



## MANAGEMENT OF PUBLIC INTEREST DISCLOSURE PROCEDURE

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### 1. PURPOSE

The purpose of this procedure is to:

- enable Council to provide a consistent and professional response to Public Interest Disclosures (PID's) received by Council in accordance with the requirements of the *Public Interest Disclosure Act 2010* (PIDA)
- ensure all Councillors and employees are aware of their responsibilities with regard to reporting serious misconduct and other important matters adversely affecting the public interest
- ensure that all Councillors and employees are aware of, and have access to, the support mechanisms available to those affected by a PID
- ensure all Councillors and employees are aware of their responsibilities with regard to fair treatment of those persons who make a PID or who may be the subject of a PID
- encourage all Councillors and employees to be accountable for their actions and maintain high standards of professional conduct and service  
establishes procedures for:
  - persons wishing to make a PID to Council in accordance with the PIDA
  - the receipt, assessment and management of a PID
  - recording and security requirements for a PID
  - assisting officers affected by a PID

The procedure aims to promote the public interest by facilitating the detection and prevention of:

- unlawful, negligent or improper public sector conduct or;
- maladministration or;
- danger to public health or safety, or the environment.

In accordance with the Qld Government, Public Service Commission: *Public Interest Disclosure Standard No. 1* (1 January 2011), Council is committed to implementing and maintaining a Public Interest Disclosure Management Program (the Program). The principles of the Program are summarised in Attachment A to this Procedure.



Attachment A

## 2. RELEVANT LEGISLATION

2.1. **The Local Government Act 2010** (LGA) – requires that anyone performing a responsibility under the LGA is to do so in accordance with the Local Government Principles:

- Transparent and effective processes, and decision-making in the public interest; and
- Sustainable development and management of assets and infrastructure, and delivery of effective services; and
- Democratic representation, social inclusion and meaningful community engagement; and
- Good governance of, and by, local government; and
- Ethical and legal behaviours of councillors and local government employees.

Section 13(h) of the LGA states one of the responsibilities of a local government employees as ‘observing the ethics principles under the *Public Sector Ethics Act 1994* (section 4).’

2.2. **The Public Sector Ethics Act 1994** (PSE) - section 4 of the PSE sets out a number of fundamental principles and ethical values which are required to be applied to all employees of Local Government. These fundamental principles together with the ethical values of employees have been summarised below:

### **Integrity and impartiality**

In recognition that public office involves a public trust, public services agencies, public sector entities and public officials seek to promote public confidence in the integrity of the public sector and -

- are committed to the highest ethical standards; and
- accept and value their duty to provide advice which is objective, independent, apolitical and impartial; and
- show respect towards all persons, including employees, clients and the general public; and
- acknowledge the primacy of the public interest and undertake that any conflict of interest issue will be resolved or appropriately managed in favour of the public interest; and
- are committed to honest, fair and respectful engagement with the community.

### **Promoting the public good**

In recognition that the public sector is the mechanism through which the elected representatives deliver programs and services for the benefit of the people of Queensland, public service agencies, public sector entities and public officials –

- accept and value their duty to be responsive to both the requirements of

- government and to the public interest; and
- accept and value their duty to engage the community in developing and effecting official public sector priorities, policies and decisions; and
- accept and value their duty to manage public resources effectively, efficiently and economically; and
- value and seek to achieve excellence in service delivery; and
- value and seek to achieve enhanced integration of services to better service clients.

#### **Commitment to the system of government**

In recognition that the public sector has a duty to the laws of the State, Commonwealth and local government, public service agencies, public sector entities and public officials—

- accept and value their duty to uphold the laws of the State, the Commonwealth and local government; and
- are committed to effecting official public sector priorities, policies and decisions professionally and impartially; and
- accept and value their duty to operate within the local government framework and the framework of Ministerial responsibility to government, the Parliament and the community.

Subsection (1) does not limit the responsibility of a public service agency, public sector entity or public official to act independently of government if the independence of the agency, entity or official is required by legislation or government policy, or is a customary feature of the work of the agency, entity or official.

#### **Accountability and transparency**

In recognition that public trust in public office requires high standards of public administration, public service agencies, public sector entities and public officials—

- are committed to exercising proper diligence, care and attention; and
- are committed to using public resources in an effective and accountable way; and
- are committed to managing information as openly as practicable within the legal framework; and
- value and seek to achieve high standards of public administration; and
- value and seek to innovate and continuously improve performance; and
- value and seek to operate within a framework of mutual obligation and shared responsibility between public service agencies, public sector entities and public officials.

2.3. **The Public Interest Disclosure Act 2010 (PIDA)** – section 3 states the main objectives of the PIDA as:

- to promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector; and
- to ensure the public interests disclosures are properly assessed and, when appropriate, properly investigated and dealt with; and
- to ensure that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure; and
- to afford protection from reprisal to persons making public interest disclosures.

### 3. APPLICATION

This procedure applies to Councillors and all employees.

### 4. DEFINITIONS

4.1. **Maladministration**, as defined in Schedule 4 of the PIDA, is administrative action that -

- (a) was taken contrary to law; or
- (b) was unreasonable, unjust, oppressive, or improperly discriminatory; or
- (c) was in accordance with a rule of law 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
- (d) was taken—
  - (i) for an improper purpose; or
  - (ii) on irrelevant grounds; or
  - (iii) having regard to irrelevant considerations; or
- (e) was an action for which reasons should have been given, but were not given; or
- (f) was based wholly or partly on a mistake of law or fact; or
- (g) was wrong.

4.2. **Official Misconduct**, as defined in s15 of the *Crime and Misconduct Act 2001*, is conduct that could if proved, be –

- (a) a criminal offence; or
- (b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.

4.3. **Proper Authority**, as defined in section 5 of the PIDA is a public sector entity.

4.4. **Public Health or Safety**, as defined in Schedule 4 of the PIDA, includes the health or safety of persons –

- (a) under lawful care or control; or
- Examples for paragraph (a)

1. students under the care or control of a teacher
  2. patients under the care or control of a doctor, nurse or other health professional
  3. prisoners under the care or control of a corrective services officer
- (b) using community facilities or services provided by the public or private sector, or
- (c) in employment workplaces.

4.5. A **Public Interest Disclosure** is a disclosure made under Chapter 2 of the PIDA and includes all information and help given by the discloser to a proper authority for the disclosure.

*(Note Chapter 2 sets out requirements about the information that may be disclosed and who may disclose it, to whom and how.)*

4.6. **Public Officer**, as defined in section 7(1) of the PIDA, is a public officer of a public sector entity, is an employee, member or officer of the entity.

4.7. **Public Sector Entity** is defined in Schedule 4 of the PIDA and includes a local government authority.

## 5. PROCEDURES FOR MAKING A PUBLIC INTEREST DISCLOSURE

### 5.1 PROCEDURES FOR COUNCILLORS AND EMPLOYEES

5.1.1 Councillors and employees may make a PID on the matters listed below, if the Councillor or employee has an honest belief, based on reasonable grounds, that they possess information that tends to show conduct or danger concerning:

- (a) The conduct of another person that could, if proved be
  - (i) official misconduct; or
  - (ii) maladministration and adversely affects a person's interests in a substantial and specific way; or
- (b) a substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure); or
- (c) a substantial and specific danger to public health or safety; or
- (d) a substantial and specific danger to the environment.

Section 66 of the PIDA makes it an offence to make an intentionally false or misleading statement to a proper authority intending that it be acted upon as a PID.

5.1.2 In accordance with section 17(2) of the PIDA, any disclosure by a Councillor or employee shall be in accordance with this procedure.

5.1.3 A PID can always be made to:

- the Chief Executive Officer (CEO)
- the Mayor or other Councillor
- an employee who directly or indirectly supervises or manages the employee (discloser).

5.1.4 A PID can always be made to an external agency by a Councillor or employee if that agency has the power to investigate and remedy that type of disclosure. For example, a PID about official misconduct can be made directly to the Crime and Misconduct Commission because it can investigate and remedy that type of PID.

## **5.2 PROCEDURES FOR EXTERNAL PERSONS**

5.2.1 Any person may make a PID about:

- a substantial and specific danger to the health and safety of a person with a disability
- the commission of an offence against a provision or condition imposed under a provision in Schedule 2 of the PIDA which is or would be a substantial and specific danger to the environment
- the conduct of another person that could, if proved, be a reprisal

5.2.2 If a person is not a Councillor or employee and wishes to make a PID, that person should be advised that they may make the PID to the CEO in accordance with this procedure. They may identify themselves or remain anonymous.

5.2.3 If another public sector entity wishes to refer a PID to Council, they should be advised to forward a written referral to the CEO.

## **6. REFERRAL OF INFORMATION TO THE CHIEF EXECUTIVE OFFICER**

When an internal or external PID is received by a Councillor or employee, the CEO must be advised by the Councillor or employee who received the PID.

## **7. ASSESSMENT OF A PID**

7.1 Section 39(1) of the *Crime and Misconduct Act 2001* requires the CEO to refer all cases of suspected official misconduct to the Crime and Misconduct Commission.

7.2 The CEO will assess the PID to determine whether the PID requires:

- referral to another public sector entity;

- further enquires to be made;
- investigation;
- finalisation.

## **8. CONFIDENTIALITY PROVISIONS FOR A PID**

8.1 Section 65 of the PIDA makes it an offence for a person to make a record of, or intentionally or recklessly disclose confidential information received in the administration of the PIDA to anyone, except when authorised to do so by the PIDA.

8.2 Councillors and employees who make or receive a PID or who otherwise lawfully receive information from the administration of the PIDA, must not disclose that information pertaining to the PID in a manner which is unlawful under the PIDA.

## **9. RECORDS MANAGEMENT**

9.1 Confidential files relating to PID's will be kept in a secure environment and shall maintain appropriate records of the number of PIDs received and the action taken on them.

## **10. DISCLOSURE SUPPORT AND PROTECTION**

10.1 Section 28(e) of the PIDA states a public sector entity must establish reasonable procedures to protect its officers from reprisals that are, or may be, taken against them by the entity or other officers of the entity.

10.2 Once advised of a PID, the Corporate Governance Manager (CGM), at the direction of the CEO, will convene a meeting of the Public Interest Disclosure Support Team (PIDST) aimed at utilising existing Council resources in a responsive, proactive and coordinated manner to meet an agency's obligations under Section 28 of the PIDA.

The PIDST is to be coordinated by the CGM and includes a senior representative of the Human Resources Branch and a representative of the discloser's Union. The CGM reports directly to the CEO in relation to PID's. In consultation with the discloser, the discloser's direct supervisor may be invited to join PIDST who may be in a better position to ensure the organisation's and employee's obligations are fulfilled at a local level.

10.3 When a PID is brought to the attention of any Council employee, the CEO through the CGM should be advised. The CGM shall ensure the risk of reprisal is properly assessed and managed. Formal advice will be given to the discloser (if known) of the support and protection available from Council's PIDST. This would occur irrespective of which appropriate authority has received or is investigating the disclosure.

10.4 The CGM is the disclosure's or employee's first point of contact in discussing any difficulties which are encountered because of a belief that a person has made, or intends to make a PID. The CGM will give appropriate advice and referral information to the employee and liaise with other members of the team when there is a need to do so. In accordance with their authority and expertise, the team would address any difficulty arising because of a belief that an employee has made, or may make a PID.

10.5 Members of the PIDST will comply with Section 65 of the PIDA with regard to their obligation to preserve the confidentiality of information obtained from the administration of the PIDA.

## **11. SUPPORT FOR COUNCILLORS OR EMPLOYEES WHO MAY BE THE SUBJECT OF A PID**

11.1 If through the proper administration of the PIDA, a Councillor or employee learns they are the subject of an enquiry resulting from a PID, they may seek assistance from their legal representative and/or industrial union.

11.2 At the appropriate time, Councillors and employees will always be given the opportunity to respond to an adverse allegation made about them before any adverse finding is made.

11.3 Councillors and employees will be assumed to be innocent of any allegation until evidence is produced to the required standard of proof to show otherwise.

## **12. RESPONSIBILITIES OF COUNCILLORS AND EMPLOYEES**

All Councillors and employees should be aware of their responsibility to act professionally and fairly at all times towards their fellow officers. Councillors or employees are to be aware that engaging in a reprisal because of a belief that a person made, or intended to make, a PID is an indictable offence with a maximum penalty of 167 penalty units or two years imprisonment.

## **13. FOR FURTHER INFORMATION AND ADVICE**

### **14.1 Internal Sources**

- Chief Executive Officer
- Chief Financial Officer
- Human Resources Manager

### **14.2 External Sources**

- **Your personal legal representative**
- **Your industrial union**
- **For advice on official misconduct:**

Crime and Misconduct Commission

Phone: (07) 3360 6060

Toll free: 1800 061 611

Fax: (07) 3360 6333

Email: mailbox@cmc.qld.gov.au

Web: [www.cmc.qld.gov.au](http://www.cmc.qld.gov.au)

- **For advice on matters of local government:**

Department of Infrastructure and Planning

Phone: (07) 3234 1870

Fax: (07) 3247 4172

Web: [www.localgovernment.qld.gov.au](http://www.localgovernment.qld.gov.au)

- **For advice on matters of local government administration:**

Queensland Ombudsman

Phone: (07) 3005 7000

Toll free: 1800 068 908 (outside Brisbane)

TTY: (07) 3006 8174

Fax: (07) 3005 7067

Email: ombudsman@ombudsman.qld.gov.au

Web: [www.ombudsman.qld.gov.au](http://www.ombudsman.qld.gov.au)

- **For advice about your rights and obligations under the *Public Interest Disclosure Act 2010*:**

Public Service Commission

Phone: (07) 3227 6379

Fax: (07) 3224 2635

Email: commission@psc.qld.gov.au

Web: [www.psc.qld.gov.au](http://www.psc.qld.gov.au)

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