

5.4. COMPLAINTS ABOUT THE PUBLIC OFFICIAL GENERAL POLICY

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DEPARTMENT Corporate Services

RECOMMENDATION

That Council:

- **adopts the Dealing With Complaints About The Public Official: Section 48A Of The Crime And Corruption Act 2001 General Policy; and**
- **delegates authority to the Chief Executive Officer under section 257 of the Local Government Act 2009 to incorporate any administrative changes required to the policy following the review by the Crime and Corruption Commission.**

EXECUTIVE SUMMARY

Pursuant to legislative requirements, the Dealing With Complaints About The Public Official: Section 48A Of The *Crime And Corruption Act 2001* General Policy is presented to Council for adoption. In this policy reference to "The Public Official" is reference to Council's Chief Executive Officer.

BACKGROUND

Under section 48A of the *Crime and Corruption Act 2001*, Council must have a policy about dealing with complaints that involves, or may involve, corrupt conduct by the Chief Executive Officer (CEO).

COMMENT

To assist Council in developing this policy, the Crime and Corruption Commission (CCC) has provided a suggested policy template and some explanatory notes. The policy presented to Council for adoption is substantially in line with the suggested policy template and the only changes that have been undertaken were to reflect this Council.

Following adoption by Council, this policy will be forwarded to the CCC for their review. Delegated authority to the CEO is sought from Council to enable any administrative changes that may be required following the review by the CCC to be updated to this policy.

PROPOSAL

Draft policy as required under the section 48A of the Crime and Corruption Act 2001 is presented to Council for adoption.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications with the adoption of this policy.

RISK MANAGEMENT IMPLICATIONS

It is imperative that Council abides by all legislative requirements to mitigate risk to reputation and standing within the local government industry.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2014-2019 Initiatives:

Theme 5 - Governance

5.2.2 - Implement adopted policies and guidelines to ensure consistency in administrative management which also encourages innovation in Council operations.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Regulator	Meeting the responsibilities associated with regulating activities through legislation or local law.
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CONSULTATION

No consultation undertaken as this policy is a requirement of legislation and a template policy has been provided by the Crime and Corruption Commission.

ATTACHMENTS

1. Dealing with a complaint involving the public official GP **[5.4.1]**



GENERAL POLICY

DEALING WITH COMPLAINTS ABOUT THE PUBLIC OFFICIAL: SECTION 48A OF THE *CRIME AND CORRUPTION ACT 2001*

Contents

1	Objective	2
2	Policy rationale	2
3	Definitions	2
4	Policy application	3
5	Nominated person	3
6	Complaints about the CEO	3
7	Resourcing the General Manager Corporate Services	4
8	Liaising with the CCC	4
9	Consultation with the CCC.....	4
10	Statutory references	4

1 Objective

The Chief Executive Officer (CEO) is the public official of Council.

The objective of this policy is to set out how Council will deal with a complaint (also information or matter)¹ that involves or may involve corrupt conduct of its CEO as defined in the *Crime and Corruption Act 2001* (CC Act).

2 Policy rationale

The policy is designed to assist Council to:

1. Comply with s48A of the *Crime and Corruption Act 2001*
2. Promote public confidence in the way suspected corrupt conduct of the CEO for Council is dealt with (s34(c) CC Act)
3. Promote accountability, integrity and transparency in the way Council deals with a complaint that is suspected to involve, or may involve, corrupt conduct of the CEO.

3 Definitions

Crime and Corruption Commission (CCC)	the Commission continued in existence under the <i>Crime and Corruption Act 2001</i>
CC Act	<i>Crime and Corruption Act 2001</i>
Complaint	includes information or matter. See definition provided by s48A(4) of the <i>Crime and Corruption Act 2001</i>
Contact details	should include a direct telephone number, email address and postal address to enable confidential communications
Corruption	see Schedule 2 (Dictionary) of the <i>Crime and Corruption Act 2001</i>
Corrupt conduct	see s15 of the <i>Crime and Corruption Act 2001</i>
<i>Corruption in Focus</i>	http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus ; see chapter 2, page 2.5
Deal with	see Schedule 2 (Dictionary) of the <i>Crime and Corruption Act 2001</i>
Nominated person	see item 5 of this policy
Police misconduct	see Schedule 2 (Dictionary) of the <i>Crime and Corruption Act 2001</i>
Public Official/CEO	see Schedule 2 (Dictionary) and also s48A of the <i>Crime and Corruption Act 2001</i>

¹ See s48A of the CC Act and definitions below

Unit of public administration (UPA)	see s20 of the <i>Crime and Corruption Act 2001</i>
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4 Policy application

This policy applies:

- if there are grounds to suspect that a complaint may involve corrupt conduct of the CEO of Council
- to all persons who hold an appointment in, or are employees of Council

For the purpose of this policy a complaint includes information or matter.²

5 Nominated person

Having regard to s48A(2) and (3) of the CC Act, this policy nominates:

- The General Manager Corporate Services as the nominated person/s to notify³ the Crime and Corruption Commission (CCC) of the complaint and to deal with the complaint under the CC Act.⁴

Once Council nominates a person, the CC Act applies as if a reference about notifying or dealing with the complaint to the public official/CEO is a reference to the nominated person⁵.

6 Complaints about the CEO

If a complaint may involve an allegation of corrupt conduct of the CEO of Council, the complaint may be reported to:

- the nominated person, or
- a person to whom there is an obligation to report under an Act⁶ (this does not include an obligation imposed by ss37, 38 and 39(1) of the CC Act).

If there is uncertainty about whether or not a complaint should be reported, it is best to report it to the nominated person.

If the nominated person reasonably suspects the complaint may involve corrupt conduct of the CEO, they are to:

- (a) notify the CCC of the complaint⁷, and
- (a) deal with the complaint, subject to the CCC’s monitoring role, when —
 - directions issued under s40 apply to the complaint, if any, or
 - pursuant to s46, the CCC refers the complaint to the General Manager Corporate Services to deal with⁸.

If the CEO reasonably suspects that the complaint may involve corrupt conduct on their part, the CEO must:

- (i) report the complaint to the nominated person as soon as practicable and may also notify the CCC, and
- (ii) take no further action to deal with the complaint unless requested to do so by the nominated person in consultation with Council.

² See s48(4) CC of the CC Act
³ Under ss37 or 38 of the CC Act
⁴ Under Chapter 2, Part 3, Division 4, Subdivisions 1 & 2 of the CC Act
⁵ See s48A(3) CC Act
⁶ See s39(2) of the CC Act
⁷ Under ss37 or 38, subject to s40 of the CC Act
⁸ Under ss41 and 42 and/or ss43 and 44 of the CC Act

If directions issued under s40 apply to the complaint:

- (i) the nominated person is to deal with the complaint, and
- (ii) the CEO is to take no further action to deal with the complaint unless requested to do so by the nominated person in consultation with Council.

7 Resourcing the General Manager Corporate Services

If pursuant to ss40 or 46, the General Manager Corporate Services has responsibility to deal with the complaint⁹:

- (i) Council will ensure that sufficient resources are available to the General Manager Corporate Services to enable them to deal with the complaint appropriately¹⁰, and
- (ii) The General Manager Corporate Services is to ensure that consultations, if any, for the purpose of securing resources sufficient to deal with the complaint appropriately are confidential and are not disclosed, other than to the CCC, without authorisation under a law of the Commonwealth or the State.
- (iii) the General Manager Corporate Services must, at all times, use their best endeavours to act independently, impartially and fairly having regard to the:
 - purposes of the CC Act¹¹
 - the importance of promoting public confidence in the way suspected corrupt conduct in Council is dealt with¹², and
 - Council's statutory, policy and procedural framework.

The General Manager Corporate Services:

- is delegated the same authority, functions and powers as the CEO to direct and control staff of Council as if the nominated person is the CEO of Council for the purpose of dealing with the complaint only
- is delegated the same authority, functions and powers as the CEO to enter into contracts on behalf of Council for the purpose of dealing with the complaint
- do not have any authority, function or power that cannot — under the law of the Commonwealth or the State — be delegated by either Council or the CEO, to the nominated person.

8 Liaising with the CCC

The CEO is to keep the CCC and the nominated person informed of any proposed changes to this policy.

9 Consultation with the CCC

The CEO will consult with the CCC when preparing any policy about how Council will deal with a complaint that involves or may involve corrupt conduct of the CEO.¹³

10 Statutory references

Unless otherwise stated, all statutory references are to the *Crime and Corruption Act 2001*.

⁹ Under ss41 and 42 and/or ss43 and 44 of the CC Act

¹⁰ See the CCC's corruption purposes and function set out in ss4(1)(b), 33, 34, 35 and the Council's relevant statutory, policy and procedural framework which help inform decision making about the appropriate way to deal with the complaint

¹¹ See ss57 and the CCC's corruption purposes and function set out in ss4(1)(b), 33, 34, 35 of the CC Act

¹² See s34(c) CC Act

¹³ Section 48A of the CC Act

This policy is to remain in force until otherwise determined by Council.
Manager Responsible for Review: General Manager Corporate Services

ORIGINALLY ADOPTED: 5 June 2018

CURRENT ADOPTION: 5 June 2018

DUE FOR REVISION: June 2021

REVOKED/SUPERSEDED: