



Blackall-Tambo

Regional Council

Investigation Policy

1. AUTHORITY

This is Blackall-Tambo Regional Council's investigation policy for how complaints about the inappropriate conduct of councillors will be dealt with as required by the section 150AE of the *Local Government Act 2009* (the LGA). However, this policy does not relate to more serious councillor conduct.

A local government must adopt, by resolution, an investigation policy about how it deals with 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. POLICY STATEMENT

Chapter 5A of the LGA prescribed the councillor conduct management system. Section 150CT of the LGA establishes an Independent 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 Blackall-Tambo Regional 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 Blackall-Tambo Regional 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 Blackall-Tambo Regional Council must comply with this investigation policy.

The Blackall-Tambo Regional Council may decide not to start or discontinue the investigation if:

1. the complaint is withdrawn by the complainant.
2. the complainant consents to the matter being withdrawn. For example, the matter has been resolved and it is unnecessary for the local government to investigate the matter.
3. the complainant refuses to cooperate by providing additional information during the investigation phase and not enough information is available to proceed.
4. the office of the councillor becomes vacant for any reason, i.e. the person has resigned or was not re-elected and is no longer a councillor.

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3. SCOPE

This investigation policy applies to investigations and determinations by the Blackall-Tambo Regional Council about the suspected conduct breach of a councillor including a Mayor which has been referred by the Independent Assessor. The policy must:

- include a procedure for investigating the suspected conduct breaches of councillors – see appendix 1 – 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 Council to prepare a report about each investigation; and
- require a notice about the outcome of investigation be provided to the Assessor, councillor and persons who made the complaint about the councillor’s conduct and include a procedure about when the council may decide not to start, or to discontinue, an investigation under section 150AEA of the LGA.

This policy must require the Blackall-Tambo Regional 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 the investigation is not started or is discontinued; and
- for conduct of 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; and
- to allow the councillor to give evidence or a written submission to the Council about the suspected conduct and preliminary findings; and
- to consider any evidence and written submission to the Council 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 fully copy of the written submission.

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 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.



4. DEFINITIONS

Term	Meaning
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
Councillor conduct register	means the register required to be kept by Council as set out in section 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
Investigation report	means a report provided by the investigator to Council that must be publicly available within 10 business days after the Council make a decision about the income of the investigation.
Investigator	means the person responsible under this investigation policy for carrying out the investigation of the suspected conduct breach of a councillor or Mayor
LGA	means the Local Government Act 2009
LGR	means the Local Government Regulation 2012
Local government meeting means a meeting of	- a local government; or - committee of a local government.
Misconduct	see section 150L of the LGA
Model procedures	see section 150F of the LGA
Referral notice	see section 150AB, AC and AD of the LGA
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 legislation.
Tribunal	means the Councillor Conduct Tribunal as established under section 150DK of the LGA
Unsuitable meeting conduct	see section 150H of the LGA

5. CONFIDENTIALITY

Matters of suspected inappropriate conduct of a councillor are confidential to the Blackall-Tambo Regional Council 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 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



- 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 received, a summary of the investigation report must be made publicly available before any discussion is undertaken by the Blackall-Tambo Regional 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 an interview, or provided a statement or affidavit, unless the complainant is a councillor or the Chief Executive Officer of Blackall-Tambo Regional Council, 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 recommendation of the investigator may be debated in the Council meeting, which may be in a closed session under section 254J(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 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 to not follow the recommendation of the investigation report.

The full investigation report must be made publicly available within 10 business days of the 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 name or identifying information about the complainant, persons who were interviewed or a transcript of an interview, or provided a statement or affidavit unless the complainant is a councillor or Chief Executive Officer of Council whose identity was disclosed at the meeting at which the investigation report was considered.

When deciding what action to take, the Council 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.

6. NATURAL JUSTICE

Any investigation of suspected inappropriate conduct of a councillor/s must be carried out in accordance with natural justice. An overview of the principles of natural justice follows.

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

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

A fair hearing means the councillor who is the subject of the suspected conduct breach matter will receive information about the suspected conduct, including;

- the preliminary findings of the investigation before the preparing of an investigation report about the investigation outcome; and
- a notice if an investigation is not started or is discontinued including the reasons for the decision
- allow the councillor to give evidence or a written submission to the local government about the suspected conduct breach and preliminary findings; and
- require the local government to consider the evidence or written statement from the councillor in preparing the investigation report; and
- include, 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, in the investigation report.

The Council must give the following notice to the other parties if an investigation is not started or discontinued including the reasons for the decision;

- the person who made the complaint
- the Assessor.

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 to each party's case.

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

7. STANDARD OF PROOF

The civil standard of proof is applied by the investigator when determining whether a councillor has engaged in a conduct breach.

The civil standard of proof is 'on 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 investigator and/or the Council, is reasonably satisfied that its existence is more probable than not.

8. 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

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of Council’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 Council.

9. EXPENSES

Council must pay any reasonable expenses of Council associated with the investigation of alleged inappropriate conduct, misconduct or conduct breach of a councillor including any costs of:

- the Conduct Tribunal in undertaking an investigation
- an independent investigator engaged on behalf of, or by the Conduct Tribunal
- an independent investigator engaged on behalf of the local government
- travel where the investigator needed to travel to undertake the investigation or to interview witnesses
- seeking legal service
- engaging an expert.

Upon an adverse finding against the councillor. Council may, by resolution, order the subject councillor to reimburse Council for all of some of the costs arising from the investigation.

10. COUNCILLOR CONDUCT REGISTER

The Chief Executive Officer 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.

11. ASSESSOR’S REFERRAL

The Council will receive from the Assessor a referral notice about the suspected inappropriate conduct 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 has engaged in inappropriate conduct and include information about the facts and circumstances that form the basis of the assessor’s reasonable suspicion.

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

The Assessor must also give notice to the councillor that states the councillor’s conduct has been referred to Blackall-Tambo Regional Council to deal with and a copy of the referral notice must be attached.



12. RECEIPT OF ASSESSOR’S REFERRAL

On receipt of a referral notice about the suspected inappropriate conduct of a councillor/s from the Assessor, the Council’s Chief Executive Officer will forward a copy of that referral notice to the Mayor and all councillors, other than the councillor who is the subject of the complaint, or the complainant if the complainant is a councillor, as a confidential document.

The councillor who is the subject of 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 Meeting Procedures.

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, then an Acting Mayor must be appointed from the other councillors by resolution, to manage the investigation.

Where the Council meeting loses a 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 make a decision. If the referral notice is about the suspected conduct breach by the Mayor, then the matter must be delegated to a standing committee.

The Blackall-Tambo Regional Council will consider establishing a standing committee under section 264 of the LGR to deal with decisions about a 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 section 150AEA or 150AG of the LGA due to conflicts of interest.

13. WHEN THE COUNCIL 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, to discontinue, a suspected conduct breach matter. The resolution must state the decision and the reasons for the decision.

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

14. 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 Blackall-Tambo Regional Council to consider. The Mayor is authorised by Council to expend money as reasonably needed to engage contractors in accordance with Council's procurement policy.

If the investigator obtains information which indicated a councillor may have engaged in misconduct, the investigator must cease the investigation and advise the Mayor and the Chief Executive Officer. The Chief Executive Officer will determine if the conduct is within the timeframe for reporting the matter. The Chief Executive Officer will then provide an information notice to the Assessor giving the details of the suspected misconduct. The notice must be given within one year after the conduct has occurred, or within six months after the conduct comes to the knowledge of the Chief Executive Officer or another person who gave the information notice to the Assessor, but within two years after the conduct occurred.

If the investigator obtains information that indicated a councillor may have engaged in corrupt conduct, the investigator must cease the investigation and advise the Mayor and Chief Executive Officer. The Chief Executive Officer will then provide an information notice to the Assessor giving the details of the suspected corrupt conduct or notify the Crime and Corruption Commission of the suspected corrupt conduct. There are no reporting time limits for corrupt conduct.

15. ENGAGING AN INVESTIGATOR

Once an investigator has been selected to undertake the investigation, that investigator will follow the investigation standards of the Blackall-Tambo Regional Council (see addendum 1 – Investigation Standards).

Once an investigation is finalised the investigator will prepare a report for the Council including the following details:

- the investigation process
- any witnesses interviewed
- documents or other evidence obtained
- a statement of the relevant fact 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.



16. 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 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 the Council under section 150AFA of the LGA. The investigation report must include the finding 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 Council.

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 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 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 Blackall-Tambo Regional 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 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 of 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;
 - any other information the council is entitled or required to keep confidential under a law.

Making a decision about the investigation

The Council must make a decision 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 that the subject councillor must leave the place where the meeting is being held, including any area set aside for the public, during the vote on whether they have committed a conduct breach and what, if any, penalty to impose if the councillor is found to have committed 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 Meeting Procedures.

If the Council has lost a 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 Blackall-Tambo Regional 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 making a decision about the conduct breach, the Blackall-Tambo Regional 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 related 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 Council 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 Blackall-Tambo Regional Council; and
- the person’s identity as the complainant was disclosed at the meeting at which the report for the investigation was considered.

17. DISCIPLINARY ACTION AGAINST COUNCILLORS

If Blackall-Tambo Regional Council decide 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.

18. NOTICE ABOUT THE OUTCOME OF THE INVESTIGATION

After an investigation is finalised, the Blackall-Tambo Regional Council must give a notice about the outcome decision of the investigation if the Council decides not to start or discontinue an investigation under section 150AEA of the LGA, or makes a decision about whether the councillor has engaged in a conduct breach under section 150AG of the LGA including the reasons for the decision and any orders made under section 150AH of the LGA 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.

19. RELATED LEGISLATION AND POLICIES

Local Government Act 2009
Local Government Regulation 2012
Crime and Corruption Act 2001
Public Interest Disclosure Act 2010
Public Sector Ethics Act 1994
 Meeting Procedures



Standing Orders Policy
Acceptable Requests Guideline
General Complaints (Administrative Actions) Policy
Privacy Policy
Councillor Code of Conduct Policy



Appendix 1

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 the 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.

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If during the course of an investigation, the Investigator obtains new information that a councillor may have engaged conduct that may give rise to a new allegation, the Investigator must obtain particulars related to the conduct and then advise the Mayor and the Chief Executive Officer who will provide an information notice to the Assessor. The Assessor will undertake a preliminary assessment or alternative action to the matter.

The Investigator will be informed of the activities of the Blackall-Tambo Regional 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 Blackall-Tambo Regional Council 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 and Chief Executive Officer who will be responsible for providing an information notice to the Assessor/Crime and Corruption Commission.