

# CORRUPT CONDUCT POLICY

## STATUTORY POLICY



### 1 Scope

This policy applies to suspected corrupt conduct of Rockhampton Regional Council Councillors, employees, contractors, volunteers or any other party dealing with Council.

### 2 Purpose

The purpose of this policy is to:

- (a) Enable the CEO to meet all statutory requirements for reporting suspected corrupt conduct.
- (b) Promote public confidence, accountability, integrity and transparency in the way suspected corrupt conduct is managed within Council.
- (c) Highlight Council's commitment to the promotion and proper management and reporting of suspected corrupt conduct disclosures.

### 3 Related Documents

#### 3.1 Primary

*Crime and Corruption Act*

#### 3.2 Secondary

*Crime and Corruption Regulation 2015*

*Criminal Code Act 1899*

*Industrial Relations Act 2016*

*Local Government Act 2009*

*Local Government Regulation 2012*

*Public Interest Disclosure Act 2010*

Code of Conduct

Code of Conduct for Councillors in Queensland

Complaint Management Policy

Corrupt Conduct Procedure

Councillor Investigation Policy

Fraud and Corruption Control Plan

Fraud and Corruption Control Policy

Grievance Procedure

Investigation Procedure

Privacy Policy

#### LEGAL & GOVERNANCE USE ONLY

Adopted/Approved:	Adopted, 6 August 2019	Department:	Office of the CEO
Version:	5	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 1 of 7

#### 4 Definitions

To assist in interpretation, the following definitions apply:

Act	<i>The Crime and Corruption Act 2001</i>
CCC	Queensland Crime and Corruption Commission
GEO	Chief Executive Officer A person who holds an appointment under section 194 of the <i>Local Government Act 2009</i> . This includes a person acting in this position.
Conduct	As defined in the Act, includes neglect, failure, inaction; and conspiracy to engage in conduct; and attempt to engage in conduct.
Confidentiality	As defined in the Act, a ground recognised at law that giving an answer or disclosing a communication or document, would be a breach of an oath taken, statutory or commercial obligation or restriction to maintain secrecy.
Contractor	A person, organisation or entity that performs a specific act or acts including the provision of services and/or materials to another person, organisation or entity under an agreement enforceable by law.
Council	Rockhampton Regional Council
Criminal Offences	As defined in the <i>Criminal Code Act 1899</i> , comprise crimes, misdemeanours and simple offences.
Discloser	A person who reports suspected corrupt conduct.
Disciplinary Breach	An allegation against an employee is substantiated and the CEO enacts an action/s under section 280 of the <i>Local Government Regulation 2012</i> .
Duty of Care	An obligation recognised by law to avoid conduct fraught with unreasonable risk of danger to others and to the organisation, in particular to reduce any vicarious liability risks.
Employee	Local government employee: (a) The CEO; or (b) A person holding an appointment under section 196 of the <i>Local Government Act 2009</i> .
Nominated Person	Manager Workforce and Governance
Offence	As defined in the <i>Criminal Code Act 1899</i> , an act or omission which renders the person doing the act or making the omission liable to punishment.
Public Interest Disclosure	As defined in section 11 of the <i>Public Interest Disclosure Act 2010</i> , all information and help given by the discloser to a proper authority about a public interest matter referred to, in accordance with sections 12 and 13 of the <i>Public Interest Disclosure Act 2010</i> .
Reportable Loss	As defined in the <i>Local Government Regulation 2012</i> , for an asset belonging to the local government, means a loss resulting from: (a) The commission of an offence under the Criminal Code or another Act; or (b) The corrupt conduct of a Councillor, local government employee or local government worker; or

#### LEGAL & GOVERNANCE USE ONLY

Adopted/Approved:	Adopted, 6 August 2019	Department:	Office of the CEO
Version:	5	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 2 of 7

	(c) Conduct of a contractor of the local government that would be corrupt conduct if the contractor were a Councillor, local government employee or local government worker.
Reprisal	As defined in section 40 of the <i>Public Interest Disclosure Act 2010</i> , a person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that: <ul style="list-style-type: none"> <li>(a) The other person or someone else has made, or intends to make a public interest disclosure; or</li> <li>(b) The other person or someone else is, has been, or intends to be, involved in a proceeding under the Act against any person.</li> </ul>
Systemic Issues	An issue, problem or change in Council policy or practice which is identified as affecting a broader range of people than just the matter/issue being investigated. This may include employees having adopted unacceptable practices by way of an inferred approval from management/supervisors.
UPA	Unit of Public Administration As defined in the <i>Crime and Corruption Act 2001</i> , includes the following: <ul style="list-style-type: none"> <li>(a) The Legislative Assembly, and the parliamentary service;</li> <li>(b) The Executive Council;</li> <li>(c) A department;</li> <li>(d) The police service;</li> <li>(e) A local government;</li> <li>(f) A corporate entity established by an Act or that is of a description of a corporate entity provided for by an Act which, in either case, collects revenues or raises funds under the authority of an Act;</li> <li>(g) A noncorporate entity, established or maintained under an Act, that: <ul style="list-style-type: none"> <li>(i.) Is funded to any extent with State moneys; or</li> <li>(ii.) Is financially assisted by the State;</li> </ul> </li> <li>(h) A State court, of whatever jurisdiction, and its registry and other administrative offices; and</li> <li>(i) Another entity prescribed under a regulation.</li> </ul>
Volunteer	Any person, who of their own free will, offers to undertake un-paid work for Council and is accepted as a volunteer by the CEO and/or his authorised delegates.

## 5 Policy Statement

Council is committed to ensuring the standing and reputation of Council is maintained and continually enhanced where opportunities exist.

Council recognises the important role Councillors, employees, contractors, volunteers and members of the public can play in the identification of suspected corrupt conduct. The CCC and Council are concerned with protecting the reputation of both those who report suspected corrupt conduct and those who are the subject of the disclosure.

Council has a zero tolerance approach and is committed to eliminating and or minimising the potential of any corrupt conduct within Council.

Where prevention opportunities, strategies and/or systemic issues are identified mechanisms will be implemented to reduce any further possible occurrences of corrupt conduct where possible.

### 5.1 Obligations and Requirements

In accordance with the obligations and requirements of the Act, Council must comply with crime and corruption legislation and:

LEGAL & GOVERNANCE USE ONLY			
Adopted/Approved:	Adopted, 6 August 2019	Department:	Office of the CEO
Version:	5	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 3 of 7

- (a) Ensure all allegations of suspected corrupt conduct are appropriately reported to the appropriate authorities;
- (b) Ensure all allegations of suspected corrupt conduct are assessed and where appropriate investigated and dealt with accordingly;
- (c) Should the suspected corrupt conduct involve a reportable loss the CEO must make notifications in accordance with section 307A of the *Local Government Regulation 2012*;
- (d) Ensure appropriate consideration is given to the interests of the persons who are the subject of a corrupt conduct disclosure;
- (e) Afford protection from reprisals to persons making an a corrupt conduct disclosure; and
- (f) Ensure that prevention opportunities are identified and implemented to minimise the exposure of the risks of corrupt conduct within Council.

## 5.2 Elimination and Prevention

Council is committed to eliminating corrupt conduct and preventing its occurrence and believes:

- (a) Honest and impartial public administration enhances the standing and reputation of the Queensland public sector;
- (b) Corrupt conduct is unfair, wastes public money and resources, leads to inefficiency and destroys public trust;
- (c) Corrupt conduct disadvantages everyone; and
- (d) Every employee has a role to play in watching for and reporting corrupt conduct and maintaining effective work practices to combat corrupt conduct.

## 5.3 What is Corrupt Conduct?

Corrupt conduct is defined in the Act as the conduct of a person, regardless of whether the person holds or held an appointment, that fulfils **each** of the following elements:

- (a) Adversely affects, or could adversely affect, directly or indirectly, the performance of functions, or the exercise of powers of a UPA or a person holding an appointment;
- (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 is not honest or is not impartial; or involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or 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
- (c) Would, if proved, be a criminal offence; or 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 is also defined as the conduct of a person, regardless of whether the person holds or held an appointment, that fulfils **each** of the following elements:

- (a) Impairs, or could impair, public confidence in public administration; and
- (b) Involves, or could involve any of the following:
  - (i) Collusive tendering;
  - (ii) Fraudulent application for licences, permits or other authorities under an Act with a purpose or object of any of the following (however described) – protecting health or safety of persons; protecting the environment or protecting or managing the use of the State's natural, cultural, mining or energy resources;
  - (iii) Dishonestly obtaining, or helping someone to dishonestly obtain, benefits from a payment or application of public funds or the disposition of State assets;
  - (iv) Evading State taxes, levies, duties or otherwise fraudulently causing a loss of State revenue; and

LEGAL & GOVERNANCE USE ONLY			
Adopted/Approved:	Adopted, 6 August 2019	Department:	Office of the CEO
Version:	5	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 4 of 7

- (v) Fraudulently obtaining or retaining appointment; and
- (c) Would, if proved, be a criminal offence; or a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

Common examples of corrupt conduct could include:

- (a) Engaging in fraud and/or forgery to obtain a certain outcome for example manipulating timesheets to accumulate accrued hours not worked i.e. 'fraud'.
- (b) Stealing from Council, such as, laptops or portable and attractive items without returning them to Council i.e. 'theft'.
- (c) Accessing and/or disclosing official, confidential or personal information for own benefit, for a family member or for third parties i.e. 'unauthorised release of information'.
- (d) Engaging in preferential treatment of suppliers of goods or services to Council in return for a monetary consideration or other benefit from the supplier to you and/or your family members i.e. 'obtaining a secret commission'.
- (e) Hiring or promoting a family member or employee to a role they are not qualified for, regardless of merit i.e. 'nepotism'.

Conduct can be corrupt conduct even if:

- (a) The employee, Councillor, contractor or volunteer was not at the time of the conduct an employee, Councillor, contractor or volunteer but has since become one;
- (b) The conduct was undertaken by a person outside of Council if the conduct can result in a loss of confidence in Council;
- (c) The conduct occurred outside of Queensland;
- (d) The conduct occurred prior to the commencement of the Crime and Corruption legislation;
- (e) The employee, Councillor, contractor or volunteer is no longer an employee, Councillor, contractor or volunteer of Council;
- (f) The conduct did not result in a benefit or detriment to any person; and/or
- (g) It amounts to a conspiracy or attempt to engage such conduct.

#### 5.4 When Does Suspicion Exist

For a suspicion to be 'reasonable', there needs to be more than bare or idle speculation, there must be some evidence sufficient for a reasonable person to suspect corrupt conduct. The CEO does not have to *believe* that the alleged conduct is corrupt conduct, or that the conduct has actually occurred. Reasonable suspicion must be based on an objective assessment of the information at hand. It is not sufficient to subjectively decide that someone is or is not capable of the alleged conduct.

There does not have to be sufficient evidence to *prove* the corrupt conduct allegation, but the available facts, evidence or other information must suggest that the allegation, if proven, would amount to corrupt conduct. The suspicion may be based on hearsay and other inadmissible material that however is relevant.

#### 5.5 Reporting Corrupt Conduct

The CEO has a specific legal obligation to notify the CCC of any complaints or information which may be suspected of being corrupt conduct.

All persons have a duty of care and an obligation to report any suspicions or allegations of corrupt conduct. There does not need to be a formal complaint from an aggrieved person to make a report.

It is important to report any suspicions of corrupt conduct as early as possible, to enable Council to prevent escalation of corrupt conduct or cause greater harm to finances, service delivery or reputation. Also, it will enable Council to identify any 'red flags' or early warning signs of any other corrupt conduct activity. Some examples, of possible 'red flags' or early warning signs of corrupt

LEGAL & GOVERNANCE USE ONLY			
Adopted/Approved:	Adopted, 6 August 2019	Department:	Office of the CEO
Version:	5	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 5 of 7

conduct activity:

- (a) Goods or services procured through the same supplier on a number of occasions with no clear reasons or justification, especially if the employee involved in the procurement and the supplier are friends, family or has a previous professional relationship;
- (b) Unusual trends start to appear in the spend pattern of an employee with a corporate credit card and no clear explanation for the spend (it may start with small value items and start to increase in value over time); or
- (c) Employees 'bragging' to other persons about getting away with things.

Processes for reporting are outlined in Council's Corrupt Conduct Procedure.

## 5.6 Complaints about the CEO (section 48A of the Act)

This policy nominates the Manager Workforce and Governance as the nominated person under the Act to handle complaints which may involve corrupt conduct on the part of the CEO.

If the nominated person reasonable suspects a complaint may involve corrupt conduct on the part of the CEO, the nominated person has the same responsibilities as the CEO under the Act and policy.

The nominated person will have sufficient resources available to enable them to deal with the complaint appropriately.

Only for the purposes of dealing with a complaint the nominated person will have the same authority, functions and power as the CEO to direct and control employees and enter into contracts on behalf of Council.

## 5.7 Protection and Public Interest Disclosures

When an employee or Councillor makes an allegation about conduct of another employee or Councillor which would, if proved, be corrupt conduct, it may also be a public interest disclosure under the *Public Interest Disclosure Act 2010*.

Council has a legal obligation to protect any corrupt conduct discloser from possible reprisals in accordance with the Act, the *Public Interest Disclosure Act 2010* and Council's Public Interest Disclosure Policy and Procedure.

Council endeavours to protect all parties to any corrupt conduct investigation. Confidentiality shall be maintained throughout any corrupt conduct process.

Any identified reprisals will be referred to the CCC.

## 6 Review Timelines

This policy is reviewed when any of the following occur:

- (a) The related information is amended or replaced; or
- (b) Other circumstances as determined from time to time by the CEO.

LEGAL & GOVERNANCE USE ONLY			
Adopted/Approved:	Adopted, 6 August 2019	Department:	Office of the CEO
Version:	5	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 6 of 7

## 7 Responsibilities

Sponsor	Chief Executive Officer
Business Owner	Chief Executive Officer
Policy Owner	Manager Workforce and Governance
Policy Quality Control	Legal and Governance



LEGAL & GOVERNANCE USE ONLY			
Adopted/Approved:	Adopted, 6 August 2019	Department:	Office of the CEO
Version:	5	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 7 of 7