

1. RATIONALE

- 1.1 A Whistleblowers Policy forms a key part of an organisations governance framework to ensure that the organisation has the appropriate mechanisms embedded to provide all stakeholder with the appropriate platform on which they can report genuine concerns.

2. POLICY STATEMENT

- 2.2 The Council is committed to upholding the principles of good governance. The Councils administrative and management practices are aligned with the requirements of the Local Government Act 1999 regarding open, transparent and accountable government. The Council encourages all stakeholder to report and make disclosures that reveal public interest information.

3. OBJECTIVES

- 3.1 The objectives of this Policy are to ensure that the Council:
- 3.1.1 Fulfils its obligations and responsibilities under the *Whistleblowers Protection At 1993*
 - 3.1.2 Encourages and facilitates Disclosure of Public Interest Information which may include occurrences of maladministration, corrupt or illegal conduct.
 - 3.1.3 Provides a process by which disclosures may be made so that they are properly investigated (*Whistleblower Procedure*)
 - 3.1.4 Provides appropriate protection for those who make disclosures in accordance with the Act
 - 3.1.5 Recognises the need to appropriately support the Whistleblower, the Responsible Officer and, as appropriate, those Public Officers affected by any allegation that affects them.

4. POLICY SCOPE

- 4.1 This Policy applies to the disclosure and/or reports of public interest information that are made in accordance with the Act. This Policy also complements the reporting framework of the ICAC Act.
- 4.2 The identity of a Whistleblower will be maintained as confidential in accordance with the Act. Confidentiality will remain in all circumstances, unless the Whistleblower consents to his/her identity being disclosed or, disclosure is otherwise required so that the matter may be properly investigated. The Act does not expressly require any other information relating to a Disclosure (i.e. the nature of the allegations) to be maintained as confidential.
- 4.3 A Whistleblower may wish to remain anonymous. In the event that an anonymous Disclosure is made, the Whistleblower must ensure that the allegation is sufficiently supported by the provision of necessary details and evidence to enable the matter to be properly investigated. Accordingly, if an allegation is not supported by sufficient evidence it will not be investigated under the provisions of the Act.
- 4.4 The Act provides immunity from criminal or civil liability for Whistleblowers, and protection for Whistleblowers against victimisation. The Council will take action as appropriate to protect Whistleblowers from victimisation. In the event that a Whistleblower is victimised, the Council will, immediately refer the matter to the SA Police.

- 4.5 The Act does not provide any protection to people who knowingly make false disclosures or are reckless as to whether their disclosures are true.
- 4.6 A person who knowingly makes a false Disclosure or is reckless as to whether the disclosure is true is guilty of an offence and may be prosecuted.
- 4.7 A Public Officer who knowingly makes a false disclosure, or is reckless as to whether the Disclosure is true, in addition to being guilty of an offence under the Act, may face disciplinary action taken by the Council.

5. DISCLOSURE AND REPORTING

- 5.1 A Disclosure/Report is to be made to the Responsible Officer. A Whistleblower may alternatively choose to disclose Public Interest Information directly to an Appropriate Authority.
- 5.2 Nothing in this Policy prevents a person from making a Disclosure to an Appropriate Authority external to the Council (i.e. the Ombudsman or the OPI). This is a choice to be made by the Whistleblower at his/her discretion.
- 5.3 A Disclosure made to the Responsible Officer may be made in person, by telephone or in writing via the follow means:
 - Confidential – Whistleblowers
PO Box 21
Oaklands Park SA 5046
 - whistleblowers@marion.sa.gov.au
 - Manager Corporate Governance (8375 6625)
 - Manager Human Resources (8375 6413)

6. ROLES AND RESPONSIBILITIES OF THE RESPONSIBLE OFFICER

- 6.1 The Responsible Officers (pursuant Council's Fraud and Corruption Framework) are:
 - Manager Corporate Governance
 - Manager Human Resources
- 6.2 Upon the receipt of a Disclosure, the Responsible Officer will:
 - 6.2.1 undertake a preliminary assessment in accordance Whistleblower Procedure and determine the nature of the Public Interest Information contained within the Disclosure; and
 - 6.2.2 either refer the Disclosure to the Appropriate Authority (where it is appropriate to do so), or proceed with the an investigation process outlined in the Whistleblower procedure.
 - 6.2.3 If the Disclosure relates to the Chief Executive Officer (or a person acting in that position), the Responsible Officer will immediately refer it to the Ombudsman for investigation as the Ombudsman deems appropriate. Alternatively, if the Disclosure relates to Corruption in public administration, the Responsible Officer

must immediately report the matter to the OPI in accordance with the Directions and Guidelines.

6.2.4 In making any determination under this Policy (i.e. such as to refer a disclosure to the Appropriate Authority or proceed with an assessment or otherwise determining whether to pursue an investigation):

- the Responsible Officer may seek legal advice from Council's Lawyers and/or seek guidance from SAPOL or the Ombudsman in relation to the best course of action to pursue; and
- is authorised to incur costs in accordance with the Council's Budget for this purpose.

6.2.5 In the event that the Responsible Officer determines that the Disclosure warrants further investigation by the Council, the Responsible Officer will appoint an Independent Assessor for these purposes in accordance with the Whistleblower Procedure.

6.2.6 The Responsible Officer will liaise with the Independent Assessor and the Whistleblower in relation to any ensuing investigation process and will ensure that the Whistleblower is provided with adequate support and protection as necessary.

6.2.7 The Whistleblower will be notified of the progress of any investigation by the Responsible Officer and, wherever practicable and in accordance with the law, of the final outcome.

7. DEFINITIONS

7.1 For the purposes of this Policy the definitions outlined in Appendix 1.

8. REFERENCES

8.1 This Policy is to be read in connection and complement the following Council Policies:

- Code of Conduct for Elected Members
- Code of Conduct for Employees
- How We Work Together Policy
- Complaints and Grievances Policy
- Fraud and Corruption Policy and Framework

9. AVAILABILITY AND REVIEW

9.1 This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website www.marion.sa.gov.au

9.2 Copies will also be provided to the public upon request,

9.3 The Council will review and update this policy no less than every four (4) years in line with the Council's Policy Framework.

Appendix 1 - Definitions

1. **Act** means the Whistleblowers Protection Act 1993
2. An **Appropriate Authority** that received disclosure of public interest information includes:
 - 2.1 A Minister of the Crown
 - 2.2 A member of the Police force – where the information relates to an illegal activity
 - 2.3 The Audit-General – where the information relates to the irregular or unauthorised use of public money
 - 2.4 The Ombudsman – where the information relates to a public officer
 - 2.5 A Responsible Office – where the information relates to a matter falling within the sphere of responsibility of the Council or
 - 2.6 Any other person (such as the Chief Executive Officer) to whom, in the circumstances of the case, it is reasonable and appropriate to make the disclosure
3. **Corruption in public administration** means
 - 3.1 an offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:
 - 3.1.2 bribery or corruption of public officers;
 - 3.1.3 threats or reprisals against public officers;
 - 3.1.4 abuse of public office;
 - 3.1.5 demanding or requiring benefit on basis of public office;
 - 3.1.6 offences relating to appointment to public office.
 - 3.2 any other offence (including an offence against Part 5 (Offences of dishonesty) of the Criminal Law Consolidation Act 1935) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or
 - 3.3 any of the following in relation to an offence referred to in a preceding paragraph:
 - 3.3.1 aiding, abetting, counselling or procuring the commission of the offence;
 - 3.3.2 inducing, whether by threats or promises or otherwise, the commission of the offence;
 - 3.3.3 being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
 - 3.3.4 conspiring with others to effect the commission of the offence
4. **Detriment** includes:
 - 4.1 injury, damage or loss; or
 - 4.2 intimidation or harassment; or

4.3 discrimination, disadvantage or adverse treatment in relation to a person's employment;
or

4.4 threats of reprisal.

5. **Directions and Guidelines** is a reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act, which are available on the Commissioner's website (www.icac.sa.gov.au).

6. **Disclosure** means an appropriate disclosure of public interest information made by the Whistleblower to an Appropriate Authority, including to a Responsible Officer.

A person makes an **appropriate disclosure** of public interest information if:

6.1 the person:

6.1.1 believes on reasonable grounds that the information is true; or

6.1.2 is not in a position to form a belief on reasonable grounds about the truth of the information but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated; and

6.2 the disclosure is made to an Appropriate Authority.

6 **Employee** refers to all the Council's employees and includes trainees, work experience students, volunteers, and contractors whether they are working in a full-time, part-time or casual capacity.

7 **Fraud** is an intentional dishonest act or omission done with the purpose of deceiving.

8 **ICAC Act** is the *Independent Commissioner Against Corruption Act 2012*.

9 **Immunity** is an undertaking given by the Council (in accordance with the Act) to a Whistleblower in relation to action it does not intend to take against a Whistleblower as a result of receiving an appropriate disclosure of public interest information from the Whistleblower.

10 **Independent Assessor** is the person responsible for investigating, a disclosure made to a Responsible Officer. The Independent Assessor will be appointed by the Responsible Officer on a case-by-case basis (depending upon the nature of the disclosure) in accordance with clause 7.3 of this Policy. The Council may prepare a list of pre-approved persons who may be appointed as an Independent Assessor in any given circumstances, in which case, the Responsible Officer must have regard to this list in appointing the Independent Assessor.

11 **Maladministration** is defined in the *Whistleblowers Protection Act 1993* to include impropriety or negligence. Section 4 of the *Independent Commissioner Against Corruption Act 2012* defines *Maladministration in public administration* to mean:

11.2 conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or

11.3 conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and

11.4 includes conduct resulting from impropriety, incompetence or negligence; and

11.5 is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

12 **Misconduct** in public administration defined at Section 4 of the *ICAC Act* means:

12.2 contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or

12.3 other misconduct of a public officer while acting in his or her capacity as a public officer.

12.4 Office for Public Integrity (OPI) is the office established under the ICAC Act that has the function to:

12.5 receive and assess complaints about public administration from members of the public;

12.6 receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;

12.7 make recommendations as to whether and by whom complaints and reports should be investigated;

12.8 perform other functions assigned to the Office by the Commissioner.

13 **Public administration** defined at section 4 of the ICAC Act means without limiting the acts that may comprise public administration, an administrative act within the meaning of the Ombudsman Act 1972 will be taken to be carried out in the course of public administration.

14 **Public interest information** means information that tends to show:

14.1 that an adult person, a Council or other Government Agency, is or has been involved in:

14.1.1 an illegal activity; or

14.1.2 an irregular and unauthorised use of public money; or

14.1.3 substantial mismanagement of public resources; or

14.1.4 conduct that causes a substantial risk to public health or safety, or to the environment;
or

14.1.5 that a public officer is guilty of maladministration in or in relation to the performance of official functions.

15 **Public Officer** includes:

15.1 a Council Member; and

15.2 an Employee or Officer of the Council;

16 **Responsible Officer** is a person appointed pursuant to Section 302B of the Local Government Act 1999 who is authorised to receive and act upon public interest information received from a Whistleblower. Each Council must ensure that a member of the staff of the Council (with qualifications prescribed by the Regulations) is designated as a Responsible Officer for the Council for the purposes of the Act.

- 17 **Victimisation** occurs when a person causes detriment to another on the ground, or substantially on the ground, that the other person (or a third person) has made or intends to make an appropriate disclosure of public interest information.
- 18 **Waste** refers to the waste of public resources (including public money), which occurs as a result of the substantial mismanagement, irregular or unauthorised use of public resources.
- 19 **Whistleblower** is any person who makes an appropriate disclosure of public interest information.