

## 5.8. COMPLAINTS ABOUT THE PUBLIC OFFICIAL POLICY

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**DEPARTMENT** Governance

### RECOMMENDATION

That Council:

- **Adopts the Complaints about the Public Official Policy as per section 48A of the *Crime and Corruption Act 2001*; and**
- **Delegates authority to the Manager Governance 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.**

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### EXECUTIVE SUMMARY

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

### BACKGROUND

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

### COMMENT

Recent review indicated changes be made to policy to update staff positions and to provide appropriate delegation and contact details as required.

### PROPOSAL

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

### FINANCIAL/RESOURCE IMPLICATIONS

There are no financial 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 2019-2024 Initiatives:

#### Theme 5 - Robust Governance and Efficient Service Delivery

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

**Goal 1** - *We will conduct Council business in an open and transparent manner with strong oversight and open reporting.*

### Operational Plan 2020-2021 Actions:

**5.1.2** - *Review Council's reporting to the community. Update key performance indicators.*

## 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:

<b>Information Provider</b>	Council provides the community with important information on services, events, policies, rules, strategies, and any other relevant data that helps the community to stay informed. In performing this role, Council seeks to be open and transparent.
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## CONSULTATION

**Internal:** Nil

**External:** Crime and Corruption Commission

## COMMUNITY ENGAGEMENT

Nil

## ATTACHMENTS

1. Draft Complaints about public official CCC Policy [5.8.1 - 4 pages]

## 44. Complaints Involving Corruption of the Public Official - Statutory

### Objective

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

The Objective of this policy is to set out how Council will deal with a complaint (or information or matter)<sup>1</sup> that involves or may involve corrupt conduct<sup>2</sup> of its CEO as defined in the Crime and Corruption Act 2001 (CC Act).

### Policy Rationale

The policy is designed to assist the Council to:

- (a) Comply with s48A of the CC Act;
- (b) Promote public confidence in the way suspected corrupt conduct of the CEO of Council is dealt with (s34(c) of the CC Act); and
- (c) Promote accountability, integrity, and transparency in the way that Council deals with a complaint that is suspected to involve, or does involve, corrupt conduct of the CEO.

### Definitions

TERM	DEFINITION
<b>Crime and Corruption Commission (CCC)</b>	the Commission continued in existence under the <i>Crime and Corruption Act 2001</i>
<b>CC Act</b>	<i>Crime and Corruption Act 2001</i>
<b>Complaint</b>	includes information or matter. See definition provided by s48A(4) of the <i>Crime and Corruption Act 2001</i>
<b>Contact details</b>	Manager Governance Douglas Shire Council PO Box 723 Mossman Qld 4873 <a href="mailto:enquiries@douglas.qld.gov.au">enquiries@douglas.qld.gov.au</a>
<b>Corruption</b>	see Schedule 2 (Dictionary) of the <i>Crime and Corruption Act 2001</i>
<b>Corrupt conduct</b>	see s15 of the <i>Crime and Corruption Act 2001</i>
<b>Corruption in Focus</b>	<a href="http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus">http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus</a> ; see chapter 2, page 2.5
<b>Deal with</b>	see Schedule 2 (Dictionary) of the <i>Crime and Corruption Act 2001</i>
<b>Nominated person</b>	Manager Governance
<b>Police misconduct</b>	see Schedule 2 (Dictionary) of the <i>Crime and Corruption Act 2001</i>
<b>Public Official/CEO</b>	see Schedule 2 (Dictionary) and also s48A of the <i>Crime and Corruption Act 2001</i>
<b>Unit of public administration (UPA)</b>	see s20 of the <i>Crime and Corruption Act 2001</i>

<sup>1</sup> See s48A of the CC Act and definitions below.

<sup>2</sup> The CCC's corruption function encompasses both "corrupt conduct" and "police misconduct". For the purposes of the Queensland Police Service, wherever the term "corrupt conduct" is used in the policy, they would also have to consider police misconduct, as per s. 37 of the CC Act.

## Policy Application

This policy applies:

- (a) if there are grounds to suspect that a complaint may involve corrupt conduct of the CEO of Council;  
and
- (b) to all councillors, employees and contractors of Council, whether employed on a permanent, temporary, contract, paid or unpaid basis.

For the purpose of this policy a complaint includes information or matter.<sup>3</sup>

## Nominated Person

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

- Manager Governance as the nominated person
- to notify<sup>4</sup> the Crime and Corruption Commission (CCC) of the complaint and to deal with the complaint under the CC Act.<sup>5</sup>

Once the Council nominates a person, the CC Act applies as if a reference about notifying or dealing with the complaint to the CEO is a reference to the nominated person<sup>6</sup>.

## Complaints about the CEO

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

- the nominated person, or
- a person to whom there is an obligation to report under an Act<sup>7</sup> (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 must be reported to the nominated person.

If the nominated person reasonably suspects the complain may involve corrupt conduct of the CEO, they must:

- (a) notify the CCC of the complaint<sup>8</sup>; and
- (b) deal with the complaint, subject to the CCC's monitoring role, when –
  - (i) directions issued under s40 of the CC Act apply to the complaint, if any; or
  - (ii) pursuant to s46 of the CC Act, the CCC refers the complaint to the nominated person to deal with<sup>9</sup>.

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

- (a) report the complain to the nominated person as soon as practicable and may also notify the CCC;  
and
- (b) take no further action to deal with the complaint unless requested to do so by the nominated person in consultation with the Mayor.

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<sup>3</sup> See s. 48A(4) of the CC Act

<sup>4</sup> Under ss. 37 or 38 of the CC Act

<sup>5</sup> Under Chapter 2, Part 3, Division 4, Subdivisions 1 & 2 of the CC Act

<sup>6</sup> See s. 48A(3) of the CC Act.

<sup>7</sup> See s. 39(2) of the CC Act.

<sup>8</sup> Under ss. 37 or 38, subject to s. 40 of the CC Act

<sup>9</sup> Under ss. 41 and 42 and/or ss. 43 and 44 of the CC Act

If directions issued under s40 of the CC Act apply to the complaint:

- (a) the nominated person is to deal with the complaint; and
- (b) 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 the Mayor.

### Recordkeeping requirements

Should the nominated person decide that a complaint, or information or matter, about alleged corrupt conduct of the CEO is not required to be notified to the CCC under s. 38 of the CC Act, the nominated person must make a record of the decision that complies with s. 40A of the CC Act.

### Resourcing the nominated person

If, pursuant to s40 or 46 of the CC Act, the nominated person has responsibility to deal with the complaint<sup>10</sup>:

- (a) Council will ensure that sufficient resources are available to the nominated person to enable them to deal with the complaint appropriately<sup>11</sup>: and
- (b) The nominated person is to ensure the 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 or
  - with the consent of the nominated person responsible for dealing with the complaint;
- (c) The nominated person must, at all times, use their best endeavours to act independently, impartially and fairly having regard to the:
  - Purpose of the CC Act<sup>12</sup>
  - The importance of promoting public confidence in the way suspected corrupt conduct in Council is dealt with<sup>13</sup>; and
  - Councils statutory, policy and procedural framework

If the nominated person has responsibility to deal with the complaint, they:

- (a) Are 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;
- (b) Are 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; and
- (c) Do not have any authority, function, or power that cannot, under the law of the Commonwealth or the State, be delegated by either the Mayor or the CEO to the nominated person.

### Liaising with the CCC

The CEO is to keep the CCC and the nominated person informed of:

- (a) The contact details for the CEO and the nominated person; and
- (b) Any proposed changes to this policy.

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<sup>10</sup> Under ss. 41 and 42 and/or ss. 43 and 44 of the CC Act

<sup>11</sup> See the CCC's corruption purposes and function set out in ss. 4(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

<sup>12</sup> See s. 57 and the CCC's corruption purposes and function set out in ss. 4(1)(b), 33, 34, 35 of the CC Act.

<sup>13</sup> See s. 34(c) of the CC Act

## Consultation with the CCC

The CEO will consult with the CCC when preparing any policy about how the Council will deal with a complaint that involves or may involve corrupt conduct of the CEO<sup>14</sup>.

## Statutory References

Unless otherwise stated, all statutory references are to the CC Act.

## Related Documents

Administrative Action Complaints – Complaints Management Process

Workplace Harassment and Bullying - Administrative Instruction

Discipline Procedures - Administrative Instruction

## Policy Review

This policy is to be reviewed for applicability, effectiveness, and consistency with relevant legislation, Council resolutions and other council documents. Reviews of this policy will occur as required, or at least once every four years.

## Policy Details

Policy Name	Complaints Involving Corruption of the Public Official
Policy Number	44
Policy Version	4
Document Number	855869
Endorsed by	Council
Policy Type	Statutory
Approval Authority	Council
Date Adopted	27/01/2021
Time Period	4 Years
Review Date	January 2025
Policy Department	Governance
Link to Corporate Plan	Robust Governance and Efficient Service Delivery
Revoked/Superseded	N/A

**This policy is to remain in force until otherwise determined by Council.**

<sup>14</sup> Section 48A of the CC Act.