

1. OVERVIEW

Public Interest Disclosures (PIDs) involve the supply of information to relevant public sector agencies, including Burke Shire Council, that reasonably indicates a wrongdoing.

Council and its Executive Management Team (EMT) encourage the making of Public Interest Disclosures and are committed to the protection of persons who make such disclosures. However, persons making disclosures should also be aware that Council considers it is a serious offence for employees, Councillors or members of the public to make false or misleading claims with the intent that it be acted on by Council as a Public Interest Disclosure, or to defame a person/s or an organisation. Persons should only make a Public Interest Disclosure when they honestly believe on reasonable grounds the information they are disclosing to be correct.

Where Council discovers that a false disclosure has been made with vexatious intent, such discloser may be subject to disciplinary action in accordance with Council's Performance and Misconduct Policy or if appropriate other legal action.

2. HOW PUBLIC INTEREST DISCLOSURES MAY BE MADE

In accordance with section 17(3) of the Public Interest Disclosure Act 2010 (PID Act), Public Interest Disclosures may be made to a person of a 'proper authority'. A person of a proper authority includes any of the following persons of a 'public sector entity' where such 'public sector entity' or its officers' would conduct business or undertake a function that relates to the nature of information being disclosed.

- (a) the Chief Executive Officer or in the case of Council the Mayor; or
- (b) if the entity has a governing body, a member of that body, including in the case of Council a Councillor; or
- (c) an officer of the entity who is charged with the function of receiving or taking action on the type of information being disclosed; or
- (d) if the entity is Council and the discloser is a Council staff, a person who directly or indirectly supervises or manages the person who is the subject of the disclosure.

A Public Interest Disclosure may be made either verbally or in writing. However where a Public Interest Disclosure is of a complex nature or involves serious allegations against a Councillor or a Council officer, it is recommended that the disclosure be submitted in writing and marked 'Confidential for the attention of the Chief Executive Officer' or other Officer, Councillor or Mayor as appropriate.

The PID should detail the incident or issue of concern in sufficient detail to enable an appropriate investigation to be conducted. Council will accept and process anonymous PIDs but without discloser details Council will be unable to contact the discloser to obtain further information or to provide feedback.

Depending on circumstances, disclosers should supply:

- their name and contact details (desirable);
- the nature of the wrongdoing;
- who they think did the wrongdoing (if possible);
- when and where the wrongdoing occurred;
- events surrounding the issue;
- whether they did anything in response to the wrongdoing;
- details of any witnesses who have knowledge of the information raised in the PID.

Council will endeavour to detect any communication received which could constitute a PID. However due to the number of documents and service requests which we process, persons wishing to have their communication regarded as a Public Interest Disclosure are strongly advised to express that wish when making the disclosure.

3. PRELIMINARY ASSESSMENTS AND REGISTRATION

All PIDs and suspected PIDs will be referred to the PID Manager for processing. Prior to commencing any referral or investigation processes, the PID Manager will undertake the following steps:

Step 1:

Assess whether the subject matter qualifies as a Public Interest Disclosure within the meaning of the PID Act.

In assessing a disclosure, the officer must determine if:

- the person making the disclosure is able to receive the protection of the Act;
- the disclosure concerns a matter about which a Public Interest Disclosure can be made;
- the disclosure meets either the subjective or objective test set out in the Act;
- the disclosure has been made to an individual or entity who may receive a Public Interest Disclosure; and
- the disclosure has been made in accordance with Council's procedure or to a person listed in the Act.

Step 2:

Determine whether the subject matter should be referred to another public sector agency. This would apply if the disclosure is about—

- another public sector agency or the conduct of one of its employees; or
- a matter that another public sector agency has the power to investigate or remedy (e.g. information about corrupt conduct would be within the power of the Crime and Corruption Commission to investigate.)

Referral to another public sector agency will not be made where the PID Manager considers there is an unacceptable risk that a reprisal would happen because of the referral. Where practical, the officer will consult with the person who made the disclosure to determine whether there would be an unacceptable risk.

Step 3:

Determine whether Council should investigate the disclosure. In accordance with s30 of the PID Act, Council may decide not to investigate or deal with a Public Interest Disclosure if—

- (a) the substance of the disclosure has already been investigated or dealt with by another appropriate process; or
- (b) the entity reasonably considers that the disclosure should be dealt with by another appropriate process; or
- (c) the age of the information the subject of the disclosure makes it impracticable to investigate; or
- (d) the entity reasonably considers that the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and

- unreasonably divert the resources of the entity from their use by the entity in the performance of its functions; or
- (e) another entity that has jurisdiction to investigate the disclosure has notified the entity that investigation of the disclosure is not warranted.

Step 4:

Conduct a risk assessment of a reprisal to the discloser and others associated with the discloser (including those who may wrongly be suspected of being a discloser) as a consequence of Council's investigation of the disclosure and subsequent actions.

If the risk is assessed as sufficiently high, a protection plan will be prepared to protect the discloser. Where feasible, this will be developed in consultation with the discloser and other relevant stakeholders.

Step 5:

Register the disclosure in Council's electronic document and records management system (eDRMS). The matter will be registered as a confidential item to be accessed and tracked only by the PID Manager.

Step 6:

Provide the discloser or the entity that referred the disclosure, reasonable information including:

- confirmation that the disclosure was received by Council;
- a description of the action proposed to be taken, or taken, by Council in relation to the disclosure;
- the likely timeframes (if possible);
- if action has been taken by Council in relation to the disclosure—a description of the results of the action;
- their involvement in the investigation process;
- the importance of maintaining confidentiality;
- the protections under the PID Act that will apply;
- that Council will keep the information disclosed, including the discloser's identity confidential, except as allowed under the PID Act;
- how they will be advised of progress and outcomes; and
- who to contact if they want further information or are concerned about reprisals.

If Council decides not to investigate or deal with a Public Interest Disclosure, it will give written reasons for its decision to the person making the disclosure (provided that their identity and contact details are known).

4. INVESTIGATING PROCESSES

The PID Manager will commission an investigation of all Public Interest Disclosures excepting where a contrary decision has been made under Step 3 above. Where appropriate, an external investigator may be engaged for this purpose. In all cases the investigator must:

- have the necessary skills or training to perform that task in a professional manner;
- not be under the direction of a person being investigated;
- be sufficiently removed from the issue as to not have a conflict of interest or perceived conflict of interest when undertaking the investigation;

- when assessing (and where necessary, investigating and taking action on) a Public Interest Disclosure involving allegations against Council officers, take account of Council's obligations to the subject officers.

The fact that Council is relying on information obtained through a Public Interest Disclosure for any subsequent disciplinary process does not exempt Council from its obligations to the subject officers.

5. TAKING CORRECTIVE ACTION

On conclusion of the investigation, the investigator will provide the PID Manager with a written report detailing the process followed and their findings. The PID Manager will forward the report to the Chief Executive Officer who will then authorise release to the person who made the disclosure.

The Chief Executive Officer will utilise that report as appropriate to:

- inform improvements to service delivery, business processes and internal controls;
- recommend any amendments to Council policies;
- recommend amendments of this procedure to improve its effectiveness; or
- instigate disciplinary action.

Where disciplinary action is commenced arising from a Public Interest Disclosure, the subject officers will be afforded rights as provided for in Council's Performance and Misconduct Procedure.

6. PROTECTION AND SUPPORT OF DISCLOSERS

Council will provide protection and support for persons making Public Interest Disclosures against reprisals by:

- (a) treating all Public Interest Disclosures as confidential information to be recorded on protected files; and
- (b) taking firm disciplinary action against any officer found to have disclosed a Public Interest Disclosure contrary to this policy or to have taken reprisal action against the discloser.

A person making a public interest disclosure is not subject to any civil or criminal liability, or any liability arising by way of administrative process, including disciplinary process for making the disclosure.

In particular:

- (a) in a proceeding for defamation has a defence of absolute privilege for making a Public Interest Disclosure; and
- (b) a person, who would otherwise be required to maintain confidentiality about the disclosed information and any Act, oath, rule of law or practice does not contravene an Act, oath, rule of law or practice by making a disclosure.

However, a person's liability for their own conduct is not affected by the person making a disclosure under the PID Act.

Disclosures made under the PID Act are protected from being disclosed in response to applications made under the Right to Information Act 2009. It should be noted however that

agencies such as the Crime and Corruption Commission may require full disclosure of information held by Council. Also persons making PIDss should understand that in particular circumstances their identity may become evident to other persons as a consequence of investigation processes.

Both during and following the investigation process support for disclosers will be provided proportionate to the risk of reprisal, and the potential consequences of a reprisal. Protections under the PID Act are only available to a person who makes a PID to a proper authority.

Similarly, vexatious allegations with no reasonable basis will also not be afforded the protections of the PID Act.

In the event of a reprisal being alleged or suspected, Council will act in the interest of the discloser by:

- attending to the safety of the discloser(s) or affected third parties as a matter of priority;
- reviewing the risk assessment of reprisal and any protective measures needed; and
- managing any allegation of a reprisal as a Public Interest Disclosure in its own right.

Council will assist employees who make Public Interest Disclosures by:

- regularly checking on the discloser's well-being;
- advising the discloser of the availability of the Employee Assistance Scheme; and
- where the health of the discloser becomes a concern, liaising with officers responsible for occupational workplace health and safety.

7. FURTHER ACTIONS BY DISCLOSERS

Within 28 days of a person receiving notification that the PID Manager has decided under Step 3 (above) not to investigate or deal with their disclosure, the person who made the disclosure may appeal to the Chief Executive Officer for a review of that decision.

A person dissatisfied with Council's handling of their Public Interest Disclosure has an internal right of review to the Chief Executive Officer. Disclosers are also entitled to raise the matter with other entities, such as the Queensland Ombudsman in cases of maladministration.

8. RECORDING PIDS

As per s29 of the PID Act:

- (1) The chief executive officer of a public sector entity to which a public interest disclosure is made must keep a proper record of the disclosure, including—
 - (a) the name of the person making the disclosure, if known; and
 - (b) the information disclosed; and
 - (c) any action taken on the disclosure; and
 - (d) any other information required under a standard made under section 60.
- (2) The chief executive officer of a public sector entity to which a public interest disclosure is referred under section 31 or 34 must keep a proper record of the disclosure, including—

- (a) the name of the person making the disclosure, if known; and
 - (b) the information disclosed; and
 - (c) the name of the public sector entity, or member of the Legislative Assembly, that referred the disclosure; and
 - (d) any action taken on the disclosure; and
 - (e) any other information required under a standard made under section 60.
- (3) In this section—
- public interest disclosure* includes a purported public interest disclosure.
 - public sector entity* does not include—
 - (a) a court or tribunal; or
 - (b) the Executive Council

The PID Manager is responsible for ensuring that the PID Register (Doc ID 211692) is maintained and updated throughout the management of any PID.

Under the PID Act, Council must report data to the Queensland Ombudsman PIDs database. This information is used to produce an annual report to Parliament.

9. WORKPLACE PARTICIPANT ACKNOWLEDGEMENT

1. I acknowledge that I have read and understood this Public Interest Disclosure (PID) Procedure
2. I understand that I can access this policy:
 - a. Upon request or
 - b. On Council's website or eDRMS
 - c. In the:
 - i. Depot
 - ii. Office
 - iii. Gregory Office
3. I understand that I must comply with the policy; and
4. There may be disciplinary consequences if I fail to comply which may result in the termination of my employment.

Name: _____

Signed: _____

Date: _____