



DISTRICT COUNCIL OF LOXTON WAIKERIE

Whistleblowers Protection Policy

Policy Identification:	
Policy type:	Council
Summary:	The policy ensures that Council encourages and facilitates disclosures of public interest and provides protection for those who make such disclosures.
Record number:	9.63.1
Date of adoption or approval:	21 August 2009
Last review date:	15 September 2017
Next review date:	September 2019 (every 2 years)
Responsible department	Executive
Responsible officer(s):	Chief Executive Officer, Director Corporate and Community Services
Review officer	Governance Officer
Consultation required:	
Relevant references:	ICAC Directions and Guidelines (www.icac.sa.gov.au)
Delegations:	
Legislation	Whistleblowers Protection Act 1993, ICAC Act 2012
Related Policies:	Fraud & Corruption Prevention Policy, Code of Conduct for Council Members, Code of Conduct for Council Employees
Related procedures:	Whistleblowers Protection Procedure

1. Introduction

1.1 The District Council of Loxton Waikerie (council) is committed to upholding the principles of transparency and accountability in its administrative and management practices and, therefore, encourages the making of disclosures that reveal public interest information.

1.2 The purpose of this policy is to ensure that council :

- properly fulfils its responsibilities under the *Whistleblower Protection Act 1993 (the Act)*;
- encourages and facilitates disclosures of public interest information which may include occurrences of maladministration and waste within the Council, and corrupt or illegal conduct in general, so that internal controls may be strengthened;
- provides a process by which disclosures may be made so that they are properly investigated; and

- provides appropriate protection for those who make disclosures in accordance with the Act.

2. Scope

2.1 This policy applies to appropriate disclosures of public interest information that concerns a public officer, and are made in accordance with the Act by Council Members, Employees of the Council, and members of the public. The policy is also intended to complement the reporting framework under the Independent Commissioner Against Corruption Act 2012 (ICAC Act)

2.2 This policy is designed to complement the existing communication channels within Council, and operate in conjunction with existing policies, including:

- Fraud & Corruption Prevention Policy;
- Employee Code of Conduct;
- Elected Members Code of Conduct; and
- Internal Review of Council Decisions Policy under section 270 of the *Local Government Act 1999*.
- Whistleblowers' Protection Reporting Procedure

2.3 The Council is committed to:

- referring, as necessary, appropriate disclosures to the Appropriate Authority, which, depending on the nature of the disclosure include a Minister of the Crown, the SA Police, the Anti-Corruption Branch of the SA Police, the Auditor-General or the Ombudsman. Further where the disclosure relates to corruption it must be reported directly to the Office for Public Integrity (OPI) in accordance with the ICAC Directions and Guidelines. A report of misconduct or maladministration may be made to 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 which promotes fair and objective treatment of those involved; and
- rectifying any substantiated wrongdoing to the extent practicable in all the circumstances.

3. Definitions

For the purposes of this Policy the following definitions apply.

3.1 **Act** means the *Whistleblower Protection Act 1993*.

3.2 An **Appropriate Authority** that receives disclosure of public interest information includes:

- a *Minister of the Crown*;
- a *member of the police force* - where the information relates to an illegal activity;
- the *Auditor-General* – where the information relates to the irregular or unauthorised use of public money;
- the *Ombudsman* – where the information relates to a public officer;
- a *Responsible Officer*, where the information relates to a matter falling within the sphere of responsibility of a Local Government body; or
- any other person¹ to whom, in the circumstances of the case, it is reasonable and appropriate to make the disclosure².

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

(a) the person-

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

(b) the disclosure is made to an Appropriate Authority.

3.4 **Corruption** is conduct of a public official involving a breach of that person's duty and/or the misuse or abuse of their position to:

- gain a reward or benefit; or
- for any dishonest or improper purpose.

3.5 **Detriment** includes:

- injury, damage or loss; or
- intimidation or harassment; or
- discrimination, disadvantage or adverse treatment in relation to a person's employment; or
- threats of reprisal.

3.6 An **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.

3.7 **Fraud** is the use of misrepresentations, deception or dishonest conduct in order to obtain an unjust advantage over another, or to cause detriment to the Council. Examples of fraudulent conduct include:

¹ Such a person may include an independent company that offers an anonymous whistleblower call service.

² Where the disclosure relates to fraud and corruption, the Appropriate Authority must pass the information as soon as practicable to the Office of Public Integrity (OPI).

- theft of assets;
- unauthorised and/or illegal use of assets, information or services for private purposes;
- misappropriation of funds; and/or
- falsification of records.

3.8 **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.

3.9 **Maladministration** generally includes impropriety or negligence, which may extend to conduct of a serious nature that is:

- contrary to law; or
- unreasonable, unjust, oppressive or improperly discriminatory; or
- based upon improper motives; or
- a result of acting outside the parameters of recommended practice.

3.10 **Misconduct** in public administration defined in section 4 of the ICAC Act means:-

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

3.11 **Public interest information** means information that tends to show –

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

- i. an illegal activity; or
- ii. an irregular and unauthorised use of public money; or
- iii. substantial mismanagement of public resources; or
- iv. conduct that causes a substantial risk to public health or safety, or to the environment; or

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

3.12 A **Public Officer** includes:

- a elected Member of the Council, including the Mayor;
- an Independent member of the Council's Development Assessment Panel;
- an Independent member of a Council Committee or a subsidiary of the Council, and
- an Employee or Officer of the Council.

- 3.13** A **Responsible Officer** is a person authorised to receive and act upon public interest information received from a Whistleblower³. Each Council must ensure that a member of the staff of the Council (with qualifications prescribed by the Regulations⁴) is designated as a Responsible Officer for the Council for the purposes of the Act.
- 3.14** **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.
- 3.15** **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.
- 3.16** **Whistleblower** is any person who makes an appropriate disclosure of public interest information.

4. Confidentiality

- 4.1** 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.
- 4.2** 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.
- 4.3** Except for the identity of the Whistleblower, the Act does not expressly require any other information relating to a public interest disclosure (i.e. the nature of the allegations) to be maintained as confidential. However, such information will be treated confidentially, except in circumstances where the investigation process requires this information to be disclosed (i.e. where the allegations must be put to the person who is the subject of the disclosure).

³ It is recommended that the Responsible Officer is one or two Council Officers (with qualifications prescribed by the Regulations, as required under s.302B of the *Local Government Act 1999*) and is not the Chief Executive Officer, the Mayor, Council Member or a Council Committee. A Council Member should not be appointed as a Responsible Officer as Council Members are not equipped to properly deal with an appropriate disclosure in terms of the roles and responsibilities of their office. Furthermore the Responsible Officer is an administrative role and the principles of good governance require division between the administrative and governing bodies of a Council.

⁴ Regulation 33 of the *Local Government (General) Regulations 2013*, states that the prescribed qualifications are the qualifications determined by the Minister. The Minister has not yet made any determination.

5. Disclosure process

5.1 An appropriate disclosure of public interest information is to be made to the Responsible Officer. A Whistleblower may alternatively choose to disclose public interest information directly to an Appropriate Authority⁵.

5.2 An appropriate disclosure made to the Responsible Officer may be made in person, by telephone or in writing. The relevant contact details are:

- Telephone 8584 8000
- Email council@loxtonwaikerie.sa.gov.au
- Address Confidential
Whistleblowers
PO Box 409
Loxton SA 5333

5.3 Where an appropriate disclosure is made by telephone, the Responsible Officer must take notes of the conversation and, where possible ask the Whistleblower to verify and sign the notes.

5.4 Upon the receipt of an appropriate disclosure, the Responsible Officer will determine the nature of the public interest information contained within the disclosure and either refer the disclosure to the Appropriate Authority (where it is appropriate to do so), or proceed with an investigation process. For example, where an appropriate disclosure relates to fraud or corruption, the Responsible Officer will refer the matter to the Office of Public Integrity.

6. Reporting and investigation procedure

6.1. Investigation procedure

6.1.1 Any investigation undertaken by the Council will be undertaken in accordance with a two-staged process involving a preliminary investigation undertaken by the Responsible Officer and, in some circumstances, a secondary investigation undertaken by an external person. 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;
- to collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;
- to consider the information collected and to draw conclusions objectively and impartially to maintain procedural fairness in the treatment of witnesses and the person who is subject of the disclosure;

⁵ In circumstances where appropriate disclosure relates to the Chief Executive Officer, it is recommended that the disclosure be made direct to the Ombudsman.

- to make recommendations arising from the conclusions drawn concerning remedial or other appropriate action; and
- the Responsible Officer and/or external persons will keep notes of all discussions, phone calls and interviews. It is recommended that the interviewee sign written records of interviews and interviews be taped, but only where the interviewee has consented to this. Witness statements should also be signed.

6.1.2 The Act requires that the Whistleblower assist with any investigation that results from his/her disclosure.

6.1.3 The person to whom the appropriate disclosure relates will be notified of the disclosure and the associated investigation. That person will be given the opportunity to respond, and his or her defence will be fairly included in the report.

6.1.4 In performing his/her duties, the Responsible Officer/external person 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 stored⁶.

6.1.5 The Whistleblower will be notified of the progress of the investigation and, wherever practicable and in accordance with the law, of the final outcome.

6.2. The role of the responsible officer

6.2.1 In the event the Responsible Officer determines to proceed with an investigation, the Responsible Officer will:

- undertake a preliminary investigation into all information received;
- report the outcome of the preliminary investigation to the Chief Executive Officer (or in the event that the disclosure relates to the Chief Executive Officer, to the Principal Member). The preliminary report must include:
 - the allegation(s) and the basis for them;
 - a determination of whether the disclosure is deliberately false, malicious or vexatious;
 - a determination of whether the matter is to be pursued further and the reasons for this decision; and

⁶ The Responsible Officer (or external person as the case may be) will ensure all information relating to an appropriate disclosure is maintained as confidential and as such, will be solely responsible for the secure storage of this information. It is recommended that the information be stored separately from the Council's records. In the event that a person's appointment as a Responsible Officer is terminated, the person must provide the 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.

- any recommendations arising from the conclusions including any remedial action that should be taken by the Council;
- in the event that the matter is to be pursued further, appoint an external person to undertake a detailed investigation and to prepare a report to submit to the Chief Executive Officer (or in the event that the disclosure relates to the Chief Executive Officer, to the Principal Member).

6.3 Final report and recommendation

6.3.1 Upon finalising a detailed investigation the external person is to prepare a report that will contain the following:

- the allegation(s);
- an account of all relevant information received including any rejected evidence, and the reasons why the rejection occurred;
- the conclusions reached and the basis for them;
- any recommendations arising from the conclusions; and
- any remedial action which should be taken by the Council.

The report will be accompanied by:

- the transcript or other record of any verbal evidence taken, including tape recordings; and
- all documents, statements or other exhibits received by the officer and accepted as evidence during the course of the investigation.

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

7. Protection for the whistleblower

7.1 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 the SA Police.

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

7.3 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.

7.4 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.

8. Availability of the policy

This policy will be available for inspection at the Council Offices at Loxton or Waikerie during ordinary business hours at no charge.

Copies of this policy will also be available from Councils website www.loxtonwaikerie.sa.gov.au or postal copies may be obtained from the Council Office free of charge.

9. Document history and version control

Date	Version	Authorisation: Council, Committee, Senior Management Team	Amendment details
21/08/2009	1.0	Council; meeting of 21 August 2009	First version
16/09/2011	1.1	Council: meeting of 16 September 2011	Incorporated review undertaken by KelledyJones Lawyers March 2012
15/08/2014	1.2	Council: meeting of 15 August 2014	Incorporated review undertaken by KelledyJones Lawyers September 2013
15/09/2017	1.3	Council: meeting of 15 September 2017	Amendments note direction within the ICAC Act and reporting requirements to the Office of Public Integrity (OPI) Addition of document history and version control protocols