

1. BACKGROUND AND PRINCIPLES

Section 48A of the *Crime and Corruption Act 2001* (“the Act”) requires a *public official* to “prepare a policy about how the *unit of public administration* for which the official is responsible will *deal with a complaint* that involves or may involve *corruption* of the public official”.

2. SCOPE

This policy applies to all persons who hold an appointment in or are employees or contractors of the Council.

This policy applies if there are grounds to suspect that a complaint may involve *corrupt conduct* of the Council’s public official.

3. POLICY OBJECTIVES

The objectives of this policy are to:

- set out how the *Council* will deal with complaints that involve or may involve corrupt conduct of its public official;
- ensure compliance with section 48A of the *Crime and Corruption Act 2001*;
- promote public confidence in the way suspected corrupt conduct of Council’s public official is dealt with; and
- promote accountability, integrity and transparency in the way the Council deals with a complaint that is suspected to involve, or may involve, corrupt conduct of its public official.

4. POLICY STATEMENT

- 4.1 The Chief Financial Officer of the Whitsunday Regional Council shall be the *nominated person*.
- 4.2 Complaints involving a *reasonable suspicion* of corrupt conduct shall be reported to the Chief Financial Officer and to other persons to whom there is an obligation to report under legislation, even if uncertainty exists as to whether or not a complaint should be reported.
- 4.3 The Chief Financial Officer may appoint, with or without consulting the *Crime and Corruption Commission* (“the Commission”), another *Senior Executive Employee* to perform the functions of the nominated person in respect of a particular complaint. Any Senior Executive Employee thus appointed shall liaise closely with the Chief Financial Officer throughout the process of managing the complaint.
- 4.4 The Chief Financial Officer shall notify the Commission if a Senior Executive Employee has been appointed as nominated person in respect of a particular complaint and provide *contact details* for the Senior Executive Employee.
- 4.5 If the nominated person is of the opinion that a complaint requires technical expertise, they may outsource the management of the complaint to a suitably qualified professional.

- 4.6 If the nominated person reasonably suspects the complaint may involve corrupt conduct of the public official they shall:
- (a) notify the Commission of the Complaint¹; and
 - (b) deal with the complaint, subject to the Commission's monitoring role, when -
 - (i) directions issued under section 40 of *the Act* apply to the complaint; or
 - (ii) the Commission refers the complaint to the nominated person to deal with.
- 4.7 If the public official reasonably suspects that a complaint may involve corrupt conduct on their part, the public official must:
- (a) report the complaint to the nominated person as soon as practicable and may also notify the Commission; and
 - (b) take no further action to deal with the complaint unless requested to do so by the nominated person in consultation with the Council.
- 4.8 If directions are issued under section 40 of the Act, the nominated person shall deal with the complaint and the public official shall take no further action to deal with the complaint unless requested to do so by the nominated person in consultation with the Council.
- 4.9 The Council shall ensure that sufficient resources are available to the nominated person to enable them to deal with complaints appropriately.
- 4.10 The nominated person shall ensure that consultations, if any, for the purpose of securing resources to deal with a complaint appropriately are confidential and not disclosed, other than to the Commission, without authorisation under a law of the Commonwealth or the State.
- 4.11 The nominated person must, at all times, use their best endeavours to act independently, impartially and fairly having regard to the:
- (a) purposes of the Act;
 - (b) the importance of promoting public confidence in the way suspect corrupt conduct in the Council is dealt with; and
 - (c) the Council's statutory, policy and procedural framework.
- 4.12 If the nominated person has responsibility to deal with the complaint, they:
- (a) are delegated the same authority, functions and powers as the public official to direct and control staff of the Council as if the nominated person is the public official of the Council for the purpose of dealing with the complaint only;
 - (b) are delegated the same authority, functions and powers as the public official to enter into a contract on behalf of the Council for the purpose of dealing with the complaint;
 - (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 Council or the public official to the nominated person.

¹ ss37,38, 40 *Crime and Corruption Act 2001*

- 4.13 The public official must keep the Commission and the nominated persons informed of:
- (a) the contact details for the public official and the nominated persons; and
 - (b) any proposed changes to this policy.
- 4.14 The public official shall consult with the Commission when preparing or amending any policy about how the Council will deal with a complaint that involves or may involve corrupt conduct of the CEO.
- 4.15 The CEO and nominated persons must maintain confidentiality as far as practicable in dealing with complaints.

5. RELEVANT LEGISLATION

Crime and Corruption Act 2001

6. DEFINITIONS

Commission means the Crime and Corruption Commission.

CEO refers a person who holds an appointment as Chief Executive Officer of the Whitsunday Regional Council under section 194 of the Local Government Act 2009. This includes a person acting in this position.

Complaint includes information or matter² such as a routine departmental audit report and evidence gathered through a corruption investigation³.

Contact details should include a direct telephone number, email address and postal address to enable confidential communications.

Corruption means corrupt conduct⁴.

Corrupt conduct means⁵

- (1) 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; and

² s48A(4) of the *Crime and Corruption Act 2001*.

³ S36(5) of the *Crime and Corruption Act 2001*.

⁴ Schedule 2 (Dictionary) *Crime and Corruption Act 2001*.

⁵ s15 of the *Crime and Corruption Act 2001*.

- (c) is engaged in for the purpose of providing a benefit to the person or another person or causing 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.
- (2) Without limiting (1), conduct that involves any of the following could be corrupt conduct under (1) –
- (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;
 - (k) sedition;
 - (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 means the Whitsunday Regional Council.

Crime and Corruption Commission means the Commission continued in existence under the Crime and Corruption Act 2001.

Deal with means to deal with a complaint about corruption or information or matter involving corruption and includes⁶ –

- 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

⁶ Schedule 2 (Dictionary) *Crime and Corruption Act 2001*.

- d) start a disciplinary proceeding; and
- e) take other action, including managerial action, to address the complaint in an appropriate way.

Nominated person means the Chief Financial Officer of the Whitsunday Regional Council or a Senior Executive Employee of the Whitsunday Regional Council appointed by the Chief Financial Officer as a nominated person.

Public Official means the Chief Executive Officer of the Whitsunday Regional Council⁷.

Reasonable suspicion means suspects on grounds that are reasonable in the circumstances.

Senior Executive Employee shall mean the Chief Operating Officer of the Whitsunday Regional Council or any other such officer designated as a Senior Executive Employee for the purposes of the *Local Government Act 2009*.

the Act means the Crime and Corruption Act 2001.

Unit of public administration⁸ means a local government for the purposes of this policy.

7. RELATED DOCUMENTS

N/A

8. DATE REVIEWED

N/A

9. NEXT REVIEW

April 2016

⁷ Schedule 2 (Dictionary) *Crime and Corruption Act 2001*.

⁸ For full definition, see section 20 of the *Crime and Corruption Act 2001*.