - any other information the local government is entitled or required to keep confidential under a law.

### **Making a decision about the investigation**

The Mornington Shire Council must make a decision by resolution as to whether the subject councillor has engaged in a conduct breach.

When debating this matter the subject councillor, who has a declarable conflict of interest in the matter, must declare the conflict of interest, and the eligible councillors (those who do not have a conflict of interest in the matter) can decide by resolution for the subject councillor to remain in the meeting during the debate and may answer questions put to the subject councillor through the chairperson to assist the eligible councillors in making a decision. The resolution can include conditions, for example that the subject councillor may remain in the meeting for the debate but must leave the place where the meeting is being held, including any area set aside for the public, during the vote about the conduct breach and what, if any, penalty to impose if the councillor is found to have engaged in a conduct breach.

Should the complainant be a councillor, that councillor has a declarable conflict of interest in the matter and must follow the declarable conflict of interest procedures set out in the **model meeting procedures** section 5.

If the council has lost quorum due to the number of conflicted councillors or another reason, the matter must be delegated consistent with section 257 of the LGA or deferred to another date when a quorum will be present.

If a decision is reached that the councillor has engaged in a conduct breach, the Mornington Shire Council (with the exception of the councillor the subject of the investigation and the complainant, if another councillor), will consider the findings and recommendations of the investigator's report and decide what, if any, action it will take under section 150AH of the LGA.

After deciding about the conduct breach, the Mornington Shire 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 regulation, or 5pm on the tenth day, or
- the day and time that the meeting minutes are made publicly available.

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 only 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.

## 18. Disciplinary action against Councillors

If the Mornington Shire Council decides that the councillor has engaged in a conduct breach, any of the following orders may be imposed:

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

**Note:** For further information refer to Addendum 5 - Conduct Breach Disciplinary Action Guideline

## 19. Notice about the outcome of the investigation

The Mornington Shire Council must give a notice about its decision to:

- the Assessor
- the person who made the complaint about the councillor's conduct that was the subject of the investigation, and the subject councillor who was investigated.

# Addendums

## Addendum 1 - Full Report Template

<p><b>1. The Complaint</b></p> <p>Description of the alleged conduct.</p> <p><i>(Outline the allegation/s as referred for investigation, including date/s, time/s, place/s, description of alleged conduct. Succinct description of (full title and relevant sections) of policy (e.g. code of conduct) alleged to have been breached)</i></p>
<p><b>2. The Complainant</b></p> <p>Name of the complainant who made the complaint about the alleged conduct.</p> <p><i>(Consider if council indicates the matter relates to a public interest disclosure and ensure compliance with the <i>Public Interest Disclosure Act 2010</i>)</i></p>
<p><b>3. The Subject Councillor</b></p> <p>Name of subject councillor (Reference level of experience as a councillor and any past disciplinary history including for like matters)</p>
<p><b>4. Conflict of Interest considerations</b></p> <p><i>(Declaration of any conflict of interest or 'no conflict of interest' by the investigator)</i></p>
<p><b>5. Summary of Investigation Process</b></p> <ul style="list-style-type: none"> <li>• scope of the investigation</li> <li>• interviews conducted</li> <li>• documents examined</li> <li>• facts identified</li> <li>• category of the conduct breach set out relevant standards of sections considered.</li> </ul>
<p><b>6. Investigation Report</b></p> <ul style="list-style-type: none"> <li>• date of the report</li> <li>• wording of allegations for consideration</li> <li>• a statement of the facts established by the investigation</li> <li>• a description of how natural justice was afforded to the councillor during the conduct of the investigation</li> <li>• a summary of the findings of the investigation</li> <li>• a summary of any relevant previous disciplinary history</li> <li>• summary of the evidence or a full copy of any written submission given by the councillor</li> <li>• application of facts to the conduct breach outlined above</li> <li>• a record of investigation costs</li> </ul> <p><i><b>Note:</b> Insert discussion of sufficiency of evidence to sustain the allegation and whether the evidence is capable of supporting a finding that the councillor has breached.</i></p>

## 7. Recommendation to Council

- Recommendations made by the investigator who investigated the conduct. It is recommended that:
  - a) This report be submitted to the [insert local government's name] for consideration, pursuant to section 150AG of the *Local Government Act 2009* (the LG Act), as to whether or not the councillor has engaged in a conduct breach; and if they are found to have so engaged, what action the local government will take to discipline the councillor pursuant to section 150AH of the LG Act;
  - b) Having analysed the material from this investigation, a conclusion might be drawn that:

**Note:** *make a recommendation as to whether a conduct breach is made or not, with succinct reasons:*

- c) If Mornington Shire Council finds the councillor has engaged in a conduct breach, are there any aggravating or mitigating circumstances that should be taken into account? *For example, any action taken by the councillor since the conduct, any Aboriginal traditions or Islander customs of the councillor.*
- d) If council finds the councillor has engaged in a conduct breach, the following disciplinary action under section 150AH LGA is recommended (refer to the 'Guideline – conduct breach disciplinary action')

Signatory\_\_\_\_\_

Name\_\_\_\_\_

Attachments\_\_\_\_\_

## Addendum 2 - Summary Report Template

1. The name of the councillor whose conduct has been investigated
2. A description of the alleged conduct
3. A statement of the facts established by the investigation
4. A description of how natural justice was afforded to the councillor during the conduct of the investigation
5. A summary of the findings of the investigation
6. Any recommendations made by the investigator who investigated the conduct.

### **Addendum 3 - Investigation Standards**

The investigation must be managed in a consistent manner.  
Documentation must be contained in an efficient records management system.  
Confidential information must be secured appropriately.

#### **1. Case Management file**

The investigation must be supported by a recognised case management tool so that emails, letters, statements, and evidence can be stored and secured confidentially. File notes must be made in the case management system to document key milestones in the investigation such as when lines of inquiry are identified, witnesses are spoken to, when evidence is secured, and document key decisions.

#### **2. Investigation Plan**

The mayor or delegate will, prior to beginning the investigation, check that the investigator does not have a conflict of interest in the matter. Remove them immediately from the investigation should a conflict of interest become known.

The following investigation process must be followed by the investigator unless the mayor or delegate agrees to vary the process in a particular case.

Take all necessary steps to protect the identity of the complainant(s) as far as possible during communications with the councillor.

Consider the following:

- Research the legislation and policy framework thoroughly.
- Identify lines of inquiry and record them as a file note in case file management system.
- Present all the evidence the councillor provides or gives in a written statement.
- Gather further evidence (for example, from interviewing other witnesses, obtaining documents, or carrying out site inspections) when necessary.
- Secure evidence in case file management system, making a file note when lines of inquiry are followed up and key decisions are made during the course of in the investigation.
- Undertake a proper and impartial examination of the evidence gathered, including expert advice and analysis and / or legal advice if required.
- Draw conclusions based on the evidence and applying the appropriate legislative and policy frameworks.

#### **3. Prepare an investigation report**

Prepare the investigation report for the local government to consider on the template attached (Addendum 1).

If during the course of an investigation, the Investigator obtains new information that a Councillor may have engaged in conduct that may give rise to a new allegation, the Investigator must obtain particulars related to the conduct and then advise the mayor or delegate and the chief executive officer who will provide an information notice to the Assessor. The Assessor will undertake a preliminary assessment or alternative action on the matter.

The Investigator will be informed of activities of the Mornington Shire council in relation to the investigation. For example, the Investigator will be informed in the event the finalisation of a matter is delayed, or if the [insert local government's name] has to notify of a fresh allegation identified during the course of an investigation to the Assessor for a preliminary assessment.

If during the course of an investigation, the Investigator obtains new information that a councillor may have engaged in misconduct or corrupt conduct the investigation will cease and the investigator will notify the mayor or delegate and chief executive officer who will be responsible for providing an information notice to the Assessor/Crime and Corruption Commission.

#### Addendum 4 - Statement of Preliminary Finding

The Investigator has assessed the evidence set out in the investigation report and, taking into account the seriousness of the allegations, has made findings on the balance of probabilities.

The table below contains a summary of the Allegations and the Investigator’s findings.

A detailed summary of the evidence and findings is provided in the full investigation report.

#### CONDUCT ALLEGATIONS

<b>Allegation</b>	<b>Finding</b>
Allegation:  Particulars:	Substantiated/Not Substantiated  Summary of Evidence:  Summary of reasons for finding:

\_\_\_\_\_

Date

\_\_\_\_\_

Investigator’s Signature and Name



## Addendum 5 - Conduct Breach Disciplinary Action Guideline

This guideline is provided to assist Queensland local governments to make consistent decisions about the appropriate disciplinary action to be taken against a councillor who is found to have engaged in a conduct breach.

### 1. What is a conduct breach?

Section 150K of the *Local Government Act 2009* (LGA) provides that a conduct breach occurs when a councillor:

- breaches a behavioural standard (**Code of Conduct for Councillors in Queensland**)
- breaches a council policy, procedure, or resolution
- contravenes an order by a chairperson of a local government to leave a council meeting and stay away from the place at which it is being held
- is part of a course of unsuitable meeting conduct orders on three occasions within a one-year period, taken together, is a conduct breach. The local government is not required to notify the OIA of these matters and may deal with the conduct under section 150AG of the *Local Government Act 2009* (including Brisbane City Council) as if an investigation had been conducted.

Below are some examples of conduct which may constitute a conduct breach:

- A councillor makes derogatory comments about staff publicly.
- A councillor speaks to the media on behalf of council when not properly authorised under a council policy.
- Contravening an order from a chairperson to leave the meeting and stay away from the place at which the meeting is being held including the public gallery, for the remainder of the meeting.
- Three occasions of unsuitable meeting conduct leading to orders being made within a period of one year in relation to a councillor or chairperson.

### 2. Decision

Section 150AG of the LGA provides that where an allegation of a conduct breach has been referred by the Office of the Independent Assessor (OIA) to a local government for investigation, the local government must decide:

1. whether or not the councillor has engaged in a conduct breach, and,
2. what action the local government will take under section 150AH of the LGA to discipline the councillor if the councillor has been found to have engaged in a conduct breach.

### 3. Types of orders

Section 150AH of the LGA provides a list of the types of orders that the local government may make where it has found that a councillor has engaged in a conduct breach:

- An order that no action be taken against the councillor
- An order that the councillor make a public apology, in the way decided by the local government, for the conduct
- An order reprimanding the councillor for the conduct
- An order that the councillor attend training or counselling addressing the councillor’s conduct including at the councillor’s expense
- An order that the councillor be excluded from a stated local government meeting
- An order that the councillor is removed or must resign from a position representing the local government other than the office of councillor
- An order that if the councillor engages in the same type of conduct again, it will be treated as misconduct
- An order that the councillor reimburse the local government for all or some of the costs arising from the councillor’s conduct breach.

#### 4. **Factors that may be taken into account**

Section 150AG(2) of the LGA provides that in deciding what action to take, the local government may consider:

- any previous conduct breach of the councillor
- any allegation made in the investigation that-
  - was admitted, or was not challenged and
  - the local government is reasonably satisfied is true.

#### 5. **Guidance on appropriate disciplinary action**

It is open to local governments to decide which order/s in section 150AH of the LGA are suitable when a councillor is found to have engaged in a conduct breach. The particular circumstances of a case must always be taken into consideration.

As a guide, it is suggested that it may be appropriate for the local government to consider making an order or combination of orders depending on whether a councillor has been found to have engaged in a conduct breach for the first time, or for a second, or third time.

The table on the following page may assist councils to decide what disciplinary action is suitable in various circumstances.

<b>Order</b>	<b>First instance engaging in a conduct breach</b>	<b>Second instance engaging in a conduct</b>	<b>Third instance engaging in a conduct breach</b>

		<b>breach</b>	
No action be taken against the councillor	✓		✓
An order for the councillor to make a public apology in the way decided by the local government, for the conduct	✓*	✓*	✓*
An order reprimanding the councillor for the conduct	✓#	✓#	✓#
An order that the councillor attend training or counselling addressing the councillor's conduct including at the councillor's expense	✓#	✓#	✓
An order that the councillor be excluded from a stated local government meeting		✓	✓
An order that the councillor is removed or must resign from a position representing the local government other than the office of councillor			✓
An order that if the councillor engages in the same type of conduct again, it will be treated as misconduct	✓^	✓	
An order that the councillor reimburse the local government for all or some of the costs arising from the councillor's conduct breach**		✓	✓

\* May be appropriate where there is heightened or particular public interest in the type of conduct or the subject matter relating to the conduct

# May be particularly appropriate where the conduct involves bullying or harassment or making inappropriate comments about another person

^ For more serious and deliberate conduct breaches by an experienced councillor

\*\* Costs arising from the councillor's conduct breach includes investigative costs, legal costs, and administrative costs. However, costs should be kept to a reasonable rate taking into consideration the costs for more serious matters dealt with by the Councillor Conduct Tribunal.