



# Gladstone Regional Council

## Corporate Standard

<b>Title</b>	<b>PUBLIC INTEREST DISCLOSURE PROCEDURE</b>
<b>Corporate Standard No.</b>	<b>CS-2019-10</b>
<b>Business Unit/s</b>	<b>FINANCE, GOVERNANCE &amp; RISK</b>
<b>Date of Approval by CEO</b>	<b>27 JUNE 2019</b>
<b>Date of Effect</b>	<b>27 JUNE 2019</b>
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<b>Date Repealed</b>	

### 1.0 PURPOSE:

Gladstone Regional Council is committed to fostering an ethical and transparent culture. In pursuit of this, the business values the disclosure of information about suspected wrongdoing in the public sector so that it can be properly assessed and, if necessary, appropriately investigated. The business will provide support to our people or others who make disclosures about matters in the public interest. This corporate standard 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)*.

By complying with the *PID Act* the business will:

- promote the public interest by facilitating public interest disclosures (PIDs) of wrongdoing;
- 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 PIDs.

As required under the *PID Act*, the Chief Executive Officer (CEO) will implement procedures to ensure that:

- any public officer who makes a PID is given appropriate support;
- PIDs made to the business are properly assessed and, where appropriate, properly investigated and dealt with;
- appropriate action is taken in relation to any wrongdoing which is the subject of a PID;
- a management program for PIDs made to the business, consistent with the standards issued by the Queensland Ombudsman, is developed and implemented; and
- public officers who make PIDs are offered protection from reprisal by the business or other public officers of the business.

**2.0 SCOPE:**

This corporate standard applies to all personnel and any other person who makes a public interest disclosure in accordance with the *PID Act*.

**3.0 RELATED LEGISLATION:**

*Crime and Corruption Act 2001*  
*Disability Services Act 2006*  
*Environmental Protection Act 1994*  
*Local Government Act 2009*  
*Ombudsman Act 2001*  
*Public Interest Disclosure Act 2010*  
*Public Records Act 2002 (Qld)*  
*Public Sector Ethics Act 1994*

**4.0 RELATED DOCUMENTS:**

Code of Conduct Policy  
Complaint Management Policy  
Complaint Management Process Corporate Standard  
Conflict of Interest Form  
Councillor Complaint Investigation Policy  
Dealing with Complaints involving the Chief Executive Officer Policy  
Fraud Control Framework Corporate Standard  
Fraud Policy  
Information Privacy Policy  
Public Interest Disclosure Standard No. 1/2019  
Public Interest Disclosure Standard No. 2/2019  
Public Interest Disclosure Standard No. 3/2019

**5.0 DEFINITIONS:**

To assist in the interpretation of this corporate standard, the following definitions apply:

**Administration action** is as defined in Schedule 4 of the *PID Act*.

**Confidential information** includes:

- a) information:
  - (i) about the identity, occupation, residential or work address or whereabouts of a person:
    - A. who makes a public interest disclosure; or
    - B. against whom a public interest disclosure has been made; and
  - (ii) disclosed by a public interest disclosure; and
  - (iii) about an individual's personal affairs; and
  - (iv) that, if disclosed, may cause detriment to a person; and
- b) does not include 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.

**Corrupt conduct** is as defined in Section 15 of the *Crime and Corruption Act 2001*.

**Detriment** is as defined in Schedule 4 of the *PID Act*.

**Disability** is as defined in Section 11 of the *Disability Services Act 2006*.

**Disclosure** means a person who makes a disclosure in accordance with Chapter 2 of the *PID Act*.

**Employee** means a person employed directly by the business, either under an Employee Employment Agreement or the Certified Agreement.

**Employee assistance program (EAP)** means a confidential service for employees that includes counselling, career assist, and a range of other services. The EAP provides short term personal counselling to all employees and/or immediate family members for personal or work-related problems.

**Investigation** means for the purposes of this procedure, the investigation of any inquiry undertaken to establish whether the information provided in a PID can be substantiated, including a review or audit.

**Journalist** means a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media.

**Leader** means the Executive Team, Managers, Team Leaders and any other supervisory position that reports to a General Manager (i.e. Specialists) of the business.

**Maladministration** is as defined in Schedule 4 of the *PID Act*.

**Natural justice** (also referred to as 'procedural fairness') applies to any decision that can affect the rights, interests or expectations of individuals in a direct or immediate way. The rules of natural justice, which have been developed to ensure that decision-making is fair and reasonable, are:

- avoid bias;
- give a fair hearing; and
- act only on the basis of logically probative evidence.

**Organisational support** means for the purposes of this procedure, actions such as, but not limited to:

- providing moral and emotional support;
- advising disclosers about agency resources available to handle any concerns they have as a result of making their disclosure;
- appointing a mentor, confidante or other support officer to assist the discloser through the process;
- referring the discloser to the business's EAP or arranging for other professional counselling;
- generating support for the discloser in their work unit where appropriate;
- ensuring that any suspicions of victimisation or harassment are dealt with;
- maintaining contact with the discloser; and
- negotiating with the discloser and their support officer a formal end to their involvement with the support program when it is agreed that they no longer need assistance.

**Personnel** means councillors, employees, contractors or volunteers, regardless of their employment status, role or position.

**Proper authority** is as defined in Section 5 of the *PID Act*.

**Public officer** means an employee, member or officer of a public sector entity.

**Reasonable belief** means a view which is objectively fair or sensible.

**Reprisal** is as defined in Section 40 of the *PID Act*.

**Subject officer** means the person who is the subject of allegations of wrongdoing made in a disclosure.

**Substantial and specific** means 'of a significant or considerable degree'. It must be more than trivial or minimal and have some weight or importance.

Specific 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.

**Support person** means someone who the person requests to be present during any stage of the process defined in this corporate standard to provide them with emotional and moral support, take notes or quietly prompt or give them advice. A support person cannot disrupt or obstruct the process.

**Wrongdoing** means conduct or other matter as defined at section 12(1) and section 13(1) of the *PID Act*.

## 6.0 CORPORATE STANDARD STATEMENT:

The Chief Executive Officer (CEO) has overall responsibility for ensuring that the business develops, implements and maintains a PID management program. The business's PID management program encompasses:

- commitment to encouraging the internal reporting of wrongdoing;
- leader endorsement of the value to the business of PIDs and the proper management of them;
- a communication strategy to raise awareness among employees about PIDs and PID procedure;
- a training strategy to give employees access to training about how to make a PID, information on the support available to a discloser, and advice on how PIDs will be managed;
- specialist training and awareness about PIDs for leaders and other staff who may receive or manage PIDs, disclosers or workplace issues relating to PIDs;
- the appointment of the Manager Governance to be responsible for issues related to the management of PIDs;
- ensuring effective systems and procedures are in place so that issues and outcomes from PIDs inform improvements to service delivery, business processes and internal controls; and
- regular review of this corporate standard and evaluation of the effectiveness of the PID management program.

### 6.1 Key Responsibilities

#### 6.1.1 Chief Executive Officer

Responsibilities include ensuring:

- all personnel are aware that they are required to conduct their duties to high professional and ethical standards and always act in the public interest and in accordance with our Code of Conduct;
- reasonable procedures are in place to deal with a PID and that those procedures are published to enable members of the public and personnel to access them (Section 28 of the *PID Act*);
- PIDs are promptly and properly assessed, investigated and dealt with, including appropriate action being taken in relation to any wrongdoing in a PID;
- personnel making a PID receive support and protection from reprisal;
- any conflicts of interest are declared prior to commencing any action in relation to a PID;
- the role of decision-maker, and review the investigation report and determine whether the alleged wrongdoing is substantiated;
- the assignment of an investigator (internal or external) upon advice from the PID Coordinator;
- all legislative obligations in relation to reporting and investigation are met; and
- all matters involving suspected corrupt conduct are assessed against the *Crime and Corruption Act 2001* and treated accordingly, including referral to the Crime and Corruption Commission where appropriate.

#### **6.1.2 Leaders**

Responsibilities include:

- accepting and reporting to the PID Coordinator any PIDs reported to them;
- maintaining an ethical culture and leading by example;
- providing clear guidance to personnel on how to handle complex issues which may involve corrupt conduct, while maintaining confidentiality and natural justice;
- ensuring that personnel in their business area are aware of their obligations in relation to the requirements of this corporate standard;
- continually monitoring and assessing the workplace for signs of reprisal against a Discloser or Subject Officer under the principles of natural justice and taking appropriate actions to protect that person or persons;
- ensuring that, if PID allegations are substantiated, investigation recommendations are implemented quickly to reduce the risk of reoccurrence;
- retaining management responsibility for their workplace and personnel to the maximum extent possible during any PID process; and
- notifying the PID Coordinator in situations where any detrimental actions are taken against the Discloser and discuss concerns and options for addressing the situation before it escalates.

#### **6.1.3 Personnel**

Responsibilities include:

- reporting PIDs in accordance with this corporate standard;
- conducting their duties to high professional and ethical standards and always act in the public interest and in accordance with our Code of Conduct; and
- ensuring that they maintain confidentiality protocols established for the management and investigation of a PID.

The CEO has delegated the following roles and responsibilities for managing PIDs within the business:

#### **6.1.4 Manager Governance (PID Coordinator)**

Responsibilities include:

- declaring any conflicts of interest prior to commencing any action in relation to a PID;
- principal contact for PID issues;
- document and manage implementation of PID management program;
- review and update PID corporate standard;
- maintain and update internal records of PIDs received and report data on PIDs to Queensland Ombudsman;
- receive and assess PIDs and provide acknowledgment of receipt of PID to discloser;
- promote awareness of PIDs throughout the organisation;
- undertake risk assessment of the PID, including for reprisal and put in place means to monitor for any signs of reprisal;
- liaise and refer PIDs to other agencies where required and involve higher authorities (i.e. the CEO, Business Improvement Committee and external agencies) in management;
- identifying how issues raised in PIDs can be used to inform improvements to service delivery, business processes and internal controls;
- act on the PID, which may involve making recommendations to the CEO for the appointment of an internal or external investigator and support person, or conduct the investigation themselves if appropriate;
- provide advice and information to discloser on the business' PID corporate standard;
- provide support and referral to other sources of advice as required;
- facilitate updates on progress of investigation; and
- proactively contact discloser throughout PID management process.

#### **6.1.5 Investigator (internal or external)**

Responsibilities include:

- appropriate knowledge of the *PID Act*, the protections provided under the *PID Act* and the entity's PID corporate standard;
- declaring any conflicts of interest prior to commencing an investigation;
- conducting investigation of information of PIDs;
- continually monitor the matter for information indicating a breach of legislation that must or may be referred to another entity with jurisdiction to deal with the matter;
- determine if the matter was substantiated, partly substantiated or not substantiated, and evaluate whether there was any evidence of a breach of an offence provision under the *PID Act*; and
- prepare report for the decision-maker (CEO).

## **6.2 What is a PID?**

Under the *PID Act*, any person can make a disclosure about a:

- substantial and specific danger to the health or safety of a person with a disability;
- the commission of an offence, or contravention of a condition imposed under a provision of legislation mentioned in schedule 2 of the *PID Act*, if the offence or contravention would be a substantial and specific danger to the environment; and
- reprisal because of a belief that a person has made or intends to make a disclosure.

In addition, public sector officers can make a disclosure about the following public interest matters:

- corrupt conduct;
- maladministration that adversely affects a person's interests in a substantial and specific way;
- a substantial misuse of public resources;
- a substantial and specific danger to public health or safety; and
- substantial and specific danger to the environment.

A discloser can have either a 'reasonable belief' that wrongdoing has occurred or provide evidence which tends to show the wrongdoing has occurred. A disclosure amounts to a PID and is covered by the PID Act even if the:

- discloser reports the information as part of their duties – such as an auditor reporting a fraud or an occupational health and safety officer reporting a safety breach;
- disclosure is made anonymously – the discloser is not required to give their name or any identifying information;
- discloser has not identified the material as a PID – it is up to the business to assess information received and decide if it is a PID; and
- disclosure is unsubstantiated following investigation – the discloser is protected when the information they provide is assessed as a PID, whether it is subsequently investigated or found to be substantiated.

### **6.3 Why make a PID?**

Personnel who are prepared to speak up about public sector misconduct, wastage of public funds, suspected unlawful activity or danger to health, safety or the environment can be the most important sources of information to identify and address problems in public sector administration. The business supports the disclosure of information about wrongdoing because:

- implementing systems for reporting and dealing with wrongdoing contributes to the integrity of the business;
- the outcomes of PIDs can include improvements to systems that prevent fraud and other economic loss to the business; and
- the community's trust in the business and Council is strengthened by having strong processes in place for reporting wrongdoing.

When making a PID the discloser receives the protections provided under the *PID Act*, including:

- confidentiality – the discloser's name and other identifying information will be protected to the extent possible;
- protection against reprisal – the discloser is protected from unfair treatment by the business and personnel as a result of making the PID;
- immunity from liability – the discloser cannot be prosecuted for disclosing the information but is not exempt from action if they have engaged in wrongdoing; and
- protection from defamation – the discloser has a defence against an accusation of defamation by any subject officer.

### **6.4 Who can a PID be disclosed to?**

A PID must be made to a proper authority to receive disclosures of the type being made.

Disclosers are encouraged to make a disclosure to an appropriate officer of the business first. If the matter is not resolved, or the discloser is concerned about confidentiality, the disclosure may be made to another appropriate agency.

#### **6.4.1 Disclosing to a journalist**

A disclosure can also be made to a journalist if the following conditions have been met:

- a valid PID was initially made to a proper authority; and
- the proper authority:
  - decided not to investigate or deal with the disclosure; or
  - investigated the disclosure but did not recommend taking any action; or
  - failed to notify the discloser within six months of making the disclosure whether the disclosure was to be investigated or otherwise dealt with.

A person who makes a disclosure to a journalist in these circumstances is protected under the *PID Act*. However, disclosers should be aware that journalists are not bound under the confidentiality provisions of Section 65 of the *PID Act*.

### **6.5 How to make a PID?**

A discloser can make a PID in any way, including anonymously, either verbally or in writing. To assist in the assessment, and any subsequent investigation of a PID, disclosers are requested to:

- 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 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;
  - any further information that could help investigate the PID;
- provide this information in writing.

### **6.6 Deciding whether a matter is a PID**

If there is any doubt as to whether a matter is a PID, further information may be obtained to inform the decision. If doubt remains, the matter will be considered and managed as a PID.

Disagreements over policies or corporate standards do not meet the threshold for a PID under the *PID Act*.

It is an offence under the *PID Act*, punishable by up to two (2) years imprisonment, to intentionally give false or misleading information intending it be acted on as a PID. Employees may be subject to disciplinary action for intentionally giving false or misleading information in a PID, or during an investigation into a PID.

Where a discloser states they are making a PID, but it is assessed that the matter is not a PID, the business will advise the discloser:

- that their information has been received but was not assessed as a PID;
- the reasons for the decision;

- the review rights available if the discloser is dissatisfied with the decision and how to request review;
- any action the business proposes to take in relation to the matter; and
- any other options the discloser has in relation to the matter.

## **6.7 Disclosures made about an individual**

All people involved in PIDs (i.e. the discloser or subject officer) will be offered an appropriate level of support and case management. Action will be taken to ensure, where possible, that people's identities and the details of the disclosure remain confidential.

Subject officers who have had a PID made against them are assumed to be innocent of any adverse allegation until there is evidence to the required standard of proof (balance of probabilities) to show otherwise. The rules of natural justice apply to any subject officer under investigation in respect of an allegation made against them. In such instances, and through the PID Coordinator, the subject officer has the right to:

- know the substance of the allegations if a decision is going to be made about their conduct;
- have a reasonable opportunity to put their case forward (whether in writing, at a hearing or otherwise); and
- have a decision maker act fairly and without bias.

Providing natural justice does not mean that the subject officer should be advised of the allegation as soon as it is received. The subject officer need not be told about an allegation if it is:

- misleading;
- has no substance; and
- not intended to act on the allegation.

Persons against whom an allegation has been made should be reassured by the PID Coordinator that the PID will be assessed impartially, objectively and reasonably and that it is only an allegation until any evidence collected shows otherwise. They should be provided with information of their rights, and the progress and outcomes of any investigation undertaken.

Personnel who are the subject of an allegation may seek assistance from their legal or union representative, a support person or the services of our EAP for advice and counselling.

## **6.8 Assessing a PID**

The disclosure will be assessed in accordance with the *PID Act*, the PID standards, Public Interest Disclosure Procedure Corporate Standard and any other relevant procedure(s).

Once the matter has been assessed as a PID, the PID Coordinator will advise the discloser:

- that their information has been received and assessed as a PID;
- the action to be taken in relation to the disclosure, which could include referring the matter to an external agency, or investigating;
- the likely timeframe involved;
- the name and contact details of the support person they can contact for updates or advice;
- of their obligations regarding confidentiality;

- the protections the discloser has under the *PID Act*;
- the commitment of the business to keep appropriate records and maintain confidentiality, except where permitted under the *PID Act*;
- how updates regarding intended actions and outcomes will be provided to the discloser; and
- contact details for the EAP.

If the PID has been made anonymously and the discloser has not provided any contact details, the business will not be able to acknowledge the PID or provide any updates.

## **6.9 Referring a PID**

If it is decided there is another proper authority that is better able to deal with the PID, the PID may be referred to that agency. This may be because:

- the PID concerns wrongdoing by that agency or an employee of that agency; and
- that agency has the power to investigate or remedy the matter.

Before referring the PID to another agency, the PID Coordinator will conduct a risk assessment, and will not proceed with the referral if there is an unacceptable risk of reprisal.

It may also be necessary to refer the PID to another agency because of a legislative obligation, for example, refer a matter to the Crime and Corruption Commission (CCC) where there is a reasonable suspicion that the matter involves or may involve corrupt conduct (as required by Section 38 of the *Crime and Corruption Act 2001*).

The confidentiality obligations of the *PID Act* permit appropriate officers to communicate with another agency about the referral of a PID. Officers will exercise discretion in their contacts with any other agency.

The discloser will be advised of the action taken by the business.

## **6.10 Risk assessment and protection from reprisal**

The business has a duty of care to support and protect personnel and any other person making a PID from negative action including reprisals that occur because of a disclosure. Reprisals will not be tolerated.

Upon receiving a PID, the PID Coordinator will conduct a risk assessment to assess the likelihood of the discloser (or witnesses or affected third parties) suffering reprisal action as a result of having made the disclosure. This assessment will consider the actual and reasonably perceived risk of the discloser (or witnesses or affected third parties) suffering detriment and will include consultation with the discloser.

A risk assessment will be undertaken if the discloser is anonymous based on information available in the PID. The risk assessment will also consider the risk to persons who may be suspected of making the PID.

Consistent with the assessed level of risk, the PID Coordinator will develop and implement a risk management plan and arrange any reasonably necessary support or protection for the discloser (or witnesses or affected third parties).

The PID Coordinator will regularly reassess the risk of reprisal while the PID is being managed, in consultation with the discloser, and review the risk management plan if required.

In the event of reprisal action being alleged or suspected, the business will:

- attend to the safety of the discloser (or witnesses or affected third parties) as a matter of priority;
- review its risk assessment, risk management plan and any protective measures needed to mitigate any further risk of reprisal; and
- manage any allegation of a reprisal as a PID in its own right.

### **6.11 Declining to take action on a PID**

Under the *PID Act*, the business may decide not to investigate or deal with a PID in various circumstances, including:

- the information disclosed has already been investigated or dealt with by another process;
- the information disclosed should be dealt with by another process;
- the age of the information makes it impractical to investigate;
- the information disclosed is too trivial and dealing with it would substantially and unreasonably divert the business from the performance of its functions; and
- another agency with jurisdiction to investigate the information has informed the business that an investigation is not warranted.

If a decision is made not to investigate or deal with a PID, the business will give the discloser written reasons for that decision.

If the discloser is dissatisfied with the decision they can request a review by writing to the CEO of the business within 28 days of receiving the written reasons for decision.

### **6.12 Communication with disclosers**

Under the *PID Act*, the business must give reasonable information to a discloser.

The PID Coordinator will acknowledge receipt of the PID in writing as soon as practicable. The discloser will be provided with information that meets the requirements of the *PID Act* and the standards issued by the Queensland Ombudsman, including:

- the action that will be taken in response to the PID;
- the protections under the *PID Act*;
- confidentiality obligations of the discloser and the business; and
- support arrangements.

The PID Coordinator will maintain contact with the discloser and provide regular updates during the management of the PID.

In accordance with the *PID Act*, after finalising action in response to the PID, the PID Coordinator will advise the discloser in writing of the action taken and the results of the action.

### **6.13 Confidentiality**

While the business will make every attempt to protect confidentiality, a discloser's identity may need to be disclosed to:

- provide natural justice to subject officers; and
- respond to a court order, legal directive or court proceedings.

The PID Coordinator will ensure that communication with all parties involved will be arranged discreetly to avoid identifying the discloser wherever possible.

Disclosers should be aware that while the business will make every attempt to keep their details confidential, it cannot guarantee that others will not try to deduce their identity.

#### **6.14 Support for disclosers**

The business recognises that providing appropriate support to a discloser is an important feature of effective PID management.

An assessment will be undertaken to identify the support needs of the discloser. Where appropriate, a support person will be assigned to the discloser. The support person will assist the discloser to access information about PIDs, protections available under the *PID Act* and the PID management process. The support person will proactively contact the discloser to offer support.

Information and support will be provided to the discloser until the matter is finalised.

Making a PID does not prevent reasonable management action. That means that the discloser will continue to be managed in accordance with normal, fair and reasonable management practices during and after the handling of the PID.

#### **6.15 Investigating a PID**

If a decision is made to investigate a PID, this will be done with consideration for the:

- principles of natural justice;
- obligation under the *PID Act* to protect confidential information;
- obligation under the *PID Act* to protect officers from reprisal; and
- interests of subject officers.

If, as a result of an investigation, the information about wrongdoing provided in the PID is substantiated, appropriate action will be taken.

Where the investigation does not substantiate wrongdoing, the business will review systems, policies, corporate standards and procedures to identify whether there are improvements that can be made and consider if personnel training is required.

#### **6.16 Rights of subject officers**

The business acknowledges that for officers who are the subject of a PID the experience may be stressful. The business will protect their rights by:

- assuring them that the PID will be dealt with impartially, fairly and reasonably in accordance with the principles of natural justice;
- confirming that the PID is an allegation only until information or evidence obtained through an investigation substantiates the allegation;
- providing them with information about their rights and the progress and outcome of any investigation; and
- referring them to the EAP for support.

Information and support will be provided to a subject officer until the matter is finalised.

**6.17 Record keeping**

In accordance with its obligations under the *PID Act* and the *Public Records Act 2002*, the business will ensure that:

- in accordance with Section 40A of the *PID Act*, any decision not to refer alleged corrupt conduct to the Crime and Corruption Commission will be recorded;
- accurate data is collected about the receipt and management of PIDs; and
- anonymised data is reported to the Office of the Queensland Ombudsman in their role as the oversight agency, through the PID reporting database.

Records about disclosures, investigations, and related decisions will be kept secure in the business' record management system and accessible only to appropriately authorised people involved in the management of the PID.

**7.0 ATTACHMENTS:**

Nil.

**8.0 REVIEW TRIGGER:**

This corporate standard will be reviewed when any of the following occur:

1. The related legislation or governing documents are amended or replaced; or
2. Other circumstances as determined by resolution of Council or the CEO; or
3. Three years from date of effect.

TABLE OF AMENDMENTS		
Document History	Date	Notes (including the prior CS No, precise of change/s, etc)
Originally Approved	8 October 2015	CS-20/2015
Amendment 1	27 June 2019	Updated to reflect changes in legislation effective 1 March 2019
Amendment 2		
Amendment 3		

**APPROVED:**

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**LEISA DOWLING**  
**CHIEF EXECUTIVE OFFICER**