

	COUNCIL POLICY	
	Complaints against the Chief Executive Officer	
	POLICY NO	100
	DEPARTMENT	Organisational Services
	PROGRAM	Governance & Safety
ENDORSED BY COUNCIL	13 February 2019, Folio 60976	

1.0 Scope

This policy applies to:

- all complaints against the Chief Executive Officer (CEO) of Mackay Regional Council (MRC); and
- to all persons who hold an appointment in, or are employees of the MRC. This includes contractors, permanent, casual and part-time employees and work experience/volunteers.

2.0 Purpose

The objective of this policy is to outline the way in which the Council will *deal with* complaints against the CEO including any allegations that may involve corrupt conduct as defined in the *Crime and Corruption Act (CC Act)*.

The policy also assists the MRC in complying with s48A of the CC Act.

3.0 Policy Rationale

This policy is designed to assist the Council to:

1. Comply with s48A of the CC Act.
2. Comply with *Local Government Act 2009 (LGA)* and *Local Government Regulation 2012 (LGR)*.
3. Promote public confidence, accountability, integrity and transparency in the way the Council deals with all allegations against the CEO including those of a serious nature that may involve, misconduct or corrupt conduct.

4.0 Definitions

To assist in interpretation the following definitions shall apply:

CCC shall mean the Crime and Corruption Commission

CC Act shall mean the *Crime and Corruption Act 2001*.

CEO means the Chief Executive Officer of the Mackay Regional Council, including people acting temporarily in the role.

Complaint includes any complaint:

- Relating to information or matter as provided by s48A (4) of the CC Act; or
- about the behaviour of the CEO; or
- that constitutes and *administrative action complaint* against the CEO in accordance with s268(2) of the LGA ie:
 - a decision, or a failure to make a decision,
 - an act, or a failure to do an act;
 - the formulation of a proposal or intention; or
 - the making of a recommendation

Contact Details shall mean a direct telephone number, email address and postal address to enable confidential communications.

Corruption means corrupt conduct.

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.

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

Deal with, shall mean undertaking all actions to address the complaint in an appropriate way which includes:

- (a) investigate the complaint, information or matter; and
- (b) gather evidence for –
 - (i) prosecutions for offences; or
 - (ii) disciplinary proceedings; and
- (c) refer the complaint, information or matter to an appropriate authority to start a prosecution or disciplinary proceeding; and
- (d) start a disciplinary proceeding; and
- (e) other actions required to process the complaint in accordance with Council’s complaint management policies and processes.

Directions Notice shall mean the directions issued by the CCC to MRC outlining the notification obligations of the nominated officer pursuant to S40 of the CC Act.

LGA shall mean the *Local Government Act 2009*

LGR shall mean the Local Government Regulation 2012

Misconduct shall mean when the CEO breaches his/her obligations under his/her contract of employment. Examples of misconduct include but are not limited to:

- breaches of policies, code of conduct and other reasonable instructions;
- unauthorised absence from duty; or
- inappropriate use of Council property and facilities.

MRC shall mean Mackay Regional Council.

Nominated Person shall mean the person responsible to **deal with** complaints against the CEO in accordance with the policy.

5.0 Nominated Person

Having regard to s48A (2) and (3) of the CC Act, the nominated person appointed under this policy to **deal with** complaints against the CEO is the person holding the position of Mayor of MRC.

6.0 Resourcing and Authority of the Nominated Person

The *nominated person* has the discretion to acquire the services of suitably qualified persons (either internal or external to MRC) to act as his/her agent to assist him/her *deal with* such complaints.

The Council will ensure that sufficient resources are available to the *nominated person* to enable him/her to deal with the complaint appropriately.

The *nominated person* is to ensure that consultations, if any, for the purpose of securing resources sufficient to deal with the complaint appropriately are confidential

The *nominated person* (or his/her agent) must, at all times, use their best endeavours to act independently, impartially and fairly having regard to the:

- purposes of the CC Act
- the importance of promoting public confidence in the way suspected corrupt conduct in the Council is dealt with, and
- the Council's statutory, policy and procedural framework.

The *nominated person* is delegated the same authority, functions and powers as the CEO to direct and control staff of the Council and to enter into contracts on behalf of the Council as if the nominated person is the CEO of the Council for the specific purpose of dealing with the complaint only.

7.0 Dealing with complaints about the CEO

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

- the nominated person, or
- a person to whom there is an obligation to report under an Act^[1] (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.

^[1] See s39(2) of the CC Act

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.

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 the Mayor.

If the *nominated person* reasonably suspects the complaint may involve an allegation of corrupt conduct of the CEO, the nominated person or his/her agent is to:

- notify the CCC of the complaint in accordance with the requirements of the *directions notice* issued by the CCC to MRC; and
- *deal with* the complaint, subject to the CCC's monitoring role and any directions issued by the CCC under s40 of the CC Act.

All other complaints against the CEO, including those involving allegations of *misconduct* are to be dealt with by the *nominated person* or his/her agent accordance with Council's Administrative Actions Complaints Policy.

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

- The contact details for the public official/CEO and the nominated persons;
- Any proposed changes to this policy.

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

8.0 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 (3) years.

The CCC must be consulted in the review of this policy.

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
2	Review of Policy	Minor amendments	Council	13.02.19