



Blackall-Tambo **Regional Council**

Public Interest Disclosure Policy

Version Number: Three	Effective Date: 20 May 2020
Policy Compiled by: Chief Executive Officer	Review Date: 20 May 2024
Policy Approved by: Chief Executive Officer	

SCOPE

This policy applies to all Councillors, employees of Council and members of the public.

PURPOSE

The purpose of this policy is to:

- a) Acknowledge Council's obligations as a Public Sector Entity as defined in the *Public Interest Disclosure Act 2010*); and
- b) Establish Council's commitment to the promotion and proper management of Public Interest Disclosures.
- c) To communicate the rights and obligations, and to outline a framework within which provide for the correct process for Councillors and employees of Council to make appropriate disclosures.

REFERENCES / POLICIES

- *Public Interest Disclosure Act 2010*
- *Crime and Corruption Act 2001*
- *Information Privacy Act 2009*
- *Local Government Act 2009*
- *Local Government Regulation 2012*
- *Public Sector Ethics Act 1994*
- *Work Health and Safety Act 2011*
- Councillor Code of Conduct Procedure
- Code of Conduct for Employees
- Privacy Policy
- Complaints Management Policy
- Workplace Health & Safety Policy
- Confidentiality Procedure
- Drug and Alcohol Policy
- Bullying and Harassment Governance Policy

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DEFINITIONS

To assist in interpretation the following definitions shall apply:

Administrative Action:

As defined in Schedule 4 of the Act:

- (a) Any action about a matter of administration, including for example:
 - (i) A decision and an act; and
 - (ii) A failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision; and
 - (iii) The formulation of a proposal or intention; and
 - (iv) The making of a recommendation, including a recommendation made to a Minister; and
 - (v) An action taken because of a recommendation to a Minister.

Appropriate Disclosure

An Appropriate Disclosure is a disclosure about:

- Corrupt Conduct;
- Maladministration that adversely affects a person’s interests in a substantial and specific way;
- A substantial misuse of public resource;
- A substantial and specific danger to public health or safety;
- A substantial and specific danger to the environment;
- A substantial and specific danger to the health or safety of a person with a disability; or
- Reprisal Action.

Business Activity

A Business Activity is one where Council trades in goods and services. The competitive neutrality principle required that an entity that is conducting a Business Activity in competition with the private sector should not enjoy a net advantage over competitors only because the entity is in the public sector.

Competitive Neutrality Complaints

A Competitive Neutrality Complaint is a complaint that:

- Relates to the failure of a local government to conduct a Business Activity in accordance with the competitive neutrality principle; and
- Is made by an Affected Person.

Complainant

A Complainant is a person or entity that makes a complaint.

Corrupt Conduct:

As defined in the *Crime and Corruption Act 2001*, conduct of a person, regardless of whether the person holds or held an appointment, that fulfils each of the following elements:

- (a) Adversely affects, or could adversely affect, directly or indirectly, the performance of functions, or the exercise of powers of a UPA or a person holding appointment;
- (b) Results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in section (a) in way that:
 - (i) is not honest or is not impartial; or
 - (ii) Involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or
 - (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of power of a person holding an appointment; and



- (c) Would, if proved, be a criminal offence; or a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.

Corrupt conduct also means conduct of a person, regardless of whether the person holds or held an appointment that fulfils each of the following elements:

- (a) Impairs, or could impair, public confidence in public administration; and
- (b) Involves, or could involve any of the following:
 - (i) Collusive tendering;
 - (ii) Fraudulent applications for licences, permits or other authorities under an Act with a purpose or object of any of the following (however described) – protecting health or safety of persons; protecting the environment or protecting or managing the use of the State’s natural, cultural, mining or energy resources;
 - (iii) Dishonestly obtaining, or helping someone to dishonestly obtain benefits from the payment of application of public funds of the disposition of State assets;
 - (iv) Evading State taxes, levies, duties or otherwise fraudulently causing a loss of State revenue;
 - (v) Fraudulently obtaining or retaining an appointment; and
- (c) Would, if proved, be a criminal offence; or disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.

Discloser

A Discloser is a person who makes a Public Interest Disclosure and does not need to be personally affected by the matter they are disclosing.

Employee

Local government employee:

- (a) The Chief Executive Officer; or
- (b) A person holding an appointment under section 196 of the *Local Government Act 2009*.

Maladministration

As defined in Schedule 4 of the Act: An administration action that was:

- (a) Taken contrary to law; or
- (b) Unreasonable, unjust, oppressive, or improperly discriminatory; or
- (c) 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 impartially discriminatory in the particular circumstances; or
- (d) Taken:
 - (i) For an improper purpose; or
 - (ii) On irrelevant grounds; or
 - (iii) Having regard to irrelevant considerations; or
- (e) An action for which reasons should have been given, but were not given; or
- (f) Based wholly or partly on a mistake of law or fact; or
- (g) Wrong.

PID Act

Public Interest Disclosure Act 2010

PID

Public Interest Disclosure



POLICY STATEMENT

By virtue of their office or position, Council recognises the important role Councillors, Council employees and members of the public can play in the identification of cases of maladministration, official misconduct and the misuse of public resources or contraventions giving rise to dangers to public health and safety, the environment or to persons with disabilities.

In accordance with the objectives of the PID Act, it is Council policy to:

- a) promote the public interest by facilitating Public Interest Disclosures of wrongdoing in the public sector; and
- b) ensure that Public Interest Disclosures are properly made, assessed, and when appropriate, properly investigated and dealt with; and
- c) ensure that appropriate consideration is given to the interests of persons who are the subject of a Public Interest Disclosure; and
- d) afford protection from reprisals to persons making Public Interest Disclosures.

These outcomes (including information regarding how a PID may be made) are achieved via a Public Interest Disclosure Management Plan which is to be developed and implemented by the Chief Executive Officer in accordance with Section 28(1) of the PID Act and this Policy.

Council recognises the sensitivities which can be associated with Public Interest Disclosures and the need to maintain public confidence in its process for managing Public Interest Disclosures. To that end Council will:

- a) ensure that Public Interest Disclosures are managed appropriately in accordance with the requirements of PID Act;
- b) maintain confidentiality of Public Interest Disclosures received (as per s65 of PID Act);
- c) prosecute any person who provides a false or misleading statement or information to Council with the intention of it being processed as a Public Interest Disclosure (as per s66 of PID Act);
- d) prosecute and/or take disciplinary action against any Councillor or Council employee who takes or attempts to take a reprisal action (refer s40 and s41 of PID Act);
- e) ensure that the proper records of Public Interest Disclosures received (as per s29 of PID Act) are maintained, and that the confidentiality of all records created during the investigation and reporting of Public Interest Disclosures is preserved (as per s65 of PID Act).

Public Interest Disclosures

Public interest disclosure must be:

- (a) Made to a proper authority; and
- (b) Information about the conduct of another person or another matter if:
 - (i) The person honestly believes on reasonable grounds that the information tends to show the conduct or other matter; or
 - (ii) The information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter.

A proper authority includes a public sector entity as defined by section 6 of the Act if the information and the subject of the disclosure related to the conduct of the entity, or the public sector entity has power to investigate or remedy.

POLICY REVIEW

This policy will be reviewed when any of the following occur:

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1. As required by legislation.
2. The related documents are amended or replaced.
3. Other circumstances as determined by the Chief Executive Officer.

Notwithstanding the above, this policy is to be reviewed at intervals of no more than four (4) years.

Version Control

Version One	21.01.2012
Version Two	20.01.2015
Version Three	20.05.2020



Appendix A

PUBLIC INTEREST DISCLOSURE MANAGEMENT PLAN AND PROCEDURE

Council’s Policy Commitment

Council recognises the important role Councillors, Council employees and members of the public can play in the identification of cases of maladministration, official misconduct and the misuse of public resources or contraventions giving rise to dangers to public health and safety, the environment or to persons with disabilities and which may not be identified and addressed through established internal controls.

In accordance with the objectives of the PID Act, and Councils PID policy, it is Council commitment to:

- (a) promote the public interest by facilitating Public Interest Disclosures of wrongdoing in the public sector; and
- (b) ensure that Public Interest Disclosures are properly assessed and, when appropriate, properly investigated and dealt with; and
- (c) ensure that appropriate consideration is given to the interests of persons who are the subject of a Public Interest Disclosure; and
- (d) afford protection from reprisals to persons making Public Interest Disclosures

Executive Team Commitments

Blackall-Tambo Regional Council has an obligation to deal with wrongdoings within or associated with its operational jurisdiction, and to take corrective action to appropriately deal with such wrongdoing.

Blackall-Tambo Regional Council encourages any staff member who reasonably considers that he or she has witnessed or is aware of a wrongdoing to come forward and make a disclosure in accordance with Councils Public Interest Disclosure Policy.

Blackall-Tambo Regional Council aspires to an organisational climate where all staff members feel confident and comfortable about making a disclosure of wrongdoing and feel safe in the knowledge that they will not be subject to or are provided strong protections against reprisal.

Blackall-Tambo Regional Council believes that disclosing wrongdoing is embedded in this Council’s values, in particular, ensuring that all staff and Council itself can be seen by the public as acting with integrity in accordance with our Code of Conduct. Further, Council 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 a staff member comes 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 Code of Conduct and Council’s Public Interest Disclosure Policy;
- 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.

Communication Strategy

This PID Management Plan and associated procedures will be posted to Council’s website.

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Articles promoting Council's Public Interest Disclosure Policy and procedures will be provided to staff.

Training Strategy

Staff Public Interest Disclosure Awareness

- a) Public Interest Disclosure Awareness Training will be provided to all staff as part of the employee induction process and at staff meetings (at least once annually). This training shall include:
 - the identification of what is a 'wrongdoing';
 - the correct way to make a Public Interest Disclosure;
 - an outline of the support and protections afforded to disclosers of wrongdoings; and
 - how Public Interest Disclosures will be managed.

Staff PID Management

- a) Senior managers and other staff who may receive or manage Public Interest Disclosures, persons making disclosures or other workplace issues relating to Public Interest Disclosure management will be provided annual training regarding these processes. Corporate Governance staff required to undertake detailed investigations of Public Interest Disclosures will receive investigation skills training.

Councillor Training

- a) Councillors will be briefed regarding both Public Interest Disclosure Awareness and Public Interest Disclosure Management following each quadrennial election.

Public Interest Disclosure Oversight

Council's Corporate Governance Department will be responsible for:

- providing staff training regarding Public Interest Disclosure awareness and Public Interest Disclosure Management;
- applying consistent and appropriate assessment procedures to determine which complaints meet the requirements of the PID Act for treatment as a Public Interest Disclosure;
- monitoring the investigation and resolution of Public Interest Disclosures;
- managing or coordinating the support and protection offered to disclosers;
- collecting, reporting and reviewing data via a secure and confidential reporting system about Public Interest Disclosures received; and
- reporting Public Interest Disclosure information to Council's Executive Team (as required) and to the Public Service Commission, via the Public Interest Disclosure database, on a quarterly basis.

Monitoring and Improvements

It is expected that the Public Interest Disclosure process will assist to:

- promote good governance of Council's operations through the investigation of, and attention to matters, which might otherwise not come to the attention of the Chief Executive Officer; and
- result in the identification of public health and safety and environmental protection issues and their referral to appropriate authorities.

An annual report will be provided to the Executive Team on:

- a) issues arising from Public Interest Disclosures received during the period; and
- b) effectiveness of Council's Public Interest Disclosure Policy and Procedures.

How Public Interest Disclosures May Be Made

A Public Interest Disclosure may be made either verbally or in writing. However, where a Public Interest Disclosure is of a complex nature or involves serious allegations against a Councillor or a Council

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officer, it is recommended that the disclosure be submitted in writing and marked ‘Confidential for the attention of the Chief Executive Officer’ or other Officer, Councillor or Mayor as appropriate.

The Public Interest Disclosure should detail the incident or issue of concern in sufficient detail to enable an appropriate investigation to be conducted. Council will accept and process anonymous Public Interest Disclosures but without the discloser’s details Council will be unable to contact the discloser to obtain further information or to provide feedback. Depending on circumstances, disclosers should supply:

- their name and contact details (desirable);
- the nature of the wrongdoing;
- who they think did the wrongdoing (if possible);
- when and where the wrongdoing occurred;
- events surrounding the issue;
- whether they did anything in response to the wrongdoing;
- others who know about the wrongdoing and have allowed it to continue.

Council will endeavour to detect any communication received which could constitute a PID. However due to the volumes of complaints and service requests which we process, persons wishing to have their communication regarded as a Public Interest Disclosure are strongly advised to express that wish when making the disclosure.

Preliminary Assessments and Registration

All Public Interest Disclosures and suspected Public Interest Disclosures will be referred to the PID Manager for processing. Prior to commencing any referral or investigation processes, the PID Manager will undertake the following steps:

Step 1: Assess whether the subject matter qualifies as a Public Interest Disclosure within the meaning of the PID Act. In assessing a disclosure, the officer must determine if:

- the person making the disclosure is able to receive the protection of the Act;
- the disclosure concerns a matter about which a Public Interest Disclosure can be made;
- the disclosure meets either the subjective or objective test set out in the Act;
- the disclosure has been made to an individual or entity who may receive a Public Interest Disclosure; and
- the disclosure has been made in accordance with Council’s procedure or to a person listed in the Act.

Step 2: Determine whether the subject matter should be referred to another public sector agency. This would apply if the disclosure is about—

- the conduct of the referral entity or a public officer of the referral entity; or
- the conduct of an entity (including itself), or
- another matter, that the referral entity has the power to investigate or remedy.

Referral to another public sector agency will not be made where the PID Manager considers there is an unacceptable risk that a reprisal would happen because of the referral. Where practical, the officer will consult with the person who made the disclosure to determine whether there would be an unacceptable risk.

Step 3: Determine whether Council should investigate the disclosure. In accordance with s30 of the PID Act, Council may decide not to investigate or deal with a Public Interest Disclosure if—

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- the substance of the disclosure has already been investigated or dealt with by another appropriate process; or
- the entity reasonably considers that the disclosure should be dealt with by another appropriate process; or
- the age of the information the subject of the disclosure makes it impracticable to investigate; or
- the entity reasonably considers that the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and unreasonably divert the resources of the entity from their use by the entity in the performance of its functions; or
- another entity that has jurisdiction to investigate the disclosure has notified the entity that investigation of the disclosure is not warranted.

Step 4: Conduct 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) as a consequence of Council's investigation of the disclosure and subsequent actions.

If the risk is assessed as sufficiently high, a protection plan will be prepared to protect the discloser. Where feasible, this will be developed in consultation with the discloser and other relevant stakeholders.

Step 5: Register the disclosure in Council's Requests System. The matter will be registered as a confidential item to be accessed and tracked only by the PID Manager.

Step 6: Provide the discloser or the entity that referred the disclosure, reasonable information including:

- confirmation that the disclosure was received by Council;
- a description of the action proposed to be taken, or taken, by Council in relation to the disclosure;
- if action has been taken by Council in relation to the disclosure—a description of the results of the action;
- the likely timeframes (if possible);
- their involvement in the investigation process;
- the importance of maintaining confidentiality;
- the protections under the Act that will apply;
- that Council will 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

If Council decides not to investigate or deal with a Public Interest Disclosure, it will give written reasons for its decision to the person making the disclosure (provided that their identity and contact details are known).

Investigating Processes

The PID Manager will commission an investigation of all Public Interest Disclosures excepting where a contrary decision has been made under Step 3 above. Where appropriate, an external investigator will be engaged for this purpose. In all cases the investigator must:

- have the necessary skills or training to perform that task in a professional manner;
- not be under the direction of a person being investigated;
- be sufficiently removed from the issue as to not have a conflict of interest or perceived conflict of interest when undertaking the investigation;



- when assessing (and where necessary, investigating and taking action on) a Public Interest Disclosure involving allegations against Council officers, take account of Council's; and obligations to the subject officers. The fact that Council is relying on information obtained through a Public Interest Disclosure for any subsequent disciplinary process does not exempt Council from its obligations to the subject officers.

Taking Corrective Action

On conclusion of the investigation, the investigator will provide the PID Manager with a written report detailing the process followed and their findings. The Manager Corporate Governance will forward copies of the report to the Chief Executive Officer and the person who made the disclosure.

The Chief Executive Officer will utilise that report as appropriate to:

- inform improvements to service delivery, business processes and internal controls;
- recommend any amendments to Council policies;
- recommend amendments of this Management Plan to improve its effectiveness; or
- instigate disciplinary action.

Where disciplinary action is commenced arising from a Public Interest Disclosure, the subject officers will be afforded rights as provided for in Council's Staff Formal Disciplinary Policy.

Protection and Support of Disclosers

Council will provide protection and support for persons making Public Interest Disclosures against reprisals by:

- a) treating all Public Interest Disclosures as confidential information to be recorded on protected files; and
- b) taking firm disciplinary action against any officer found to have disclosed a Public Interest Disclosure contrary to this policy or to have taken reprisal action against the discloser.

A person making a public interest disclosure is not subject to any civil or criminal liability, or any liability arising by way of administrative process, including disciplinary process for making the disclosure. In particular:

- a) in a proceeding for defamation has a defence of absolute privilege for making a Public Interest Disclosure; and
- b) a person, who would otherwise be required to maintain confidentiality about the disclosed information in any Act, oath, rule of law or practice does not contravene an Act, oath, rule of law or practice by making a disclosure.

However, a person's liability for their own conduct is not affected by the person making a disclosure under the Act.

Disclosures made under the PID Act are protected from being disclosed in response to applications made under the *Right to Information Act 2009*. It should be noted however that agencies such as the Crime and Misconduct Commission may require full disclosure of information held by Council. Also, persons making Public Interest Disclosures should understand that in particular circumstances their identity may become evident to other persons as a consequence of investigation processes.

Both during and following the investigation process support for disclosers will be provided proportionate to the risk of reprisal, and the potential consequences of a reprisal. Protections under the Act are only



available to a person who makes a Public Interest Disclosure to a proper authority. For example, a person making a Public Interest Disclosure to a journalist prior to making a Public Interest Disclosure to a proper authority would not be afforded the protections of the PID Act.

Similarly, vexatious allegations with no reasonable basis will also not be afforded the protections of the PID Act.

In the event of a reprisal being alleged or suspected, Council will act in the interest of the discloser by:

- attending to the safety of the discloser(s) or affected third parties as a matter of priority;
- reviewing the risk assessment of reprisal and any protective measures needed; and
- managing any allegation of a reprisal as a Public Interest Disclosure in its own right.

Council will assist employees who make Public Interest Disclosures by:

- regularly checking on the discloser's well-being;
- advising the discloser of the availability of the Employee Assistance Scheme; and
- where the health of the discloser becomes a concern, liaising with officers responsible for occupational workplace health and safety.

Further actions by Disclosers

Within 28 days of a person receiving notification that the PID Manager has decided under Step 3 (above) not to investigate or deal with their disclosure, the person who made the disclosure may appeal to the Chief Executive Officer for a review of that decision.

A person dissatisfied with Council's handling of their Public Interest Disclosure has an internal right of review to the Chief Executive Officer. Disclosers are also entitled to raise the matter with other entities, such as the Queensland Ombudsman in cases of maladministration.