

117 Public Interest Disclosure

General Policy



PURPOSE

North Burnett Regional Council 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. To provide direction in accordance with the *Public Interest Disclosure Act 2010* (the Act) on what a public interest disclosure is and the procedure for making such a disclosure to the North Burnett Regional Council.

SCOPE

This policy applies to all councillors, employees and contractors with the North Burnett Regional Council as well as any member of the community looking to make a public interest disclosure.

POLICY STATEMENT

1.0 Principals

This policy has been developed to ensure North Burnett Regional Council can accommodate objects on Section 3 of the Act being:

- 1.1 To promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector.
- 1.2 To encourage the ethical responsibility of persons to disclose suspected misconduct and maladministration in relation to:-
 - a) Wasting of public funds;
 - b) Corrupt conduct;
 - c) Substantial and specific danger to the environment;
 - d) Substantial and specific danger to health and safety;
 - e) Substantial and specific danger to health and safety of a person with a disability; and
 - f) Reprisal action.
- 1.3 To promote an environment in which reporting of negligent or improper behaviour is encouraged. Managers are to ensure employees are aware of their responsibilities in making a PID and are able to advise other persons of the appropriate reporting process.
- 1.4 To ensure that public interest disclosures are properly assessed and when appropriate, properly investigated and dealt with. Council is committed to the principle of natural justice (procedural fairness) and making the process fair for both the discloser and the person the subject of the disclosure. Confidentiality is vital.
- 1.5 To ensure that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure.
- 1.6 To afford protection to persons making public interest disclosures.

2.0 Organisational responsibilities

- 2.1 Council is responsible for the implementation of policies and procedures for the management of PIDs. Council will provide training and assistance to employees in how to identify potential wrongdoing, how to make a PID, the support and protection to be afforded to disclosers and how PID's are managed by Council.
- 2.2 Managers must ensure staff are provided with information about making a disclosure and provide an environment where it would be comfortable discussing concerns or reporting the matter where appropriate.
- 2.3 All staff are responsible for complying with this policy and the Code of Conduct. They should be able to identify potential situations of suspected misconduct or unethical behaviour, and have clear guidance on how to report such conduct.
- 2.4 The Chief Executive Officer is the nominated PID Coordinator who ensures the organisation carries out its responsibilities under the PID Act, which includes:-
 - a) Evaluating a PID investigation following conclusion to determine whether any change is needed to the PID policy and internal procedures; and
 - b) Conducting an annual review of the effectiveness of the policy.

3.0 Identifying a public interest disclosure

A public interest disclosure (PID) is a disclosure about wrongdoing in the public sector that serves the public interest. For an allegation to be considered a PID under the Act it must be:

- public interest information about serious wrongdoing or danger
- an appropriate disclosure
- made to a proper authority

An appropriate disclosure meets the subjective and objective tests set out in the Act. This means:

- The discloser honestly and reasonably believes the information provided tends to show the conduct or danger; or
- The information tends to show the conduct or danger regardless of the discloser's belief.

The Act distinguishes between disclosures made by a public officer and those made by anyone else.

3.1 A public officer may make a public interest disclosure to a proper authority if they have information about:

- a) the conduct of another person that could, if proved, be—
 - corrupt conduct; 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.

3.2 Any person (whether or not a public officer) may make a public interest disclosure to a proper authority if they have information about:

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

4.0 Making a disclosure

4.1 Council's preferred approach is making a disclosure to the PID Coordinator. Alternatively, you can make your disclosure to any manager within Council. As a receiving officer or Councillor of a PID, you must contact your manager or CEO immediately.

4.2 Disclosers are encouraged to report anything that may relate to the PID. Proof is not required, as long as there are reasonable grounds to believe that it has occurred. The discloser should be prepared to give information on:-

- a) Name, job title and workplace address of the person the subject of the disclosure;
- b) Details of relevant events, dates and places;
- c) The names of people who may be able to provide additional information;
- d) Your name and contact details so you can be informed about the assessment of your public interest disclosure and the outcome.

4.3. Disclosers have the responsibility to provide honest and accurate information

4.4. Disclosures to Council can be made in any way, including:

By email: admin@northburnett.qld.gov.au

By mail: Chief Executive Officer, PO Box 390, Gayndah, Qld 4625

By phone: 1300 696 272

In person: 34-36 Capper Street, Gayndah, Qld 4625

A disclosure can also be made to another proper authority that is not Council.

5.0 Support and protection offered to the discloser

Council is committed to ensuring that no adverse action, including reprisals and detrimental action, 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—

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

Council will provide the following protection to the discloser:-

- a) Council recognises that anyone who makes a public interest disclosure needs to be safeguarded and supported;
- b) Ensure strict confidentiality is upheld at all times by keeping the information disclosed, including the discloser's identity confidential, except as allowed under the Act;
- c) Assess the risk of reprisal when a disclosure is first made. Consult the discloser with an appropriate plan to reduce the risk. Review and reassess the risk throughout the investigation process;
- d) Take practical action or stop or correct potential harassment, discrimination or any other form of detriment;
- e) Any discloser who believes that they have been subjected to a reprisal should report the matter immediately to their manager or the CEO, who will consider, and where necessary investigate, all reports; and
- f) An employee who takes a reprisal commits an indictable offence and is also liable to disciplinary action.

Council will provide the following support to the discloser:-

- a) Confirmation the disclosure has been received;
- b) A written description of the action taken or proposed to be taken in respect of the PID; or if the entity believes no action is required, the reasons for this decision;
- c) Contact if they want further information or are concerned about reprisals; and
- d) Provide information on support services (internal and external) such as stress management and counselling services.
- e) Under the Section 30 of the Act, disclosers have a right to apply to the CEO for a review of the decision within 28 days of receiving the written reasons.

Making a PID does not protect the discloser from disciplinary or criminal action if the discloser has been involved in improper conduct. A discloser who is an employee remains subject to reasonable management action in relation to their work conduct.

Reasonable management action includes a reasonable appraisal of work performance, a reasonable requirement to undertake counselling, and a reasonable suspension from the workplace or a reasonable disciplinary action.

6.0 Support and protection offered to the subject officer

All public interest disclosures 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.

7.0 The assessment and investigation process

In accordance with PID Standard No. 1, all PIDs will be treated seriously and confidentially and are referred to the PID Coordinator for assessment. The assessment process includes:-

- a) Thorough investigation resulting in action and remedy;
- b) Determining if the matter should be referred to another entity;
- c) Keeping disclosers informed and providing feedback;
- d) Keeping personal information private and confidential;
- e) Protecting the rights of the subject officers;
- f) Maintaining an adequate record; and
- g) Reporting all disclosures to the oversight agency.

8.0 Support and protection offered to the subject officer

Council is committed to maintaining confidentiality in respect of the management of disclosures.

Confidentiality not only protects the discloser against reprisals, but any other people affected by the disclosure. All PIDs are held securely within Council's record management system.

An employee who obtains confidential information, because of their involvement in the administration of the PID Act, must not make a record of such information, or intentionally or recklessly disclose it, except as permitted by the PID Act. These include:

- Providing information to a referral or oversight agency; and
- Responding to a court order or legal directive (e.g. subpoena, notice to produce, direction by a parliamentary committee) court proceedings.

9.0 Record-Keeping and Reporting

The Act requires Council to keep an adequate record of public interest disclosures, 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.

The act requires Council to report information about PIDs they have received to the Queensland Ombudsman. The Ombudsman reports statistical information in the Office's annual report to the Parliament.

10.0 Disclosing to a journalist

Under the PID Act, a discloser may make a PID to a journalist if they have already made the same disclosure to a public sector entity that is a 'proper authority' and:

- the entity has decided not to investigate or deal with the disclosure
- the entity investigated the disclosure but did not recommend taking any action
- the discloser was not notified within six months of making the disclosure whether or not the disclosure was to be investigated or dealt with.

11.0 Disclosing false or misleading information

Under Section 66 of the Act, it is an offence to disclose information that 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 public interest disclosures and the person intentionally provides false or misleading information.

Employees who make false declarations may be in breach of Council's Code of Conduct and therefore are liable to disciplinary action.

RELEVANT LAW

[Public Interest Disclosure Act 2010](#)

RELATED POLICIES AND PROCEDURES

[116 Administrative Action Complaints Code of Conduct](#)

Doc ID 175901
Doc ID 249240

RELATED FORMS

Nil

DEFINITIONS

Term	Definition
<i>Term</i>	Definition
<i>Corrupt conduct</i>	as defined in section 15 of the <i>Crime and Corruption Act 2001</i>
<i>Discloser</i>	shall mean a person who makes a Public Interest Disclosure in accordance with the Act. A Discloser may or may not wish to remain anonymous.
<i>Employee</i>	shall mean all persons employed by North Burnett Regional Council, includes a person engaged by the entity under a contract of service
<i>Maladministration</i>	shall mean <ol style="list-style-type: none">Was taken contrary to law; orWas unreasonable, unjust, oppressive, or improperly discriminatory; orWas 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; orWas taken:<ol style="list-style-type: none">For an improper purpose; orOn irrelevant grounds; orHaving regard to irrelevant considerations; orWas an action or which reasons should have been given, but were not given; or

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- f) Was based wholly or partly on a mistake of law or fact; or
 - g) Was wrong.
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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.

Reasonable management action will depend on the circumstances of the individual situation, having regard to the duty each employee has to Council as an employer. For example, where a work area is restructured with a resultant change to an employee's workload, this would constitute reasonable management action by the Council. However, the failure to provide adequate resources in relation to the increased workload may be viewed as the Council implementing the action in an unreasonable way.

Reprisal as outlined in Section 40 of the *Public Interest Disclosure Act 2010*.

APPROVAL

Council approved this policy on 26 September 2018.

REVIEW

This policy will be reviewed every two years by the Chief Executive Officer and is due for review in September 2020.

REVISION HISTORY

Version	Meeting	Date	History
1	Policy & Strategy Meeting	02/08/2011	Adopted
2	General	15/03/2017	Reviewed
3	General	26/09/2018	Reviewed