
Policy Title:	Public Interest Disclosure Process
Policy No:	117
Policy Subject:	Public Interest Disclosure Process
Directorate:	Executive Services
Department:	Executive Services
Responsible Officer:	Chief Executive Officer
Authorised by:	North Burnett Regional Council
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Authorities:	<i>Public Interest Disclosure Act 2010</i>

INTRODUCTION:

North Burnett Regional Council (NBRC) is committed to facilitate the disclosure, in the public interest, of information about wrongdoing in the public sector and to provide protection for those who make disclosures.

PURPOSE

This process has been developed to:

1. promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector; and
2. ensure that public interest disclosures are properly assessed and when appropriate, properly investigated and dealt with; and
3. ensure that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure; and
4. afford protection to persons making public interest disclosures, in accordance with the *Public Interest Disclosure Act 2010* (the Act).

LEGISLATIVE BASIS

- *Information Privacy Act 2009*
- *Right to Information Act 2009*
- *Crime and Misconduct Act 2001*
- *Public Sector Ethics Act 1994*
- *Local Government Act 2009*
- *Public Interest Disclosure Act 2010 (the Act)*

APPLICATION/SCOPE

This process applies to any public interest disclosure (PID) made about Council operations.

A public interest disclosure is defined by reference to:

- the person who makes the disclosure;
- the type of information disclosed; and
- the entity to which the disclosure is made

A PID can be made by **any person (whether or not the person is a public officer) to a proper authority** about:

- a) substantial and specific danger to the health or safety of a person with a disability; or
- b) the commission of an offence against a provision mentioned in Schedule 2 of the Act, if the commission of the offence is or would be a substantial and specific danger to the environment; or
- c) a contravention of a condition imposed under a provision mentioned in Schedule 2 of the Act, if the contravention is or would be a substantial and specific danger to the environment; or
- d) the conduct of another person that could, if proved, be a reprisal.

Furthermore, a PID can be made by a **public officer to a proper authority** about:

- a) the conduct of another person that could, if proved, be—
 - official misconduct; or
 - maladministration that 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.

To determine that a disclosure is a PID, the disclosure must also satisfy either:

- a) The person making the disclosure honestly believes, on reasonable grounds, that the information tends to show the conduct or other matter is wrongdoing; or
- b) The information tends to show the conduct or other matter is wrongdoing, regardless of whether the person making the complaint honestly believes the information.

STATEMENT OF ORGANISATIONAL COMMITMENT

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

- acknowledging PIDs and supporting disclosers
- undertaking a risk assessment and offering protection from reprisals

STATEMENT OF ORGANISATIONAL COMMITMENT (continued)

- 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
- reporting all disclosures to the oversight agency

DEFINITIONS

Proper authority is—

- a) a public sector entity; or
- b) a member of the Legislative Assembly.

Public officer, of a public sector entity, is an employee, member or officer of the entity.

Reprisal - Occurs when 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. A public officer who is found to have taken a reprisal commits a criminal offence.

Schedule Two – of the Public Interest Disclosure Act 2010 outlines offences or contraventions endangering the environment. The Schedule lists a range of legislation that must be considered when determining if a disclosure is a PID.

PROCEDURE FOR MAKING A PID BY ANY PERSON

1. Making a PID

A PID can be made by **any person (whether or not the person is a public officer) to a proper authority**.

2. Who to disclose to?

Any person can make a disclosure to the Chief Executive Officer (CEO). Disclosures can be made in any way, including:

- in person
- in writing (by letter, fax, or email)
- by telephone.

A disclosure can also be made to an agency external to Council. While persons are encouraged to raise matters directly with Council, disclosures may also be made to an appropriate external agency.

3. Disclosing anonymously

A person may make a disclosure to a proper authority in any way, including anonymously.

4. Keeping disclosers informed

Council will provide the following advice in writing (where possible):

- confirmation the disclosure has been received
- a description of the action proposed to be taken
- if action has been taken, a description of the results of the action.

When disclosures are made, Council will inform the discloser of:

- the likely timeframes for processing the PID;
- their required involvement in the investigation process;
- the importance of maintaining confidentiality;
- the protections under the Act that will apply;
- Council's requirement to keep the information disclosed, including the discloser's identity confidential, except as allowed under the Act;
- how they will be advised of progress and outcomes; and
- who to contact if they want further information or are concerned about reprisals.

5. Protecting disclosers

As soon as possible after receiving a PID, Council must determine the level of protection and support appropriate for a discloser by conducting a risk assessment of a reprisal to the discloser and others associated with the discloser (including those who may wrongly be suspected of being a discloser).

Council will ensure protective measures are in place which will be proportionate to the risk of reprisal and the potential consequences of a reprisal. If the risk is assessed as sufficiently high, Council will prepare a protection plan to protect the discloser. Where feasible, this should be developed in consultation with the discloser and other relevant stakeholders.

6. Taking action on a PID

After receiving a PID, Council will make a decision on how to best deal with the disclosure. In some cases Council may decide not take any action (under s30 of the Act) or Council's action may be to refer the disclosure to another agency (under s31 of the Act). Council may decide not to investigate or deal with a public interest disclosure if:-

- a) the substance of the disclosure has already been investigated or dealt with by another appropriate process; or
- b) Council reasonably considers that the disclosure should be dealt with by another appropriate process; or
- c) the age of the information the subject of the disclosure makes it impracticable to investigate; or
- d) Council reasonably considers that the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and unreasonably divert the use of Council's resources; or

6. Taking action on a PID (continued)

- e) Another entity that has jurisdiction to investigate the disclosure has notified Council that investigation of the disclosure is not warranted.

If Council decides not to investigate or deal with a public interest disclosure, Council must give written reasons for its decision to the person making the disclosure.

7. Responding to reprisals

Council is committed to ensuring that no adverse action, including reprisals, occurs as a result of a disclosure. Under s40 of the Act, *“A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that—*

- a) *the other person or someone else has made, or intends to make, a public interest disclosure; or*
- b) *the other person or someone else is, has been, or intends to be, involved in a proceeding under the Act against any person.”*

Disclosers should not suffer any form of detrimental action as a result of making a disclosure, including:

- unfair treatment
- harassment
- intimidation
- victimisation
- unlawful discrimination.

8. Privacy and Confidentiality

Maintaining confidentiality is very important in the handling of a disclosure. Confidentiality not only protects the discloser against reprisals, but any other people affected by the disclosure.

Confidential information, includes:

- the fact a disclosure has been made
- any information that may identify the discloser or any person who may be the subject of a disclosure
- the actual information that has been disclosed
- information relating to the disclosure that, if known, may cause detriment.

While every attempt to protect confidentiality will be made, there will be occasions when revealing the identity of the discloser is necessary. These include:

- providing information to a referral or oversight agency
- responding to a court order or legal directive (eg subpoena, notice to produce, direction by a parliamentary committee) court proceedings.

9. Protecting the Rights of Subject Officer(s)

All PIDs are to be assessed and managed impartially, fairly and reasonably. The rules of natural justice apply to any subject officer under investigation in respect of an allegation raised against them. Accordingly, subject officers are to be advised of the nature of allegations against them at the appropriate time and are to be afforded an opportunity to respond.

10. Record-Keeping and Reporting

The Act requires Council to keep an adequate record of PIDs, including details of the discloser (where known), the nature of the information disclosed and action taken by Council, even where the disclosure is investigated and found to be incorrect.

11. Disclosing False or Misleading Information

Disclosures are not to be made if the information is known to be malicious, false, misleading or vexatious. Disclosers need to be prepared to demonstrate reasonable grounds for their suspicions. It is an offence, to which significant penalties apply, if a person makes a statement intending that it be acted upon as a PID and the person intentionally provides false or misleading information.

