

## **Public Interest Disclosure**

<b>Policy type</b>	Council
<b>Function</b>	Organisation
<b>Policy Owner</b>	Governance
<b>Effect date</b>	26 May 2016

### **1. Purpose**

A Public Interest Disclosure (PID) is a disclosure in the public interest, of information about wrongdoing in the public sector. This policy supports Council’s commitment to an ethical culture by documenting how Council will assess and respond to any PID This Policy must be read in conjunction with the Public Interest Disclosure Guidelines & Procedure.

Cassowary Coast Regional Council (Council) encourages any staff member, councillor and members of the public who consider that he or she has witnessed wrongdoing to come forward and make a disclosure. Council aspires to an organisational climate where all staff feel confident and comfortable about making a disclosure of wrongdoing.

Council believes that it has an obligation to deal with wrongdoing in this organisation. We believe that disclosing wrongdoing is in accordance with this organisation’s ethical culture, in particular, acting with integrity. Further, this organisation believes that staff who come forward with disclosures of wrongdoing are acting as exemplary organisational citizens by assisting Council in promoting openness, accountability and good management.

When staff or a councillor come forward with information about wrongdoing, Council commits to—

- protecting the dignity, wellbeing, career interests and good name of all persons involved
- protecting the discloser from any adverse action taken as a result of making the disclosure
- treating any bullying, harassment, unfair treatment, victimisation or discrimination that results from a disclosure being made as a breach of our disciplinary procedures
- responding to the disclosure thoroughly and impartially
- where some form of wrongdoing has been found, taking appropriate action to deal with it
- keeping the discloser informed of the progress and outcome.

All Cassowary Coast Regional Council officers must participate in PID training when requested, in relation to this policy.

### **2. Scope**

A Public Interest Disclosure is defined by reference to—

- The person who makes the disclosure
- The type of information disclosed
- The entity to which the disclosure is made.

In the case of receiving a PID, Council commits to—

- Acknowledging PIDs and supporting disclosers
- Undertaking a risk assessment and offer protection from reprisals

- Taking action - to investigate and remedy
- Responding to reprisals
- Keeping disclosers informed and providing feedback
- Keeping personal information private and confidential
- Protecting the rights of the subject officers
- Maintaining an adequate record of PIDs
- Referring false, misleading or vexatious disclosures to the Crime and Corruption Commission.

### 3. Definitions and principles

**Allegation/alleged conduct** —A stated belief or claim that is yet to be substantiated on the balance of probabilities.

**Anonymous** — Where the person disclosing information does not identify themselves at any stage, to anyone.

**Council** – means Cassowary Coast Regional Council

**Councillors** – shall mean all elected members of council including the Mayor.

**CEO** – shall mean the person appointed to the position of Chief Executive Officer under the *Act* and anyone acting in that position.

**Corrupt conduct** - as per section 15 of the Crime and Corruption Act and could include conduct that involves any of the following—

- Abuse of public office;
- Bribery, including bribery relating to an election;
- Extortion;
- Obtaining or offering a secret commission;
- Impair, or could impair, public confidence in public administration;
- Fraudulently obtaining a financial gain through the misuse of government funds or assets;
- Misuse of Council assets and equipment e.g. vehicles, mobile phones, computers etc.
- Maladministration and misappropriation including misuse of fuel cards and corporate credit cards
- Stealing;
- Forgery;
- Unauthorised release or disclosure of confidential information
- Timesheet fraud, claiming for duties not performed
- Perverting the course of justice;
- An offence relating to an electoral donation;
- Loss of revenue of the State;
- Sedition—incitement or revolt of discontent towards or resistance against government;
- Not deciding conflicts of interest
- Homicide, serious assault or assault occasioning bodily harm or grievous bodily harm;
- Obtaining a financial benefit from procuring prostitution or from unlawful prostitution engaged in by another person;
- Illegal drug trafficking;
- Illegal gambling;

- Causing, attempting to cause or conspiring to cause, detriment to another person because (or in the belief that) another person has made a public interest disclosure pursuant to the Public Interest Disclosure Act 2010 ;
- wilful neglect which may be defined as malicious or reckless conduct

**Danger** — A threat or event that would cause harm or damage to both persons and/or property.

**Disability** — As defined in the Disability Services Act 2006.

**Discloser** - the person who makes a PID

**Maladministration** — Administrative action that—

- Was taken contrary to law; or
- Was unreasonable, unjust, oppressive, or improperly discriminatory; or
- Was in accordance with a rule or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory in the particular circumstances; or

Was taken—

- For an improper purpose; or
- Or irrelevant grounds; or
- Having regards to irrelevant considerations; or
- Was an action for which reasons should have been given, but were not given; or
- Was based wholly or partly on a mistake of law or fact; or
- Was wrong.

**PID** – Public Interest Disclosure: is a disclosure about wrongdoing in the public sector that serves the public interest. Uncover corruption and other misuses of public resources.

**Reportable conduct** - is conduct by a person or persons connected with council which is:

- Dishonest;
- Fraudulent;
- Corrupt;
- Illegal (including theft, drug sale/use, violence or threatened violence and criminal damage against property);
- A breach of legislation or local laws;
- Serious improper conduct;
- Unsafe work practices;
- Conduct which may cause financial or non-financial loss to the council or be otherwise detrimental to the interests of the council;
- Gross mismanagement;
- Serious or substantial waste; or
- Repeated instance of breach of administrative procedures.

**Reprisal** - any person causes, or attempts or conspires to cause, detriment to another person because or in the belief that a person has made or may make a PID. Some examples of a detriment which could give rise to allegations of reprisals include:

- Personal injury or prejudice to safety
- Property damage or loss
- Intimidation or harassment

- Unlawful discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business
- Threats of any of the above
- Financial loss from any of the above.

**Subject Officer** - the person about whom a PID is made

**Substantial and specific** — **Substantial** means ‘of a significant or considerable degree’. It must be more than trivial or minimal and have some weight or importance. **Specific** means ‘precise or particular’. This refers to conduct or detriment that is able to be identified or particularised as opposed to broad or general concerns or criticisms.

**The Act** – shall mean the *Public Interest Disclosure Act 2010*.

### 3.1 Principles

Council aims to conduct its business with integrity, honesty and fairness and to comply with all relevant laws, regulations, codes and corporate standards.

This policy has been developed to—

- Promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector; and
- Encouraging internal reporting of wrongdoing; and
- Ensure that public interest disclosures are properly assessed and, when appropriate, properly investigated and dealt with; and
- Protecting the rights of the officers subject to a PID by ensuring that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure; and
- To afford protection from reprisals to persons making public interest disclosures and managing the risk of reprisal associated with a PID.

## 4. Procedure

### 4.1 Responsibility

This policy applies to all council employees, councillors, contractors, and volunteers.

### 4.2 Why make a PID?

Employees who are prepared to speak up about public sector misconduct, wastage of public funds, suspected unlawful activity or danger to health, safety or the environment can be the most important sources of information to identify and address problems in public sector administration. Council supports the disclosure of information about wrongdoing because—

- Implementing systems for reporting and dealing with wrongdoing contributes to the integrity of the Cassowary Coast Regional Council (CCRC).
- The outcomes of PIDs can include improvements to systems that prevent fraud and other economic loss to CCRC.
- The community’s trust in public administration is strengthened by having strong processes in place for reporting wrongdoing.
- When making a PID the discloser receives the protections provided under the PID Act, including—
- Confidentiality — the discloser’s name and other identifying information will be protected to the extent possible.

- Protection against reprisal — the discloser is protected from unfair treatment by Council and employees of Council as a result of making the PID.
- Immunity from liability — the discloser cannot be prosecuted for disclosing the information but is not exempt from action if they have engaged in wrongdoing.
- Protection from defamation — the discloser has a defense against an accusation of defamation by any **subject officer**.

### 4.3 What is a Public Interest Disclosure?

Under the PID Act, **any person** can make a disclosure about a—

- Substantial and specific danger to the health or safety of a person with a disability
- Substantial and specific danger to the environment
- Reprisal because of a belief that a person has made, or intends to make a disclosure.

In addition, Council officers and councillors can make a disclosure about the following public interest matters—

- Corrupt conduct
- Maladministration
- A substantial misuse of public resources
- A substantial and specific danger to public health or safety
- Substantial and specific danger to the environment

A discloser can have either a 'reasonable belief' that wrongdoing has occurred, or provide evidence which tends to show the wrongdoing has occurred.

A disclosure amounts to a PID and is covered by the PID Act even if the—

- Discloser reports the information as part of their duties — such as an auditor reporting a fraud or an occupational health and safety officer reporting a safety breach
- Disclosure is made anonymously — the discloser is not required to give their name or any identifying information
- Discloser has not identified the material as a PID — it is up to Council to assess information received and decide if it is a PID.
- Disclosure is unsubstantiated following investigation — the discloser is protected when the information they provide is assessed as a PID, whether or not it is subsequently investigated or found to be substantiated.

### 4.4 How to make a PID

A discloser can make a PID in any way, including anonymously, either verbally or in writing. To assist in the assessment, and any subsequent investigation of a PID, disclosers are requested to—

- Provide contact details (this could be an email address that is created for the purpose of making the disclosure or a telephone number)
- Provide as much information as possible about the suspected wrongdoing, including—
  - Who was involved
  - What happened
  - When it happened
  - Where it happened
  - Whether there were any witnesses, and if so who they are
  - Any evidence that supports the PID, and where the evidence is located
  - Any further information that could help investigate the PID
- Provide this information in writing.

A person can make a PID via the following—

- Phone us—  
1300 763 903 (for the cost of a local phone call if you are using a landline)  
(07) 4030 2222
- Send a letter—  
Please address all correspondence to:  
Chief Executive Officer  
PO Box 887  
Innisfail, QLD 4860
- Send an email—  
[ceo@cassowarycoast.qld.gov.au](mailto:ceo@cassowarycoast.qld.gov.au)
- Enter a complaint on Council's Website—  
<http://www.cassowarycoast.qld.gov.au/>

Council has the responsibility to adequately support any person making a disclosure, witness to a PID and the subject officer. Refer to the PID Guidelines for further detailed information s.65 of the Act — *How Council will assure protections and confidentiality obligations are met.*

#### **4.5 Rights of an Officer Subject to a PID**

Subject officers who have had a PID made against them are assumed to be innocent of any adverse allegation until there is evidence to the required standard of proof to show otherwise. The rules of natural justice apply to any subject officer under investigation in respect of an allegation made against them. In such instances, and through the PID Coordinator, the subject officer has the right to—

- know the substance of the allegations if a decision is going to be made about their conduct
- have a reasonable opportunity to put their case forward (whether in writing, at a hearing or otherwise)
- have a decision maker act fairly and without bias.

Providing natural justice does not mean that the subject officer should be advised of the allegation as soon as it is received. The subject officer needs not to be told about an allegation if it is—

- misleading
- has no substance
- not intended to act on the allegation

Persons against whom an allegation has been made should be reassured that the PID will be assessed impartially, objectively and reasonably and that it is only an allegation until any evidence collected shows otherwise. They will be provided with information about their rights, and the progress and outcomes of any investigation undertaken.

Subject officers may seek assistance from their industrial union, or engage their own legal representative at their own expense, during the process of an investigation of any allegations raised against them.

#### **4.6 Referring a disclosure to another entity**

Council may refer a disclosure onto the CCC, police, the ATO or another public sector entity, where considered appropriate.

Where it is decided that a matter is to be referred to another entity, or when the CEO is statutorily bound to refer matter to an oversight agency, the referral will be done in accordance with the legislative and administrative processes provided for under the PID Act. This includes a requirement to not refer a PID to another agency if there is an unacceptable risk that a reprisal will happen because of the referral.

In considering whether an unacceptable risk exists, the PID Coordinator will, wherever possible, consult with the discloser.

From 1 July 2019, the *Human Rights Act 2019* commenced to assist in protecting the basic human rights of every person in Queensland. The Queensland Human Rights Commission (QHRC) was established, in part, to ensure all public entities act or make decisions in a way that is compatible with your human rights, and to receive human rights complaints.

On 1 January 2020, a number of other provisions of the HR Act commenced, which means complaints Council receives about alleged corruption may also be human rights complaints involving the acts or decisions of a public entity (including its employees). Not all corruption complaints will be human rights complaints.

For more information about your rights under the HR Act, how to make a human rights complaint can be found at: <https://www.qhrc.qld.gov.au/complaints>

<b>Related forms, policies and procedures</b>	Public Interest Disclosure Guidelines & Procedures Queensland Ombudsman Guides Fraud Control Plan
<b>Relevant legislation</b>	<i>Local Government Act 2009</i> <i>Information Privacy Act 2009</i> <i>Crime and Corruption Act 2001</i> <i>Ombudsman Act 2001</i> <i>Public Sector Ethics Act 1994</i> <i>Public Interest Disclosure Act 2010</i> <i>Human Rights Act 2019</i>
<b>Reference and resources</b>	Queensland Ombudsman Crime and Corruption Commission Public Interest Disclosure Standards

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