

CORRUPT CONDUCT PROCEDURE



1 Scope

This procedure 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 procedure is to:

- (a) Outline processes upon receipt of an allegation or allegations of suspected corrupt conduct;
- (b) Ensure prompt assessment and referral of complaints or instances of suspected corrupt conduct comply with the *Crime and Corruption Act 2001*;
- (c) Allow for a prompt investigation into corrupt conduct complaints; and
- (d) Ensure appropriate action is taken when corrupt conduct occurs.

3 Related Documents

3.1 Primary

Corrupt Conduct Policy

3.2 Secondary

Crime and Corruption Act 2001

Crime and Corruption Regulation 2015

Criminal Code Act 1899

Drugs Misuse Act 1986

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

Corruption in Focus: A Guide to Dealing with Corrupt Conduct in the Queensland Public Sector

Councillor Investigation Policy

Discipline Procedure

Fraud and Corruption Control Plan

Fraud and Corruption Control Policy

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Grievance Procedure
Investigation Procedure
Privacy Policy
Public Interest Disclosure Policy
Public Interest Disclosure Procedure
Workplace Bullying, Discrimination and Sexual Harassment Policy

4 Definitions

To assist in interpretation, the following definitions apply:

Act	The <i>Crime and Corruption Act 2001</i>
CC	The <i>Criminal Code Act 1899</i>
CCC	Queensland Crime and Corruption Commission
CCC Liaison Officer	Coordinator Workforce Relations and Ethics
CEO	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 and 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.
Corrupt Conduct	As defined in the Act, 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: (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 (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 also means 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 the administration; and

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	<p>(b) Involves, or could involve any of the following;</p> <p>(i) Collusive tendering;</p> <p>(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;</p> <p>(iii) Dishonestly obtaining, or helping someone to dishonestly obtain, benefits from the payment or application of public funds or the deposition of State assets;</p> <p>(iv) Evading State taxes, levies, duties or otherwise fraudulently causing a loss of State revenue;</p> <p>(v) Fraudulently obtaining or retaining appointment; and</p> <p>(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.</p>
Council	Rockhampton Regional Council
Criminal Offences	As defined in the CC, comprise crimes, misdemeanours and simple offences.
Delegated Officer	An employee appointed to a position with the relevant sub-delegations under the <i>Local Government Regulation 2012</i> .
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> .
Employee	Local government employee: <p>(a) The CEO; or</p> <p>(b) A person holding an appointment under section 196 of the <i>Local Government Act 2009</i>.</p>
Workforce Relations and Ethics Unit	Workforce Relations and Ethics Unit, Workforce and Governance
Nominated Person	Manager Workforce and Governance
OIA	Office of the Independent Assessor
Offence	As defined in the CC, 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> .
Public Official	CEO and nominated person for complaints which may involve corrupt conduct on the part of the CEO.
Person	A human being regarded as an individual, whether or not the individual is a public officer (members of the public). Councillors, employees, contractors, consultants, volunteers or anyone else who works in any other capacity for Council.
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:

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	<p>(a) The other person or someone else has made, or intends to make a public interest disclosure; or</p> <p>(b) The other person or someone else is, has been, or intends to be, involved in a proceeding under the Act against any person.</p>
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	<p>Unit of Public Administration</p> <p>As defined in the <i>Crime and Corruption Act 2001</i>, includes the following:</p> <p>(a) The Legislative Assembly, and the parliamentary service;</p> <p>(b) The Executive Council;</p> <p>(c) A department;</p> <p>(d) The police service;</p> <p>(e) A local government;</p> <p>(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;</p> <p>(g) A noncorporate entity, established or maintained under an Act, that:</p> <p>(i.) Is funded to any extent with State moneys; or</p> <p>(ii.) Is financially assisted by the State;</p> <p>(h) A State court, of whatever jurisdiction, and its registry and other administrative offices; and</p> <p>(i) Another entity prescribed under a regulation.</p>

5 Procedure

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

Council is committed to protecting the reputation of both those who report suspected corrupt conduct and those who are subject of the complaint. Strict confidentiality shall be maintained by all involved throughout this entire process.

In accordance with the obligations and requirements of the Act, Council must comply with the Crime and Corruption legislation.

5.1 Obligations

Every Councillor and employee has an obligation to report any suspected corrupt conduct they may become aware of throughout the course of their duties or even out of hours that may impact Council or another Council employee.

A Councillor or an employee who makes a disclosure is protected under the Act and the *Public Interest Disclosure Act 2010*. An employee cannot be held liable for defamation, breach of employer confidence or breach of official secrecy for having made a disclosure. This includes disclosures made internally or to any external Government agency and such disclosure that becomes subject to public attention, but not disclosures to the media.

A discloser may report suspected corrupt conduct to their line management, to the Workforce Relations and Ethics Unit, to the CEO, to the nominated person, to a Councillor or directly to the CCC. It is essential suspected corrupt conduct matters are referred as soon as practicable, preferable within 24 hours of being aware of the matter.

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5.2 Complaint Assessments and Management

Suspected corrupt conduct complaints relating to a Councillor will be directed to the CEO who will assess and refer in accordance with the *Local Government Act 2009*. Complaints of corrupt conduct will be referred directly to the CCC. Complaints about the conduct of a Councillor, other than corrupt conduct, are to be made to the OIA in accordance with Chapter 5A of the *Local Government Act 2009*. Complaints about Councillor conduct may be made directly to Council, however these will be referred to the appropriate agency for assessment.

Suspected corrupt conduct complaints relating to the CEO will be directed to the nominated person who will assess and manage accordingly. The nominated person may utilise internal and/or external investigative or specialist advisors in assessing and managing a suspected corrupt conduct complaint.

Suspected corrupt conduct complaints relating to employees will be directed to the CCC Liaison Officer who will assess and manage accordingly. The CEO and other managers will be informed and regularly briefed as required by the Workforce Relations and Ethics Unit.

5.3 Reporting Requirements

Section 40 of the Act provides that the CCC may issue directions about how and when a public official must notify the CCC of complaints under section 38. The CCC has issued Council directions on the types of conduct required to be referred to the CCC.

Level 1 conduct complaints must be notified to the CCC without reasonable delay. If conduct is revealed which falls within the level one category, Council must cease any action in relation to the matter and immediately notify the CCC.

Level 2 conduct complaints must be notified to the CCC via a section 40 schedule at the conclusion of each month in the CCC's prescribed format.

Level 3 conduct complaints do not require notification to the CCC however Council may commence dealing with these matters immediately. Level 3 conduct complaint matters will be subject to the CCC's auditing program.

The table below details the three types and their level.

Level	Conduct Type
1	<ul style="list-style-type: none"> (a) Involves an allegation of corrupt conduct against a senior executive level officer or a public (including Council) officer in a prominent and/or sensitive position; (b) Involves an allegation of corrupt conduct against an elected official (c) Is one concerning conduct about which the CCC has notified the public official is of a type of a particular interest to it; or (d) Raises suspicion of serious systemic concerns, and involves an allegation of 'professional misconduct', which is either: <ul style="list-style-type: none"> (i.) A course of conduct involving repeated and/or willful behaviour that undermines the trust placed in the person by virtue of their position; or (ii.) A single incident of behaviour indicating a callous disregard for, or reckless indifference to, the exercise of skills or the performance of the duties or activities of the subject officer; or (e) An offence relating to corruption or abuse of office in chapter 13 of the CC, including an allegation of an offence of corruption (s87), extortion by public officers (s88), abuse of office (s92), misconduct in relation to public office (s92A); or (f) An offence relating to receiving, soliciting, gifting or offering secret commissions in chapter 42A of the CC; or (g) An offence relating to the administration of justice as contained in chapter 16 of the CC, including an offence of attempt to pervert the course of justice (s140), or official corruption (s121), or perjury (s123) or fabricating evidence (s126), or corruption of witnesses (s127),

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	<p>or damaging evidence with intent (s129), or conspiring to bring false accusations (s131); or</p> <p>(h) An offence relating to the executive and the legislative assembly contained in chapter 8 of the CC, including an offence of false evidence before Parliament (s57), or a member of parliament receiving bribes (s59) or bribery of member of parliament (s60);</p> <p>(i) an offence under Chapter 5 of the Act, including injury or detriment to witness (s211), victimisation (s212), secrecy (s213) and a person making a frivolous or vexatious complaint (s216), or counselling or procuring a person to make a frivolous or vexatious complaint;</p> <p>(j) involves an allegation of an offence under the <i>Drugs Misuse Act 1986</i> of trafficking in dangerous drugs (s5), supplying dangerous drugs (s6), producing dangerous drugs (s8), or permitting use of place (s11); or</p> <p>(k) an offence relating to property and public monies in Part 6 of the CC and maladministration where the value exceeds \$20,000; or</p> <p>(l) use of force exercised in the course of performing official duties which has caused or may cause a serious injury and which could lead to a charge of unlawful wounding (s323) or doing grievous bodily harm (s320) in chapter 29 of the CC; or</p> <p>(m) an offence of reprisal or a breach of confidentiality under s41 and s65 respectively of the <i>Public Interest Disclosure Act 2010</i>; or</p> <p>(n) involves an allegation of a deliberate failure to comply with s38 of the Act; or</p> <p>(o) the public official reasonably considers that the public interest requires that the matter be referred in the first instance to the CCC; or</p> <p>(p) a complaint concerning an officer who has a significant complaints history; or</p> <p>(q) is already or likely to be the subject of significant media attention.</p>
2	<p>A complaint of corrupt conduct that does not meet any of the conduct types as identified in Level 1, but involves:</p> <p>(a) Repeated behaviour of a similar nature (for example conduct that has been occurring for a significant period of time);</p> <p>(b) Fraud or misappropriation over \$5000;</p> <p>(c) A substantial injury;</p> <p>(d) A senior officer or supervisor failing to report or deal with corrupt conduct; or</p> <p>(e) Potential systemic concerns.</p>
3	<p>All other matters the public official reasonably suspects involves, or may involve, corrupt conduct.</p>

5.4 Process for Dealing with Suspected Corrupt Conduct

The Workforce Relations and Ethics Unit will deal with complaints which may involve corrupt conduct referred to the CEO by the CCC in the most appropriate manner subject to CCC directions.

To deal with a complaint involving corrupt conduct includes:

- (a) Investigate the complaint, information or matter;
- (b) Gather evidence for:
- (c) Prosecutions for offences; or
- (d) Disciplinary proceedings;
- (e) Refer the complaint, information or matter to an appropriate authority to start a prosecution or disciplinary proceeding;
- (f) Start a disciplinary proceeding; and
- (g) Take other action, including managerial action, to address the complaint in an appropriate way.

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All investigations will be undertaken in accordance with Council's Investigation Procedure and guided by the CCC's Corruption in Focus and other CCC guidelines. In some instances certain investigations may be referred to external organisations for completion.

5.5 Reporting

The nominated person or the CCC Liaison Officer will report and liaise with the CCC as required to satisfy various obligations.

The Workforce Relations and Ethics Unit will maintain the Council complaints register and record system to support effective notification of complaints to the CCC and for auditing purposes.

When a complaint has been received and it has been determined that the complaint, or information or matter about alleged corrupt conduct is not required to be notified to the CCC; a record of that decision not to refer; will be maintained in the Council's complaints register.

Where the CEO or delegated officer is satisfied suspected corrupt conduct is a reportable loss pursuant to section 307A of the *Local Government Regulation 2012* the CEO or a delegated officer, nominated person or the CCC Liaison Officer will notify the relevant entities in accordance with section 307A of the *Local Government Regulation 2012*.

5.6 Protections and Confidentiality

Providing information about corrupt conduct to Council or the CCC has a high priority and overrides the confidential provisions of other Acts, oaths, affirmations, statutory declarations and rules and practices of Council.

- (a) An employee does not commit an offence and is not liable to disciplinary action by providing information to the CCC.
- (b) Council has a legal obligation to protect any discloser from possible reprisals in accordance with the Act, *Public Interest Disclosure Act 2010* and Council's Public Interest Disclosure Policy and Procedure.
- (c) Any reprisals from making a disclosure must be reported immediately to management or the Workforce Relations and Ethics Unit and will be referred to the CCC accordingly.
- (d) Council endeavours to protect all parties to any corrupt conduct investigation. Confidentiality shall be maintained throughout any corrupt conduct process by all parties involved.
- (e) Confidentiality is essential to ensure:
 - (i) Efforts to obtain the truth are not jeopardised;
 - (ii) Protection of the reputations of people where complaints are found to be without substance; and
 - (iii) Protection of the identity of those who provide information.

6 Review Timelines

This procedure 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 Manager Workforce and Governance

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7 Document Management

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



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