



**WUJAL WUJAL ABORIGINAL SHIRE COUNCIL**

# Public Interest Disclosure Policy

## Document Control

Policy Category	Strategic				
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## 1. Origin / Authority

Wujal Wujal Aboriginal Shire Council

## 2. Purpose and Scope

Council is committed to fostering an ethical, transparent culture. where all staff members feel confident and comfortable about making a disclosure of wrongdoing and feel safe in the knowledge that they will not be subject to, or are provided with, strong protections against reprisal.

In pursuit of this, Council values the disclosure of information about suspected wrongdoing in the public sector so that it can be properly assessed and, if necessary, appropriately investigated.

Council will provide support to an employee or others who make disclosures about matters in the public interest. This Policy demonstrates this commitment and ensures that practical and effective procedures are implemented which comply with the requirements of the *Public Interest Disclosure Act 2010* (PID Act).

The purpose of the Public Interest Disclosure Policy is to:

- Ensure the prompt and efficient action of all disclosure and compliance with the *Public Interest Disclosure Act 2010* and Council's Public Interest Disclosure Policy.
- Outline the disclosure processes and the required responsibilities of all employees.
- Allow for a prompt investigation into disclosure complaints.
- Ensure that appropriate action is taken when required.

This policy applies to all Councillors, Council officers and members of the public.

## 3. Policy Statements

### 3.1 Definitions

<b>Allegation/Alleged Conduct</b>	A stated belief or claim that is yet to be substantiated on the balance of probabilities
<b>Anonymous</b>	Where the person disclosing information does not identify themselves at any stage, to anyone.
<b>Confidential Information</b>	<p><b>Includes:</b></p> <ol style="list-style-type: none"><li>1. Information about the identity, occupation, residential or work address or whereabouts of a person —<ul style="list-style-type: none"><li>• who makes a public interest disclosure; or</li><li>• against whom a public interest disclosure has been made.</li></ul></li><li>2. Information disclosed by a public interest disclosure; and</li><li>3. Information about an individual's personal affairs; and</li><li>4. Information that, if disclosed, may cause detriment to a person.</li></ol> <p><b>Does not include:</b></p> <ol style="list-style-type: none"><li>1. Information publicly disclosed in a public interest disclosure made to a court, tribunal or other entity that may receive evidence under oath, unless further disclosure of the information is prohibited by law</li></ol>
<b>Council/Councillors</b>	The Wujal Wujal Aboriginal Shire Council and the elected members of Council including the Mayor.
<b>CEO</b>	The person appointed to the position of Chief Executive Officer under the Act and anyone acting in that position.

<p><b>Corrupt Conduct</b></p>	<p>As defined in section 15 of the Crime and Conduct Act.</p> <p>Corrupt conduct means conduct of a person, regardless of whether the person holds or held an appointment, that—</p> <p>(a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—</p> <ul style="list-style-type: none"> <li>• a unit of public administration; or</li> <li>• (a person holding an appointment; and</li> </ul> <p>(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—</p> <ul style="list-style-type: none"> <li>• is not honest or is not impartial; or</li> <li>• involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or</li> <li>• 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</li> </ul> <p>(c) would, if proved, be—</p> <ul style="list-style-type: none"> <li>• a criminal offence; or</li> <li>• a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.</li> </ul> <p>Corrupt conduct also means conduct of a person, regardless of whether the person holds or held an appointment, that—</p> <p>(a) impairs, or could impair, public confidence in public administration; and</p> <p>(b) involves, or could involve, any of the following—</p> <ul style="list-style-type: none"> <li>• collusive tendering.</li> <li>• fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)— <ul style="list-style-type: none"> <li>○ protecting health or safety of persons.</li> <li>○ protecting the environment.</li> <li>○ protecting or managing the use of the State’s natural, cultural, mining or energy resources.</li> </ul> </li> <li>• dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets.</li> <li>• evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue.</li> <li>• fraudulently obtaining or retaining an appointment; and</li> </ul> <p>(c) would, if proved, be—</p> <ul style="list-style-type: none"> <li>• a criminal offence; or</li> <li>• a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.</li> </ul>
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<b>Disclosure</b>	<p><b>What is a disclosure under the PID Act</b></p> <p>A disclosure is information that tends to show, or that the public official reasonably believes tends to show, disclosable conduct. Disclosable conduct is conduct engaged in by an agency, public official or contracted service provider. Types of conduct include:</p> <ul style="list-style-type: none"> <li>• illegal conduct</li> <li>• corruption</li> <li>• maladministration</li> <li>• abuse of public trust</li> <li>• deception relating to scientific research</li> <li>• wastage of public money</li> <li>• unreasonable danger to health and safety or to the environment.</li> </ul>
<b>Investigation</b>	For the purposes of this procedure, investigation includes any enquiry undertaken to establish whether the information provided in a PID can be substantiated, including a review or audit
<b>Maladministration</b>	<p>Administrative action that –</p> <ul style="list-style-type: none"> <li>• Was taken contrary to law; or</li> <li>• Was unreasonable, unjust, oppressive, or improperly discriminatory; or</li> <li>• Was in accordance with a rule or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory in the particular circumstances; or</li> </ul> <p>Was taken –</p> <ul style="list-style-type: none"> <li>• For an improper purpose; or</li> <li>• For irrelevant grounds; or</li> <li>• Having regards to irrelevant considerations; or</li> <li>• Was an action for which reasons should have been given, but were not given; or</li> <li>• Was based wholly or partly on a mistake of law or fact; or</li> <li>• Was wrong</li> </ul>
<b>PID</b>	Public Interest Disclosure is a disclosure about wrongdoing in the public sector that serves the public interest, uncovers corruption and other misuses of public resources.
<b>PID Standards</b>	As detailed on the Queensland Ombudsman's website. Refer to following link: <a href="https://www.ombudsman.qld.gov.au/what-we-do/role-of-the-ombudsman/legislation-and-standard">https://www.ombudsman.qld.gov.au/what-we-do/role-of-the-ombudsman/legislation-and-standard</a>
<b>Property Authority</b>	A person or organisation that is authorised under the Public Interest Disclosure Act 2010 to receive disclosures.
<b>Public Officer</b>	A public officer, of a public sector entity, is an employee, member or officer of the entity.
<b>Reasonable Belief</b>	A view which is objectively fair or sensible.

<b>Reportable Conduct</b>	<p>Is conduct by a person or persons connected with council which is:</p> <ul style="list-style-type: none"> <li>• Dishonest</li> <li>• Fraudulent</li> <li>• Corrupt</li> <li>• Illegal (including theft, drug sale/use, violence or threatened violence and criminal damage against property)</li> <li>• A breach of legislation or local laws</li> <li>• Serious improper conduct</li> <li>• Unsafe work practices</li> <li>• Conduct which may cause financial or non-financial loss to the council or be otherwise detrimental to the interests of the council</li> <li>• Gross mismanagement</li> <li>• Serious or substantial waste</li> <li>• Repeated instance of breach of administrative procedures</li> </ul>
<b>Reprisal</b>	Any person causes or attempts or conspires to cause, detriment to another person because or in the belief that a person has made or make a PID
<b>Substantial</b>	Substantial means 'of a significant or considerable degree'. It must be more than trivial or minimal and have some weight or importance.
<b>Specific</b>	Means 'precise or particular'. This refers to conduct or detriment that is able to be identified or particularised as opposed to broad or general concerns or criticisms.
<b>The Act</b>	Shall mean the Public Interest Disclosure Act 2010.

### 3.2 General Statement

- Everyone whether a Councillor, employee or member of the public, plays an important role in identifying cases of maladministration, official misconduct and the misuse of public resources or contraventions giving rise to dangers to public health and safety, the environment or to persons with disabilities.
- All disclosures will be handled in the same manner regardless of whether the disclosure is made from a person or public official.
- Disclosure must be made to the proper authority, namely a public sector entity and Council can only pursue disclosures where the information and the subject of the disclosure relates to the conduct of Council or that Council has the power to investigate.

Council will:

- Promote the public interest by facilitating public interest disclosures (PIDs)
- Ensure that PIDs are properly assessed and, where appropriate, properly investigated and dealt with
- Ensure appropriate consideration is given to the interests of persons who are the subject of a PID, and
- Ensure protection from reprisal is afforded to persons making a PID.

### 3.3 Responsibilities

#### 3.3.1 Chief Executive Officer and Senior Managers

The Executive Management Team members are responsible for:

- The communication of expectations that all employees are required to conduct their duties to high professional and ethical standards and always act in the public interest, (refer to the Code of Conduct).
- Reasonable procedures are in place to deal with a disclosure and that those procedures are published to enable persons and public officials to access them.
- The disclosures are properly assessed, investigated and dealt with, including appropriate action being taken in relation to any wrongdoing in a disclosure.
- That employees making a disclosure receive support and protection from reprisal.
- That all legislative obligations in relation to reporting and investigation are met.
- That all matters involving suspected official misconduct are referred to the Crime and Corruption Commission pursuant to the *Crime and Corruption Act 2001*.

#### 3.3.2 Supervisors

All supervisors are responsible for maintaining an ethical culture and leading by example to:

- Provide clear direction to employees on how to raise matters that involve official misconduct, while maintaining confidentiality and natural justice.
- Ensure that employees in their operational area are aware of their obligations in relation to the requirements of the Public Interest Disclosure Policy and this procedure; and
- Monitor the workplace for signs of reprisal against a Disclosure or an employee who is the subject of a disclosure under the principles of natural justice.

#### 3.3.3 Employees

All employees are responsible for:

- Complying with the Public Interest Disclosure Policy and this procedure and Council's Code of Conduct.
- Reporting their concerns about suspected misconduct or unethical behaviour in accordance with the Public Interest Disclosure Policy and this procedure.
- Participating in various awareness training programs.

### 3.4 Making a Disclosure

A disclosure can be made in writing (preferable) or orally and anonymously.

A person making an anonymous disclosure, direct to Council, should disclose as much information as possible to enable Council to respond appropriately.

A disclosure may be made in accordance with Section 17 of the *Public Interest Disclosure Act 2010* to a proper authority.

Under this section a disclosure may be made to any of the following:

- The Chief Executive Officer.
- In the case of Council, the Mayor.
- For a Council Employee, the direct Manager or Supervisor.
- The Queensland Ombudsman if the disclosure concerns official misconduct.

Any disclosure pertaining to the Chief Executive Officer, or a Councillor shall be dealt with in accordance with current statutory provisions.

A person should disclose anything that they think may constitute a disclosure and be prepared to provide evidence to support the disclosure to the investigating officer.

- All disclosures will be treated with strict confidentiality and shall not be discussed (including any correspondence) with any other person other than chosen support persons.
- Under *section 46* of the Act, Disclosers have a right of appeal or review, internally and externally on the management of and/or a decision regarding their disclosure. External review avenues include the Queensland Ombudsman and the Crime and Corruption Commission.
- Some disclosures are not protected by the Act, including disclosures made to the media, frivolous or vexatious disclosures, those that question the merits of Council policy and those that are made to avoid disciplinary action.
- To intentionally make a false disclosure is an offence under *section 66* of the Act.
- Disclosures can be made directly to the Crime and Corruption Commission regarding misconduct, or the Ombudsman concerning maladministration or concerning a Member of Parliament.

### **3.4.1 Information to provide when making a disclosure**

Contact Details

- provide contact details (this could be an email address that is created for the purpose of making the disclosure or a telephone number)

Provide as much information as possible in writing about the suspected wrongdoing, including:

- who was involved
- what happened
- when it happened
- where it happened
- whether there were any witnesses, and if so, who they are
- any evidence that supports the PID, and where the evidence is located, and
- any further information that could help investigate the PID.

## **3.5 Support and Protection**

- Management will treat all disclosures in the strictest of confidence, including disclosures which do not qualify as an actual disclosure as defined in legislation.
- All concerns are taken seriously and privacy and confidentiality will be protected as far as possible throughout any investigation process.
- An employee may share information with an assistance provider appointed by council, union representative or an appointed support person.
- Under *section 36* of the Act, a person is not liable civilly, criminally or under an administrative process for making a disclosure.
- An employee cannot be dismissed on the basis of making a disclosure or intending to make a disclosure in accordance with the Act.
- Under *section 40* of the Act, Council is responsible for preventing detriment including any reprisals and bullying to the maker of a disclosure. It is also an offence for an employee to make a reprisal because of a belief that another person has made or intends to make a disclosure.
- If a person feels as though they have been disadvantaged or subjected to a reprisal for making a disclosure, they should raise the matter immediately with their senior management.
- Council will ensure that all people involved in an investigation of a disclosure, either as a Discloser or subject, will be offered an appropriate level of support and case management.
- Action will be taken to ensure where possible that people's identities and details of the disclosure remain confidential.

- Subject officers are assumed to be innocent of any adverse allegations until there is evidence to the required standard of proof to show otherwise. The rules of natural justice apply to any subject officer under investigation in respect to an allegation made against them.
- It is the responsibility of the responsible officer of the proper authority to provide feedback to the Discloser about the progress and the outcome of the disclosure. Council also undertakes to keep the Discloser who is not a public officer informed of the progress of their disclosure.

Any apparent conflict between disclosure and confidentiality is risk managed by Council through a clear focus on the prevention of fraud, wrongdoing and unethical behaviour.

### **3.6 Responsibility Person dealing with a Disclosure**

- The Chief Executive may appoint a Council Officer or other person to deal with a specific application.
- The responsible person is to ensure that the matter meets the criteria under the Act and, if so, the person prepares recommendations for appropriate management consideration.
- If a disclosure pertains to an administrative action, environment or safety concerns the responsible person refers the disclosure to the relevant Council section or the appropriate State Government Department or agency.
- If a disclosure requires an investigation, Council will commence an appropriate investigation process. In some instances, certain investigations may be referred to external organisations for investigation, recommendation and/or completion.
- The responsible person will liaise directly with the relevant State Government Department or agency as required, maintain the required registers, and complete all legislative reporting requirements.
- When a disclosure investigation has identified a discipline breach, the responsible person makes the appropriate recommendations for action for Council, the CEO or EMT consideration.

### **The responsible person is to update the appropriate senior management on the ongoing progress of any disclosure investigations and processes as appropriate.3.7 Education and Training**

Council will facilitate educational awareness programs for councillors and staff pertaining to the Public Interest Disclosure Policy and Public Interest Disclosure Procedure.

### **3.8 Record Keeping and Reporting**

The Act requires Council to keep an adequate record of public interest disclosures, including details of the discloser, the nature of the information disclosed, and action taken by Council, even where the disclosure is investigated and found to be incorrect. This is done so that disclosers are identified and can be protected from reprisal.

The PID Coordinator is to maintain a confidential file pertaining to each potential PID, with the following requirements –

- The name of the person making the disclosure (if known)
- Details of the disclosure
- The determination made in respect of the PID claim
- Action taken on the disclosures (including review, investigation or other form of managerial response)



## **4. Application**

This policy applies to all employees, volunteers and contractors (workers) of Council.

This Policy will commence on adoption by Council. It replaces all other policies (whether written or not).

## **5. Associated Policies, Processes and Forms**

- Code of Conduct for Employees
- Code of Conduct for Councillors
- Complaints Management Process
- Public Information Disclosure Process

## **6. Relevant Legislation**

- Local Government Act 2009
- Local Government Regulations 2012
- Public Interest Disclosure Act 2010 (PID Act)
- Crime and Corruption Act 2001.
- <https://www.apsc.gov.au/public-interest-disclosure-scheme>
- <https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure/information-for-disclosers>

## **7. Review**

Council will formally review this policy every two years.



Kiley Hanslow

**Chief Executive Officer**

Wujal Wujal Aboriginal Shire Council