



*Agriculturally rich – Naturally beautiful*

## COUNCIL POLICY

### Whistleblowers Protection Policy

<b>Policy Number:</b>	PO134		
<b>Strategic Plan Objective</b>	Corporate Governance and Leadership		
<b>Policy Owner:</b>	Chief Executive Officer	<b>File Number:</b>	9.63.1
<b>Responsible Officer:</b>	Governance Officer	<b>Minute Reference:</b>	086/2016 (11/05/2016)
<b>Date Adopted:</b>	11/05/2016	<b>Next Review Date:</b>	May 2019

#### 1. POLICY OBJECTIVES

This policy will ensure that Council fulfils its responsibilities under the Whistleblowers Protection Act 1993 and to provide guidance on how to make disclosures so that they are properly investigated. This policy will provide appropriate protection for those who make disclosures in accordance with the Whistleblowers Protection Act 1993.

It will also encourage and facilitate disclosures of public interest information, which may include occurrences of maladministration and waste within Council, and corrupt or illegal conduct in general, so that internal controls may be strengthened. Council recognises the need to appropriately support any whistleblower, the Responsible Officer and, as appropriate, those Public Officers affected by any allegation.

#### 2. SCOPE

Council is committed to upholding the principles of transparency and accountability in our administrative and management processes, and therefore encourages the making of disclosures that reveal public interest information. This policy applies to appropriate disclosures of public interest information that concern a Public Officer, made in accordance with the Act by Elected Members, Council employees, and members of the public.

#### 3. DEFINITIONS

Definitions are provided in attachment 1.

#### 4. POLICY STATEMENT

Council is committed to a working environment that reflects the core values of integrity, respect, trust and honesty which is achieved by:

- Referring, as necessary, appropriate disclosures to the appropriate authority which, depending on the nature of the disclosure, includes a Minister of the Crown, the South Australian Police (SAPOL), the Anti-Corruption Branch of SAPOL, the Auditor-General or the Ombudsman. Where the disclosure relates to corruption it must be reported directly to the OPI in accordance with the Directions and Guidelines. A report of misconduct or maladministration may be made to the OPI, but it must be reported to the OPI if the disclosure gives rise to a reasonable suspicion of serious or systemic misconduct and/or maladministration unless there

is knowledge that the disclosure has already been reported to the State Ombudsman.

- Otherwise investigating all appropriate disclosures of public interest information in a manner that promotes the fair and objective treatment of those involved.
- Rectifying any substantiated wrongdoing to the extent practicable in all the circumstances.

### **Confidentiality**

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.

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. If an allegation is not supported by sufficient evidence, it will not be investigated.

The Responsible Officer, in conjunction with the Independent Assessor will ensure all information relating to an appropriate disclosure is maintained as confidential and as such, will be responsible for the secure storage of this information. In the event that a person's appointment as a Responsible Officer is terminated, the person must provide this information to the newly-appointed Responsible Officer and having done so will continue to be bound by a duty of confidentiality in respect of the Whistleblower's identity and the information received.

### **Disclosure of Public Interest Information**

An appropriate disclosure of public interest information is to be made to a Responsible Officer or to an Appropriate Authority.

Responsible Officers are trained to apply the Act. They are required to maintain a supportive relationship with a Whistleblower and keep them informed on the progress of the investigation. Disclosures can be made to one of the current Responsible Officers by telephone (8832 0000) or in writing:

- Governance Officer; or
- Manager People and Culture.

Written disclosures should be addressed as:

**PRIVATE & CONFIDENTIAL**  
Whistleblowers Responsible Officer  
Yorke Peninsula Council  
PO Box 57  
MAITLAND SA 5573

Where a disclosure is made by telephone, the Responsible Officer must take notes of the conversation and, where possible, ask the Whistleblower to verify the notes. The following are relevant considerations for the Whistleblower in determining where to direct a disclosure:

- When choosing to make a disclosure internally, disclosures relating to an Elected Member or a member of Council staff, other than the CEO (or person acting in that position), should be made to a Responsible Officer;

- Any disclosure relating to a person appointed as a Responsible Officer should be made to the other person appointed as a Responsible Officer or failing this, to an Appropriate Authority external to the Council;
- Any disclosure relating to the CEO should be made external to the Council to the Ombudsman or, where it relates to Corruption in public administration to the OPI;
- Any disclosure relating to Maladministration or Misconduct in public administration may be reported in accordance with the ICAC Act or, if there is a reasonable suspicion that the Maladministration or Misconduct is serious or systemic, it must be reported to the OPI in accordance with the Directions and Guidelines;
- If a disclosure contains allegations of Fraud or Corruption, the Whistleblower should report the matter in accordance with the Council's Fraud and Corruption Policy PO148. That is, if the disclosure relates to Corruption in public administration it should be reported to the OPI in the first instance. If the disclosure relates to Fraud, it may be reported to the Responsible Officer or direct to SAPOL;
- Any allegations of Fraud or Corruption and/or criminal conduct will not be investigated by an Independent Assessor under this Policy.
- 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.

### **Role of the Responsible Officer**

Upon receiving a disclosure, the Responsible Officer:

- Will undertake a preliminary assessment in accordance to determine the nature of the public interest information contained within the disclosure;
- Will either refer the disclosure to the appropriate authority (where it is appropriate to do so), or proceed with an investigation;
- Will, if the disclosure relates to the CEO (or a person acting in that position), 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.
- 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;
- Is authorised to incur costs in accordance with the Council's Budget for this purpose.

In the event that the Responsible Officer determines that the disclosure warrants further investigation by the Council, the Responsible Officer may appoint an Independent Assessor for these purposes as deemed necessary. If an Independent Assessor is appointed, 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.

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.

### **Preliminary Assessment of Complaint**

Where the identity of the Whistleblower is known to the Responsible Officer or is reasonably ascertainable, the Responsible Officer will acknowledge receipt of the disclosure within 10 business days and in doing so, will provide a copy of this Policy to the Whistleblower.

Upon receipt of a disclosure, the Responsible Officer will undertake a preliminary assessment to determine whether it:

- Is frivolous, vexatious or trivial, in which case, no further action will be taken in relation to the complaint;
- Warrants a formal investigation;
- Requires referral to an Appropriate Authority external to the Council;

The Responsible Officer must report the outcome of the preliminary assessment to the CEO (unless the disclosure relates to the CEO in which case it should be reported external to the Council to the Ombudsman or, where it relates to Corruption in public administration to the OPI and must not be investigated by an Independent Assessor).

Where the Responsible Officer determines the disclosure warrants investigation, the Responsible Officer may, having regard to available resources, appoint an Independent Assessor and refer the disclosure to the Independent Assessor for investigation.

Where the Responsible Officer determines the disclosure warrants referral to an external body, the Responsible Officer will undertake the referral.

The Responsible Officer will inform the Whistleblower of the outcome of the preliminary investigation in writing as soon as is reasonably practicable after the determination has been made.

If the Whistleblower is dissatisfied with the Responsible Officer's determination it is open to him/her to report the disclosure to an Appropriate Authority external to the Council.

### **Investigation of a Complaint**

The objectives of the investigation process are to:

- Investigate the substance of the disclosure and to determine whether there is evidence in support of the matters raised or, alternatively, to refute the report made;
- Collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;
- Consider the information collected and to draw conclusions objectively and impartially;
- Observe procedural fairness in the treatment of any person who is the subject of the disclosure;
- Make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.

The principles of natural justice will be observed throughout the investigation process. The investigation will be conducted in an efficient manner and will involve a thorough and balanced assessment of the available evidence and any other factors deemed relevant to making a fair and reasonable judgement about the matter.

The Act requires that the Whistleblower assist with certain investigations that may result from his/her disclosure. In the event that the Whistleblower fails, without reasonable excuse, to assist with an investigation process the protection afforded to him/her under the Act may be forfeited.

Upon receipt of a disclosure, the Responsible Officer, or Independent Assessor where appointed, will bring the fact of the disclosure to the attention of the person who is the subject of it in writing within five (5) days, and will provide them with an opportunity to respond to the disclosure within a reasonable timeframe (either in writing or in person). The full details of any allegations contained in the disclosure need not be brought to the person's attention if the Responsible Officer, or Independent Assessor where appointed considers that doing so will compromise the success of the investigation.

At any time, the Responsible Officer, or Independent Assessor where appointed is required to communicate with the person subject of the disclosure, the Whistleblower and/or other witnesses for the purposes of the investigation. The Responsible Officer, or Independent Assessor where appointed, will ensure the relevant person is aware of the reason for and purpose of the communication. Where possible, such notification will be provided to the relevant person at least 48 hours before communication is scheduled to take place.

During any interview with the Responsible Officer, or Independent Assessor where appointed, the person who is the subject of a disclosure may be accompanied by any person providing support to him/her (including a lawyer) as he/she considers fit. Any costs incurred in relation to obtaining the assistance of a support person is at the personal expense of the person subject of the disclosure. The support person is bound by a duty of confidentiality in relation to any matter discussed during such interview.

The investigation will be undertaken in confidence. The Responsible Officer, or Independent Assessor where appointed, will keep the identity of the Whistleblower confidential unless disclosure of his/her identity is necessary to ensure the proper investigation of the disclosure.

Where an Independent Assessor has been appointed to undertake the investigation, the Independent Assessor will keep the Responsible Officer informed of the expected timeframes for completion of the investigation.

### **Final Report and Recommendation**

Upon finalising a detailed investigation, the Responsible Officer, or Independent Assessor where appointed, must prepare a report that will contain the following:

- The allegation(s);
- An account of all relevant information received including any rejected evidence, and associated reasons for rejection;
- The conclusions reached and the basis for them;
- Any recommendations arising from the conclusions;
- Any remedial action which should be applied.

The report may also be accompanied by:

- The transcript or other record of any verbal evidence taken;
- Relevant documents, statements or other exhibits received by the Council and accepted as evidence during the course of the investigation.

The report will not disclose particulars that will or are likely to lead to the identification of the Whistleblower.

The report must be provided to the CEO to action as he/she considers appropriate.

Where the report relates to the CEO (where investigated by the Ombudsman or another agency), it must be provided to the Mayor who will determine what action, if any, should be taken.

### **Handling of Information**

The Responsible Officer, or Independent Assessor where appointed, must ensure accurate records of the investigation process are maintained including notes of all discussions, phone calls, and interviews. Witness statements should be signed wherever possible.

In performing his/her duties, the Responsible Officer, or Independent Assessor where appointed, will maintain a confidential file of information (including written documents, disks, tapes, film or other objects that contain information) that relates to a disclosure and/or is a product of the associated investigation/reporting process. All such information will be recorded in a register, which is to remain confidential and be securely stored.

### **Information to the Elected Body**

As a matter of discretion, the CEO may inform the Elected Members, on a confidential basis, of the fact an investigation of a disclosure took place and the outcome of the investigation.

The CEO will take the following into account in determining whether to inform the Council and the level of detail provided in doing so:

- The identity of the person who is the subject of the disclosure;
- The impact (if any) of the investigation upon the Council's achievement of its objectives under its Strategic Plan and/or policies;
- The nature of the impact of any action taken to finalise the matter upon the Council's operations and/or budget;
- Whether or not it is lawful for the CEO to provide this information to the Council or other persons.

In the event the disclosure and investigation process is confined only to issues impacting upon Council employees and human resource processes, the CEO will not inform the Elected Members of the fact of the disclosure and/or investigation since these matters fall outside the roles and responsibilities of Elected Members under the Local Government Act 1999.

### **Protection for the Whistleblower**

The Act provides immunity from criminal or civil liability for Whistleblowers, and protection for Whistleblowers against victimisation. Accordingly the Council will take action as appropriate to protect Whistleblowers from victimisation. Furthermore, in the event that a Whistleblower is victimised, the Council will, immediately refer the matter to SAPOL.

The Act does not provide any protection to people who knowingly make false disclosures or are reckless as to whether their disclosures are true.

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.

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.

**Availability of the Policy**

This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the [Council's website](#). Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's [Fees and Charges Register](#).

**5. COMPLAINTS**

Complaints about this policy can be made in writing to the Governance Officer. All complaints will be managed in accordance with Council's Complaints Policy PO147.

**6. REVIEW**

This policy will be reviewed every three years and as deemed necessary in consideration of any changes to legislation, relevant standards, codes and guidelines, audit findings, any corrective actions/controls arising from risk assessment and/or hazard/incident reports and stakeholder feedback.

**7. TRAINING**

Training needs will be reviewed during induction and annually, during individual performance reviews and as necessary in consideration of any changes to legislation relevant standards, codes and guidelines, audit findings, any corrective actions/controls arising from risk assessment and/or hazard/incident reports and stakeholder feedback.

**8. RELATED COUNCIL POLICIES AND DOCUMENTS**

- Code of Conduct for Council Members
- Code of Conduct for Council Employees
- PO037 Internal Review of a Council Decision
- PO063 Records Management Policy
- PO147 Complaints Policy
- PO148 Fraud and Corruption Prevention Policy
- Fees and Charges Register

**9. REFERENCES AND LEGISLATION**

- Independent Commissioner Against Corruption Act 2012
- Local Government Act 1999
- Whistleblowers Protection Act 1993
- Local Government Association Whistleblower Protection Policy – Model Policy

**10. COUNCIL DELEGATION**

<b>Details of Delegation:</b>	Chief Executive Officer
<b>Delegate:</b>	Manager Organisational Development - Responsible Officer Governance Officer - Responsible Officer

**11. VERSION HISTORY**

<b>Archived Policy Name</b>	<b>Policy Number</b>	<b>Date Adopted</b>	<b>Last Reviewed</b>
Whistleblowers Protection Policy	PO134	09/06/2009	08/06/2010
Whistleblowers Protection Policy	PO134	12/03/2014	12/03/2014
Whistleblowers Protection Policy	PO134	11/05/2016	11/05/2016

**DEFINITIONS**

Act	Whistleblowers Protection Act 1993.
Appropriate Authority	<p>An authority that receives disclosure of public interest information including:</p> <ul style="list-style-type: none"> <li>• A Minister of the Crown;</li> <li>• A member of the police force - where the information relates to an illegal activity;</li> <li>• The Auditor-General - where the information relates to the irregular or unauthorised use of public money;</li> <li>• The Ombudsman – where the information relates to a Public Officer;</li> <li>• A Responsible Officer – where the information relates to a matter falling within the sphere of responsibility of a local government body;</li> <li>• Any other person to whom, in the circumstances of the case, it is reasonable and appropriate to make the disclosure. Such a person may include: <ul style="list-style-type: none"> <li>○ A Council employee (such as the CEO) to whom the whistleblower feels comfortable making the disclosure; and/or</li> <li>○ The OPI where the disclosure relates to corruption, maladministration or misconduct in public administration.</li> </ul> </li> </ul>
Business Day	A day when the Council is normally open for business.
CEO	Refers to the Chief Executive Officer (including their delegate) of the Yorke Peninsula Council, or an Acting Chief Executive Officer of the Yorke Peninsula Council (including their delegate) .
Corruption	<p>In public administration means:</p> <ul style="list-style-type: none"> <li>• an offence against Part 7 Division 4 (Offences relating to Public Officers) of the Criminal Law Consolidation Act 1935, which includes the following offences: <ul style="list-style-type: none"> <li>a. bribery or corruption of Public Officers;</li> <li>b. threats or reprisals against Public Officers;</li> <li>c. abuse of public office;</li> <li>d. demanding or requiring benefit on basis of public office;</li> <li>e. offences relating to appointment to public office.</li> </ul> </li> <li>• 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</li> <li>• any of the following in relation to an offence referred to in a preceding paragraph: <ul style="list-style-type: none"> <li>a. aiding, abetting, counselling or procuring the commission of the offence;</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>b. inducing, whether by threats or promises or otherwise, the commission of the offence;</li> <li>c. being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;</li> <li>d. conspiring with others to effect the commission of the offence</li> </ul>
Detriment	<p>Includes:</p> <ul style="list-style-type: none"> <li>• Injury, damage or loss;</li> <li>• Intimidation or harassment;</li> <li>• Discrimination, disadvantage or adverse treatment in relation to a person’s employment; or</li> <li>• Threats of reprisal.</li> </ul>
Directions and Guidelines	<p>Reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act 2012, which are available on the commissioner’s website(<a href="http://www.icac.com.au">www.icac.com.au</a>).</p>
Disclosure	<p>An <b>appropriate disclosure</b> of public interest information made by the Whistleblower to an Appropriate Authority, including to a Responsible Officer. A person makes an <b>appropriate disclosure</b> of public interest information if:</p> <ul style="list-style-type: none"> <li>• the person: <ul style="list-style-type: none"> <li>○ believes on reasonable grounds that the information is true; or</li> <li>○ 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</li> <li>○ the disclosure is made to an Appropriate Authority.</li> </ul> </li> </ul>
Employee	<p>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.</p>
Fraud	<p>Is an intentional dishonest act or omission done with the purpose of deceiving.</p>
ICAC Act 2012	<p>Independent Commissioner Against Corruption Act 2012.</p>
Immunity	<p>An undertaking given by 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.</p>
Independent Assessor	<p>The person responsible for investigating a disclosure made to a Responsible Officer. An Independent Assessor may be appointed by the Responsible Officer on a case-by-case basis (depending upon the nature of the disclosure). 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.</p>
Maladministration	<p>Is defined in the Whistleblowers Protection Act 1993 to include impropriety or negligence. Section 4 of the Independent</p>

	<p>Commissioner Against Corruption Act 2012 defines Maladministration in public administration to mean:</p> <ol style="list-style-type: none"> <li>a. 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</li> <li>b. Conduct of a Public Officer involving substantial mismanagement in or in relation to the performance of official functions; and</li> <li>c. includes conduct resulting from impropriety, incompetence or negligence; and</li> <li>d. is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.</li> </ol>
Misconduct	<p>In public administration defined at Section 4 of the ICAC Act means:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• Other misconduct of a Public Officer while acting in his or her capacity as a Public Officer.</li> </ul>
OPI	<p>Office for Public Integrity is the office established under the ICAC Act 2012 that has the function to:</p> <ul style="list-style-type: none"> <li>• Receive and assess complaints about public administration from members of the public;</li> <li>• Receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and Public Officers;</li> <li>• Make recommendations as to whether and by whom complaints and reports should be investigated; and</li> <li>• Perform other functions assigned to the Office by the Commissioner.</li> </ul>
Public Administration	<p>Defined at section 4 of the ICAC Act 2012 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.</p>
Public Interest Information	<p>Information that tends to show:</p> <ul style="list-style-type: none"> <li>• That an adult person, a Council or other Government Agency, is or has been involved in:             <ul style="list-style-type: none"> <li>○ An illegal activity;</li> <li>○ An irregular and unauthorised use of public money;</li> <li>○ Substantial mismanagement of public resources; or</li> <li>○ Conduct that causes a substantial risk to public health or safety or to the environment.</li> </ul> </li> <li>• That a Public Officer is guilty of maladministration in or in relation to the performance of official functions.</li> </ul>
Public Officer	<p>Includes:</p> <ul style="list-style-type: none"> <li>• An Elected Member of Council, including the Mayor;</li> <li>• An Independent Member of Council’s Development Assessment Panel;</li> </ul>

	<ul style="list-style-type: none"> <li>• An Independent Member of a Council Committee or subsidiary of Council; or</li> <li>• An employee or officer of Council.</li> </ul>
Responsible Officer	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. Regulation 21B of the Local Government (General) Regulations 1999, states that the prescribed qualifications are the qualifications determined by the Minister. The Minister has not yet made any determination.
SAPOL	The Anti-Corruption Branch of the South Australia Police.
Victimisation	When a person causes detriment to another on the grounds, or substantially on the grounds, that the other person (or a third person) has made or intends to make an appropriate disclosure of public interest information.
Waste	The waste of public resources (including public money), which occurs as a result of the substantial mismanagement, irregular or unauthorised use of public resources
Whistleblower	Any person who makes an appropriate disclosure of public interest information.