

Policy



STATUTORY

COMPLAINTS OF CORRUPT CONDUCT BY CHIEF EXECUTIVE OFFICER

Head of Power

Section 48A *Crime and Corruption Act 2001*

Key Supporting Council Document

Lockyer Valley Regional Council Corporate Plan 2022-2027:

- Compliant with relevant legislation

Definitions

CC Act	<i>Crime and Corruption Act 2001 (Qld).</i>
CCC	means the Crime and Corruption Commission continued in existence under the CC Act.
CEO	means the Chief Executive Officer of Lockyer Valley Regional Council.
Complaint	includes information or matter (as per section 48A(4) of CC Act)
Conduct (as per section 14 of the CC Act)	includes: <ul style="list-style-type: none">• neglect, failure and inaction;• conspiracy to engage in conduct;• attempt to engage in conduct.
Corrupt Conduct – (as per section 15 of the CC Act)	means conduct of a person, regardless of whether the person holds or held an appointment, that— <ul style="list-style-type: none">• adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of:<ul style="list-style-type: none">○ a unit of public administration; or○ a person holding an appointment; and• results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned above 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
- 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:

- impairs, or could impair, public confidence in public administration; and
- involves, or could involve, any of the following:
 - collusive tendering;
 - 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):
 - protecting health or safety of persons;
 - protecting the environment;
 - protecting or managing the use of the State's natural, cultural, mining or energy resources;
 - dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;
 - evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
 - fraudulently obtaining or retaining an appointment; and
- 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.

Corruption in Focus <https://www.ccc.qld.gov.au/publications/corruption-focus>; see chapter 2, page 2.6.

Nominated person for the purpose of this policy, is the Group Manager People Customer and Corporate Services:

Email: dmcpherson@lvrc.qld.gov.au

Phone: (07) 5466 3512

Policy Objective

The purpose of this policy is to set out how Lockyer Valley Regional Council will deal with a Complaint that involves or may involve corrupt conduct of its CEO. This policy seeks to promote:

- public confidence in the way suspected corrupt conduct of the CEO is dealt with; and
- accountability, integrity and transparency in the way the Council deals with a Complaint that is suspected to involve, or may involve, corrupt conduct of the CEO.

Policy Statement

Under section 48A of the CC Act, Council must adopt a policy about how it deals with the suspected Corrupt Conduct of its public official. The CEO, or person acting in the CEO role, is the public official of Council.

This policy applies where there are grounds to suspect that a Complaint may involve corrupt conduct of CEO. The policy applies to all persons who hold an appointment in or are employees of Council.

Council is committed to:

- eliminating Corrupt Conduct and preventing its occurrence.
- protecting the reputation of those who report suspected Corrupt Conduct and those who are the subject of the Complaint.
- maintaining strict confidentiality and integrity by all involved in the process of dealing with Complaints.

Nominated Person

In accordance with section 48A(2) and (3) of the CC Act, Council nominates the Group Manager People Customer and Corporate Services as the Nominated Person to notify the CCC of the Complaint and to deal with the Complaint under the CC Act.

Once the person is nominated, the CC Act applies as if a reference about notifying or dealing with the Complaint to the CEO is a reference to the Nominated Person.

Receipt and Notification to CCC of Complaints about the CEO

If a Complaint may involve an allegation of Corrupt Conduct of the CEO, the Complaint may be reported to:

- the Nominated Person; or
- A person to whom there is an obligation to report under an Act.

If there is uncertainty about whether or not a Complaint should be reported, it is best to report it to the Nominated Person.

If the Nominated Person reasonably suspects the Complaint may involve Corrupt Conduct of the CEO, they are to:

- notify the CCC of the Complaint; and
- deal with the Complaint, subject to the CCC's monitoring role, when the CCC refers the Complaint to the Nominated Person to deal with (section 46 of the CC Act).

If the CEO receives a Complaint and reasonably suspects that it may involve Corrupt Conduct on their part, the CEO must:

- report the Complaint to the Nominated Person as soon as practicable and may also notify the CCC, and
- take no further action to deal with the Complaint unless requested to do so by the Nominated Person in consultation with the Mayor.

Recordkeeping requirements

Should the Nominated Person decide that a Complaint, or information or matter, about alleged Corrupt Conduct of the CEO is not required to be notified to the CCC under section 38 of the CC Act, the Nominated Person must make a record of the decision that complies with section 40A of the CC Act and includes:

- the details of the Complaint or information or matter; and
- the evidence on which the Nominated Person relied in making the decision; and
- any other reasons for the decision.

Resourcing the Nominated Person

If the Nominated Person has responsibility to deal with the Complaint under section 43, 44 or 46 of the CC Act:

- the Council will ensure that sufficient resources are available to the Nominated Person to enable them to deal with the Complaint appropriately; and
- the Nominated Person is to ensure that consultations, if any, for the purpose of securing resources sufficient to deal with the Complaint appropriately are confidential and are not disclosed, other than to the CCC, without:
 - authorisation under a law of the Commonwealth or the State, or
 - the consent of the Nominated Person responsible for dealing with the Complaint.
- the Nominated Person must, at all times, use their best endeavours to act independently, impartially and fairly having regard to the:
 - purposes of the CC Act;
 - the importance of promoting public confidence in the way suspected Corrupt Conduct in the Council is dealt with; and
 - the Council's statutory, policy and procedural framework.

If the Nominated Person has responsibility to deal with the Complaint, they:

- are delegated the same authority, functions and powers as the CEO to direct and control staff of the Council as if the Nominated Person is the CEO of the Council for the purpose of dealing with the Complaint only
- are delegated the same authority, functions and powers as the CEO to enter into contracts on behalf of the Council for the purpose of dealing with the Complaint
- do not have any authority, function or power that cannot, under the law of the Commonwealth or the State, be delegated by either the Mayor or the CEO, to the Nominated Person.

Investigation and Response by the Nominated Person

If the Nominated Person has responsibility to deal with the Complaint, they must, subject to any direction of the CCC:

- deal with the complaint; and
- before finally dealing with the Complaint, report to Council about:
 - the action taken, or not taken, to investigate the Complaint;
 - the reasons the Nominated Person considers the investigation action to be appropriate in the circumstances;
 - the results of the action taken that are known at the time of the report; and
 - the reasons the Nominated Person considers that taking, or not taking, disciplinary or other action against the CEO to be appropriate in the circumstances.
- in finally dealing with the Complaint, provide a response to the complainant consistent with section 44(5) of the CC Act and to the CEO sufficient to comply with procedural fairness obligations, if any.

Liaising with the CCC

The CEO is to keep the CCC and the Nominated Person informed of:

- the contact details for the CEO and the Nominated Person
- any proposed changes to this policy.

Consultation with the CCC

The CEO will consult with the CCC when preparing any policy about how Council will deal with a complaint that involves or may involve Corrupt Conduct of the CEO.

Human Rights

Council is committed to respecting, protecting and promoting human rights. Council has an obligation under the *Human Rights Act 2019* to give proper consideration to human rights when making a decision, and to act and make decisions in a way that is compatible with human rights. To the extent that an act or decision under this policy may engage human rights, Council will have regard to the *Human Rights Act 2019* in undertaking the act or making the decision.

Relevant Legislation

Local Government Act 2009
Public Sector Ethics Act 1994

Related Documents

NA