



DEALING WITH COMPLAINTS ABOUT THE PUBLIC

OFFICIAL POLICY (Crime and Corruption Act 2001, S48A)

1. Objective

The objective of this policy is to set out how McKinlay Shire Council (Council) will deal with a complaint (also information or matter)¹ that involves or may involve corrupt conduct of its public official as defined in the *Crime and Corruption Act 2001* (CC Act).

For the purpose of this policy, the Chief Executive Officer (CEO) is the public official of McKinlay Shire Council.

2. Policy rationale

The policy is designed to assist Council to:

1. Comply with s48A of the *Crime and Corruption Act 2001*
2. Promote public confidence in the way suspected corrupt conduct of the CEO for the Council is dealt with (s34(c) CC Act)
3. Promote accountability, integrity and transparency in the way in which Council deals with a complaint that is suspected to involve, or may involve, corrupt conduct of the CEO.

3. Definitions

Crime and Corruption Commission (CCC)	the Commission continued in existence under the <i>Crime and Corruption Act 2001</i>
CC Act	<i>Crime and Corruption Act 2001</i>
Chief Executive Officer (CEO)	The Chief Executive Officer of McKinlay Shire Council
Complaint	includes information or matter. See definition provided by s48A(4) of the <i>Crime and Corruption Act 2001</i>
Contact details	Contact Details of the nominated person are: Telephone 07 4746 4223 Email address mayor@mckinlay.qld.gov.au Postal address PO Box 177, Julia Creek Qld 4823
Corruption	see Schedule 2 (Dictionary) of the <i>Crime and Corruption Act 2001</i>
Corrupt conduct	see s15 of the <i>Crime and Corruption Act 2001</i>
<i>Corruption in Focus</i>	http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus ; see chapter 2, page 2.5

¹ See s48A of the CC Act and definitions below

Deal with	see Schedule 2 (Dictionary) of the <i>Crime and Corruption Act 2001</i>
Nominated person	see item 5 of this policy
Police misconduct	see Schedule 2 (Dictionary) of the <i>Crime and Corruption Act 2001</i>
Public Official/CEO	see Schedule 2 (Dictionary) and also s48A of the <i>Crime and Corruption Act 2001</i>
Unit of public administration (UPA)	see s20 of the <i>Crime and Corruption Act 2001</i>

4. Policy application

This policy applies:

- if there are grounds to suspect that a complaint may involve corrupt conduct of the CEO of Council
- to all persons who hold an appointment in, or are employees of Council

For the purpose of this policy a complaint includes information or matter.²

5. Nominated person

Having regard to s48A(2) and (3) of the CC Act, this policy nominates the Mayor of McKinlay Shire Council as the nominated person to notify³ the Crime and Corruption Commission (CCC) of the complaint and to deal with the complaint under the CC Act.⁴

Once the Council nominates a person, the CC Act applies as if a reference about notifying or dealing with the complaint to the public official/CEO is a reference to the nominated person⁵.

6. Complaints about the CEO

If a complaint may involve an allegation of corrupt conduct of the CEO of Council, the complaint may be reported to:

- the nominated person, or
- a person to whom there is an obligation to report under an Act⁶ (this does not include an obligation imposed by ss37, 38 and 39(1) of the CC Act).

² See s48(4) CC of the CC Act

³ Under ss37 or 38 of the CC Act

⁴ Under Chapter 2, Part 3, Division 4, Subdivisions 1 & 2 of the CC Act

⁵ See s48A(3) CC Act

⁶ See s39(2) of the CC 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:

- (a) notify the CCC of the complaint⁷, and
- (b) deal with the complaint, subject to the CCC's monitoring role, when —
 - directions issued under s40 apply to the complaint, if any, or
 - pursuant to s46, the CCC refers the complaint to the Mayor to deal with⁸.

If the CEO reasonably suspects that the complaint may involve corrupt conduct on their part, and there is a nominated person, the CEO must:

- (i) report the complaint to the nominated person as soon as practicable and may also notify the CCC, and
- (ii) take no further action to deal with the complaint unless requested to do so by the Mayor.

If directions issued under s40 apply to the complaint:

- (i) the nominated person is to deal with the complaint, and
- (ii) the CEO is to take no further action to deal with the complaint unless requested to do so by the Mayor.

7. Resourcing the Nominated Person

If pursuant to ss40 or 46, the CEO or Mayor has responsibility to deal with the complaint⁹:

- (i) the Council will ensure that sufficient resources are available to the CEO or Mayor to enable them to deal with the complaint appropriately¹⁰, and
- (ii) the CEO or Mayor 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 CEO or Mayor responsible for dealing with the complaint
- (iii) the CEO or Mayor must, at all times, use their best endeavours to act independently, impartially and fairly having regard to the:
 - purposes of the CC Act¹¹
 - the importance of promoting public confidence in the way suspected corrupt conduct in the Council is dealt with¹², and

⁷ Under ss37 or 38, subject to s40 of the CC Act

⁸ Under ss41 and 42 and/or ss43 and 44 of the CC Act

⁹ Under ss41 and 42 and/or ss43 and 44 of the CC Act

¹⁰ See the CCC's corruption purposes and function set out in ss4(1)(b), 33, 34, 35 and the Council's relevant statutory, policy and procedural framework which help inform decision making about the appropriate way to deal with the complaint

¹¹ See ss57 and the CCC's corruption purposes and function set out in ss4(1)(b), 33, 34, 35 of the CC Act

- the Council’s statutory, policy and procedural framework.

If the Mayor 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 elected Council or to the nominated person; and

If the CEO has responsibility to deal with the complaint, they must:

- disclose the complaint to the Mayor
- deal with the complaint, and
- before finally dealing with the complaint, report to the Mayor about
 - the action taken or not taken
 - the reasons the CEO considers the action to be appropriate in the circumstances and
 - the results of the action taken that are known at the time of the report¹³.

8. Liaising with the CCC

The CEO is to keep the CCC and the nominated person/s (if any) informed of:

- the contact details for the public official/CEO and the nominated person/s (if there is a nominated person)
- any proposed changes to this policy.

9. Consultation with the CCC

The CEO will consult with the CCC when preparing any policy about how the Council will deal with a complaint that involves or may involve corrupt conduct of the public official/CEO.¹⁴

10. Statutory references

Unless otherwise stated, all statutory references are to the *Crime and Corruption Act 2001*.

¹² See s34(c) CC Act

¹³ See ss42 and 44 of the CC Act

¹⁴ Section 48A of the CC Act