

 <p>Mackay REGIONAL COUNCIL</p>	COUNCIL POLICY	
	Public Interest Disclosure	
	POLICY NO	078
	DEPARTMENT	Organisational Services
	PROGRAM	Governance & Assets
ENDORSED BY COUNCIL	13 February 2019, Folio 61005	

1.0 Scope

This policy applies to Mackay Regional Council's (MRC's), Councillors, employees and members of the public.

2.0 Purpose

MRC is committed to the promotion of the public interest and encourages and supports Public Interest Disclosures of wrong doing in Council.

The objectives of the Policy are:

- To create a positive reporting environment that encourages the making of Public Interest Disclosures;
- To provide processes that ensure Public Interest Disclosures are dealt with in a thorough and timely manner;
- To provide appropriate support and protection to MRC Officers and members of the public to make a Public Interest Disclosure;
- To ensure that MRC fulfils its responsibility under the *Public Interest Disclosure Act 2010*. (the act)
- To ensure that the Discloser is kept informed throughout the process.

3.0 Reference

- *Crime and Corruption Act 2001*
- *Information Privacy Act 2009*
- *Local Government Act 2009*
- *Local Government Regulation 2012*
- *Public Interest Disclosure Act 2010*
- *Public Interest Disclosure Standard*
- *Public Sector Ethics Act 1994*
- *Work Health & Safety Act 2011*
- *Mackay Regional Council Code of Conduct 2014*
- *Mackay Regional Council Fraud & Corruption Policy*

4.0 Definitions

To assist in interpretation the following definitions shall apply:

Council shall mean the Mayor and Councillors of Mackay Regional Council.

Councillor shall mean a Councillor of a Mackay Regional Council within the meaning of the *Local Government Act 2009*, includes the Mayor.

Corrupt Conduct has the same meaning as 'corrupt conduct' under the *Crime and Corruption Act 2001* being conduct of a person, regardless of whether the person holds or held an appointment, that:

- (a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of –
 - (i) a unit of public administration; or
 - (ii) a person holding an appointment; and
- (b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a 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 powers of a person holding an appointment.
- (c) is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and
- (d) would, if proved, be –
 - (i) a criminal offence; or
 - (ii) 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 may include, but is not limited to:

- (a) abuse of public office;
- (b) bribery, including bribery relating to an election;
- (c) extortion;
- (d) obtaining or offering a secret commission;
- (e) fraud;
- (f) stealing;
- (g) forgery;

- (h) perverting the course of justice;
- (i) an offence relating to an electoral donation;
- (j) loss of revenue of the State;
- (l) homicide, serious assault or assault occasioning bodily harm or grievous bodily harm;
- (m) obtaining a financial benefit from procuring prostitution or from unlawful prostitution engaged in by another person;
- (n) illegal drug trafficking;
- (o) illegal gambling.

Corruption shall mean a dishonest activity in which a Mackay Regional Council employee, Councillor, volunteer, consultant or contractor acts contrary to the interest of Mackay Regional Council and abuses his/her position of trust in order to achieve some personal gain or advantage for him or herself or for another person or organisation.

Discloser 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.

Disclosure shall mean a Public Interest Disclosure.

Maladministration shall mean an administrative action that:

- a) was taken contrary to law; or
- b) was unreasonable, unjust, oppressive, or improperly discriminatory; or
- c) was 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; or
- d) was taken:
 - i. for an improper purpose; or
 - ii. on irrelevant grounds; or
 - iii. having regard to irrelevant considerations; or
- e) was an action for which reasons should have been given, but were not given; or
- f) was based wholly or partly on a mistake of law or fact; or
- g) was wrong.

MRC shall mean Mackay Regional Council.

MRC Officers/Employees shall mean all persons employed at Mackay Regional Council on a permanent, temporary, volunteer or casual basis and may include persons engaged under a contract of service.

PID shall mean Public Interest Disclosure/s.

Public Interest Disclosure (PID) shall mean a disclosure of information to a proper authority in accordance with the Act, and includes all information and help given by the Discloser to the proper authority.

The Act distinguishes between disclosures made by:

- A public officer; and
- Anyone else.

Public Interest Disclosures made by public officers must concern:

- (a) The conduct of another person that could, if proved, be -
 - (i) Corrupt conduct; or
 - (ii) 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 priorities or expenditure); or
- (c) A substantial and specific danger to public health or safety; or
- (d) A substantial and specific danger to the environment.

Public Interest Disclosures made by any other person must concern;

- A substantial and specific danger to the health or safety of a person with a 'disability' as defined in the *Disability Services Act 1992*; or
- A substantial and specific danger to the environment; or
- Contravention that is or would be a substantial and specific danger to the environment; or
- A reprisal taken against anybody as a result of a Public Interest Disclosure.

A person has information about the conduct of another person or another matter if either:

- The person honestly believes on reasonable grounds that the information tends to show the conduct or other matter or;
- The information tends to show the conduct or other matters regardless of whether the person honestly believes the information tends to show the conduct or other matter.

The disclosure is still a Public Interest Disclosure and covered by the Act including:

- Disclosures made to the media (exception special circumstances outlined in Part 4, Section 20 of the Act);
- Those made frivolously or vexatious;
- Those which primarily question the relative merits of government or agency policy; and
- Those that are made substantially to avoid disciplinary action.

Disclosures that are wilfully false constitute an offence under the Act.

The disclosure cannot be based on a mere disagreement over policy that may properly be adopted about priorities or expenditure.

Public Officer shall mean a MRC officer/employee or Councillor.

Reportable Conduct shall mean any conduct by a person connected with Council which is:

- Dishonest;
- Fraudulent;
- Corrupt;
- Illegal (including theft, drug sale/use, violence or threatened violence and criminal damage against property);
- A breach of Legislation or Local Laws;
- Unethical (either a breach of Council's Code of Conduct for Employees or generally);
- Serious improper conduct;
- Unsafe work practices;
- Conduct which may cause financial or non-financial loss to the Council or be otherwise detrimental to the Interests of Council;
- Gross Mismanagement;
- Serious or substantial waste; or
- Repeated instance of breach of administrative procedures;
- Environmental dangers.

Reprisal shall mean an occurrence when a person attempts to cause or causes detriment to anybody because of a belief that a person intends to or has made a Public Interest Disclosure.

5.0 Background

MRC encourages disclosures of any reportable conduct.

MRC will ensure that suitably trained officers will undertake investigations with respect to Public Interest Disclosures. These officers will be delegated by the Chief Executive Officer.

MRC recognises that a Discloser has a right of protection under the Act and that MRC may be liable if it does not take action to prevent and deter reprisal.

MRC will not tolerate intimidation, harassment or victimisation, assault or any other inappropriate conduct directed towards a person because of a suspicion or belief that the person may or has made a Public Interest Disclosure. MRC will deal with any occurrences under appropriate disciplinary and/or harassment procedures in line with the requirements of the Act.

MRC is obligated to meet the following principles from the five Local Government principles referred to in the *Local Government Act 2009* and *Local Government Regulation 2012*:

- Good governance of, and by, local government; and
- Ethical and legal behaviour of Councillor's and Local Government employees.

Councillor's and employees are also obligated to comply with the ethics principles set out in the *Public-Sector Ethics Act 1994*. The principle that relates to disclosures of interest is labelled "integrity and impartiality". This principle is about public trust and an employee's obligation to maintain and enhance public confidence in the integrity of the Local Government.

MRC's Code of Conduct also sets out the behavioural standards expected of MRC employees.

If an employee or Councillor maliciously makes an alleged Public Interest Disclosure which they know to be untrue their actions will be regarded as misconduct and will be dealt with under the appropriate disciplinary procedures.

6.0 Policy Statement

Principles:

- Every Councillor and employee of MRC has an ethical responsibility to report suspected misconduct, maladministration, wasting of public funds, substantial and specific danger to public health and safety, the environment or a person with disability, and reprisal action;
- The principle of natural justice (procedural fairness) will apply to all investigations of matters the subject of Public Interest Disclosures;
- The rights of any person who is subject to, or in some way associated with, a Public Interest Disclosure will be safeguarded. MRC is committed to affording support and protection from reprisals to any person making a Public Interest Disclosure and appropriately dealing with the employees who take reprisal action;
- Managers and supervisors are to ensure employees are aware of their responsibilities in making a Public Interest Disclosure and are able to advise other persons of the appropriate reporting processes.

6.1 Types of Reportable Conduct

The disclosure of reportable conduct includes:

- Corrupt conduct;
- Maladministration;
- Negligent or improper management of public funds;
- An act which endangers public health or safety or the environment.

The disclosures may concern the conduct of any Councillor, employee, or anyone contracting to supply goods & services to MRC.

6.2 Anonymous Disclosures

Whilst anonymous disclosures can be made, MRC prefers that disclosers identify themselves as this enables the best assessment and investigation of the disclosures and ensures appropriate support is provided to the discloser.

If a discloser chooses to remain anonymous they are asked to provide as much information as possible in their disclosure to enable proper assessment and investigation of the Public Interest Disclosure.

Anonymous disclosers will not/cannot be informed of the investigation outcome by reason of their anonymity and as a result some of the protections in the Act may not apply to anonymous disclosers.

6.3 Receiving, Assessing and Acting on PIDs

All disclosures received by MRC will be assessed and if the disclosure does not meet the criteria as a public interest disclosure, it will be directed to the appropriate complaints process.

6.4 Investigation Process

To ensure the integrity of the investigation process for Public Interest Disclosures, MRC, will at all times during the investigation of the Public Interest Disclosures commit to:

- Maintain and preserve confidentiality;
- Follow the approved processes in managing Public Interest Disclosures and to protect employees from reprisals;
- Deal decisively with reprisals and possible reprisals;
- Record disclosures;
- Verify disclosures;
- Provide reasonable information to the discloser on the results of the investigation.

All disclosures made under the Act will be investigated by a delegated officer.

6.5 Disclosure Procedures

MRC will develop and implement procedures for dealing with the Public Interest Disclosures under the Act. The procedures will include:

- Provide a clear identification of who is covered by the guideline;
- Encourage the reporting of wrong doing;
- Establish a clear reporting system to enable employees to make a Public Interest Disclosure both internally or externally;
- Provide a means for complying with the confidentiality requirements of the Act;
- Provide for the rights of review, both internal and external;
- Provide for the assessment of the risks of reprisal;
- Provide a description of the roles responsibilities of key employees in the management of Public Interest Disclosures and in the support and protection of Disclosers; and
- Provide an outline of the rights of subject officers.

6.6 Action Taken on the Disclosure and the Results

MRC is committed to good governance and to ensure Public Interest Disclosure outcomes inform improvements and further, will encourage the practice of corporate compliance and ethical conduct when providing

feedback on the outcome of the investigation and action taken to the discloser.

6.7 Protection of the Discloser

MRC 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.

The rights of any person who is subject to, or in some way associated with a Public Interest Disclosure will be safeguarded. MRC is committed to affording support and protection from reprisal to any person making a Public Interest Disclosure and appropriately deal with employees who take reprisal action.

The Chief Executive Officer may intervene directly to protect the discloser and take immediate action to deal with suspected reprisal.

A discloser is not protected under the Act if the disclosure involves any wrong doing on the part of the discloser.

7.0 **Review of Policy**

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

1. The related documents are amended or replaced.
2. Other circumstances as determined from time to time by a resolution of Council

Notwithstanding the above, this policy is to be reviewed at intervals of no more than three years.

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New Policy		Adopted by Council	18.06.14
2	Review of Policy		Adopted by Council	28.09.16
3	Review of Policy	Amendments to policy	Adopted by Council	12.09.18
4	Review of Policy	Amendments to policy	Adopted by Council	13.02.19