

# Whistleblower Protection Policy



## 1. POLICY STATEMENT

1.1 City of Playford 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 City of Playford:

- properly fulfils its responsibilities under the *Whistleblowers Protection Act 1993*;
- 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;
- provides appropriate protection for those who make Disclosures in accordance with the Act; and
- recognises the need to appropriately support the Whistleblower, the Responsible Officer and, as appropriate, those Public Officers affected by any allegation that affects them.

## 2. SCOPE

2.1 This Policy applies to appropriate Disclosures of Public Interest Information that are made in accordance with the Act by Council Members, Employees of the Council, and members of the public. This Policy is also intended to complement the reporting framework under the ICAC Act.

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

- a) Code of Conduct for Council Employees;
- b) Code of Conduct for Council Members;
- c) Internal Review of Council Decisions Procedure (under section 270 of the *Local Government Act 1999*);
- d) Complaints Handling Policy and Procedure; and
- e) Protocol – Ombudsman Enquiry Procedure.

The logo for the City of Playford, featuring the text 'CITY OF' above the word 'Playford' in a stylized script font, with a green graphic element below it consisting of three horizontal lines of varying lengths.	Policy No.:	Not Applicable	Version No.:	3
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### 2.3 The Council is committed to:

- a) 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 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;
- b) otherwise facilitating the investigation of all appropriate Disclosures of Public Interest Information in a manner which promotes fair and objective treatment of those involved; and
- c) 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 Whistleblowers 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 person<sup>1</sup> to whom, in the circumstances of the case, it is reasonable and appropriate to make the disclosure.*

**3.3 Chief Executive Officer** means the Chief Executive Officer of a council and includes a Deputy or other person acting in the office of Chief Executive Officer.

**3.4 Council Member** is a person elected as a Councillor or Mayor of the Council.

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<sup>1</sup> Such a person may include:

- a Council employee (such as the Chief Executive Officer) to whom the whistleblower feels comfortable making the disclosure; and/or
- The OPI where the disclosure relates to corruption, maladministration or misconduct in public administration.

### 3.5 Corruption in public administration means:

3.5.1 an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:

- (i) bribery or corruption of public officers;
- (ii) threats or reprisals against public officers;
- (iii) abuse of public office;
- (iv) demanding or requiring benefit on basis of public office;
- (v) offences relating to appointment to public office.

3.5.2 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

3.5.3 any of the following in relation to an offence referred to in a preceding paragraph:

- (i) aiding, abetting, counselling or procuring the commission of the offence;
- (ii) inducing, whether by threats or promises or otherwise, the commission of the offence;
- (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- (iv) conspiring with others to effect the commission of the offence

### 3.6 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.

3.7 **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](http://www.icac.sa.gov.au)).

3.8 **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:

- (a) the person:
  - (i) believes on reasonable grounds that the information is true; or
  - (ii) 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.

**3.9 Council Employee or Council Staff** 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.

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

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

**3.12 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.

**3.13 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 5.4.3 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.

**3.14 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:

- (i) 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
- (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and

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

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

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

3.15.1 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

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

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

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

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

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

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

**3.17 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.

**3.18 Public interest information**<sup>2</sup> 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.

**3.19 Public Officer** includes:

- a Council Member; and
- Staff or Officer of the Council;

**3.20 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<sup>3</sup>. Each Council must ensure

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<sup>2</sup> This definition captures conduct that constitutes corruption, misconduct and maladministration in public administration.

<sup>3</sup> It is recommended that the Responsible Officer is one or two Council Officers 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.

that a member of the staff of the Council (with qualifications prescribed by the Regulations<sup>4</sup>) is designated as a Responsible Officer for the Council for the purposes of the Act.

**3.21 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.

**3.22 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.

**3.23 Whistleblower** is any person who makes an appropriate disclosure of public interest information.

#### **4. LEGISLATION AND REFERENCES**

- Whistleblower Act 1993
- Independent Commission Against Corruption Act 2012
- Local Government Act 1999

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<sup>4</sup> 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.

## 5. POLICY

### 5.1 Confidentiality

5.1.1 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. 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.

5.1.2 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.

### 5.2 Disclosure Process

5.2.1 A Disclosure is to be made to the Responsible Officer. A Whistleblower may alternatively choose to disclose Public Interest Information directly to an Appropriate Authority.

5.2.2 The following are relevant considerations for the Whistleblower in determining where to direct a Disclosure:

- a) Subject to this clause, when choosing to make a Disclosure internally, Disclosures relating to a Council Member or a member of council staff, other than the Chief Executive Officer (or person acting in that position), should be made to a Responsible Officer.
- b) 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.
- c) Any Disclosure relating to the Chief Executive Officer should be made external to the Council to the Ombudsman or, where it relates to Corruption in public administration to the OPI.
- d) 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.
- e) 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. That is, if the Disclosure relates to Corruption in public administration it should be reported to the OPI in the first instance<sup>5</sup>. If the Disclosure relates to Fraud, it may be reported to the Responsible Officer or direct to SA Police.

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<sup>5</sup> The OPI is the authority charged with receiving complaints and reports relating to such information. However, it remains open to the Whistleblower to make a disclosure relating to corruption in public administration to the Responsible Officer if he/she feels more comfortable doing so.

- f) Any allegations of Fraud or Corruption and/or criminal conduct will not be investigated by an Independent Assessor under this Policy.

5.2.3 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.

5.2.4 A Disclosure made to the Responsible Officer may be made in person, by telephone or in writing. The relevant contact details are:

Position	Manager Governance
Telephone	(08) 8256 0310
Email	<a href="mailto:governance@playford.sa.gov.au">governance@playford.sa.gov.au</a>
Address:	Confidential Whistleblowers 12 Bishopstone Road Davoren Park SA 5113

5.2.5 Where a 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.

### 5.3 Role of the Responsible Officer

5.3.1 Upon the receipt of a Disclosure, the Responsible Officer will:

- a) undertake a preliminary assessment in accordance with section 5.4 of this Policy below to determine the nature of the Public Interest Information contained within the Disclosure; and
- b) either refer the Disclosure to the Appropriate Authority (where it is appropriate to do so), or proceed with the an investigation process outlined in section 5.5 of this Policy.

5.3.2 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.

5.3.3 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):

- a) the Responsible Officer may seek legal advice from Council's Lawyers and/or seek guidance from SA Police or the Ombudsman in relation to the best course of action to pursue; and

b) is authorised to incur costs in accordance with the Council's Budget for this purpose.

5.3.4 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 under paragraph 5.4.3 of this Policy.

5.3.5 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.

5.3.6 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.

#### **5.4 Preliminary Assessment of Complaint**

5.4.1 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 2 days and in doing so, will provide a copy of this Policy to the Whistleblower.

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

a) is frivolous, vexatious or trivial, in which case, no further action will be taken in relation to the complaint; or

b) warrants referral to an Independent Assessor for a formal investigation and report to Council; or

c) requires referral to an Appropriate Authority external to the Council.

5.4.3 The Responsible Officer must report the outcome of his/her determination under section 5.4.2 above to the Chief Executive Officer (unless the disclosure relates to the Chief Executive Officer in which case it is to be dealt with pursuant to clause 5.2.2 above and must not be investigated by an Independent Assessor). Where the Responsible Officer determines the disclosure warrants investigation, the Responsible Officer will, having regard to available resources, appoint the Independent Assessor and refer the Disclosure to the Independent Assessor for investigation.

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

5.4.5 The Responsible Officer will inform the Whistleblower of the outcome of his/her determination under section 5.4.2 above in writing as soon as is reasonably practicable after the determination has been made.

5.4.6 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.

## 5.5 Investigation Procedure

5.5.1 The objectives of the investigation process are:

- a) 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;
- b) to collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;
- c) to consider the information collected and to draw conclusions objectively and impartially;
- d) to observe procedural fairness in the treatment of any person who is subject of the disclosure; and
- e) to make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.

5.5.2 The Independent Assessor will observe the principles of natural justice 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.

5.5.3 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<sup>6</sup>.

5.5.4 Upon receipt of a Disclosure, the Independent Assessor will bring the fact of the Disclosure to the attention of the person who is the subject of it in writing within 5 days, and 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 Independent Assessor considers that doing so will compromise the success of the investigation.

5.5.5 At any time the Independent Assessor is required to communicate with the person subject of the Disclosure, the Whistleblower and/or other witnesses for the purposes of the investigation, the Independent Assessor will ensure the relevant person is aware of the reason for and purpose of the communication. Such notification will be provided to the relevant person at least 48 hours before such communication is to take place.

5.5.6 During any interview with the Independent Assessor, 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 are the personal expenses of the person subject of the Disclosure. The support

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<sup>6</sup> Refer section 6(3) of the Act.

person is bound by a duty of confidentiality in relation to any matter discussed during such interview.

- 5.5.7 The investigation will be undertaken in confidence. The Independent Assessor will keep the identity of the Whistleblower confidential unless Disclosure of his/her identity is necessary to ensure that the proper investigation of the Disclosure.
- 5.5.8 The Independent Assessor will keep the Responsible Officer informed of the expected timeframes for completion of the investigation and the provision of a report to the Council.

## **5.6 Final Report and Recommendation**

- 5.6.1 Upon finalising a detailed investigation the Independent Assessor must prepare a report that will contain the following:
- a) the allegation(s);
  - b) an account of all relevant information received including any rejected evidence, and the reasons why the rejection occurred;
  - c) the conclusions reached and the basis for them;
  - d) any recommendations arising from the conclusions; and
  - e) any remedial action which should be taken by the Council.

The report will be accompanied by:

- a) the transcript or other record of any verbal evidence taken, including tape recordings; and
  - b) all documents, statements or other exhibits received by the officer and accepted as evidence during the course of the investigation.
- 5.6.2 The report will not disclose particulars that will or are likely to lead to the identification of the Whistleblower.
- 5.6.3 The report must be provided to the Chief Executive Officer to action as he/she considers appropriate.

## **5.7 Handling of Information**

- 5.7.1 The Independent Assessor must ensure accurate records of the investigation process are maintained including 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.
- 5.7.2 In performing his/her duties, the Independent Assessor 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<sup>7</sup>.

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<sup>7</sup> 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 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 this information to the newly-appointed Responsible Officer and

## **5.8 Information to Elected Body**

- 5.8.1 As a matter of discretion, the Chief Executive Officer may inform the elected body, on a confidential basis, of the fact an investigation of a Disclosure took place and the outcome of the investigation.
- 5.8.2 Factors the Chief Executive Officer will take into account in determining whether to inform the elected body under paragraph 5.8.1 above and the level of detail provided in doing so are as follows:
- a) the identity of the person subject of the Disclosure;
  - b) the impact (if any) of the investigation upon the Council's achievement of its objectives under its Strategic Plan and/or policies; and
  - c) the nature of the impact of any action taken to finalise the matter upon the Council's operations and/or budget.
- 5.8.3 In the event the Disclosure and investigation process is confined only to issues impacting upon Council staff and human resource processes, the Chief Executive Officer will not inform the elected body of the fact of the Disclosure and/or investigation since these matters fall outside the roles and responsibilities of Council Members under the *Local Government Act 1999*.

## **5.9 Protection for the Whistleblower**

- 5.9.1 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.
- 5.9.2 The Act does not provide any protection to people who knowingly make false disclosures or are reckless as to whether their disclosures are true.
- 5.9.3 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.
- 5.9.4 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.

## **5.10 Availability of the Policy**

- 5.10.1 This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's web site [www.playford.sa.gov.au](http://www.playford.sa.gov.au). Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.

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having done so will continue to be bound by a duty of confidentiality in respect of the Whistleblower's identity and the information received.

## 6. RESPONSIBILITIES

- 6.1 The Governance team is responsible for communication of this policy, however it is the responsibility of all Council Members and Council Staff to adhere to this Policy.
- 6.2 In order to ensure Council continues to provide the best possible complaints handling service for its customers, this policy will be subject to periodic evaluation and review. The Policy will be reviewed every 4 years and within 12 months of a general periodic election.

## 7. Relevance to Strategic Plan

### Strategy 1 - Our foundations – services, city presentation and community pride Outcomes:

- 1.1 Liveable City with mix of services and facilities
- 1.2 Environmental responsibility
- 1.3 Attractive and sustainable open spaces
- 1.4 Improved visual amenity
- 1.5 Enhanced reputation

### Strategy 5 - Building our capabilities Outcomes:

- 5.1 Highly performing organisation
- 5.2 Delivering value for money services
- 5.3 Effective government and private sector partnerships.

## 8. SUPPORTING DOCUMENTATION

### 8.1 Related Policies:

- Council Member Code of Conduct
- Code of Conduct for Council Employees
- Complaints Handling Policy
- Request for Service Policy

### 8.2 Related Procedures:

- Code of Conduct – Council Member Complaints Handling Procedure
- Complaints Management Procedure – Section 21A of Development Act 1993
- Internal Review of Council Decisions Procedure
- Complaints Handling Procedure
- Protocol – Ombudsman Enquiry Procedure

## 9. APPROVAL AND CHANGE HISTORY

Version	Approval Date	Approval by	Change
1	28/02/2012	Council	New Policy
2	24/11/2015	Council	Review – Legislative Change
3	22/03/2016	Council	Minor Changes
3.1	7/05/2018	Senior Manager	Minor amendment

## APPENDIX 1

### OFFENCES

#### **Local Government Act 1999**

##### **(a) Council Members**

###### Member duties (sections 62(3) & (4))

A member of a Council must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council.

*Maximum Penalty: \$10,000.00 or imprisonment for two years.*

A member of a Council must not, whether within or outside the State, make improper use of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council.

*Maximum Penalty: \$10,000.00 or imprisonment for two years.*

###### Provision of false information (section 69)

A member of a Council who submits a return under Chapter 5 Part 4 (Register of Interest) and Schedule 3 of the *Local Government Act 1999*, that is to the knowledge of the member, false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence.

*Maximum Penalty: \$10,000.00.*

###### Restrictions on publication of information from Register of Interests (section 71)

A Council member must not publish information, or authorise publication of information, derived from a Register unless the information constitutes a fair and accurate summary of the information contained in the Register, and is published in the public interest, or comment on the facts set forth in a Register, unless the comment is fair and published in the public interest and without malice.

*Maximum Penalty: \$10,000.00.*

**(b) Council Employees**

Provision of false information (section 117)

A Council employee who submits a return under Chapter 7 Part 4 Division 2 (Register of Interest) and that is to the knowledge of the employee false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence.

*Maximum Penalty: \$10,000.00.*

Restrictions on disclosure (section 119(1))

A Council employee must not disclose to any other person any information furnished pursuant to Chapter 7 Part 4 Division 2 (Register of Interests) unless the disclosure is necessary for the purposes of the preparation or use of the Register by the Chief Executive Officer or is made at a meeting of the Council, a Council Committee or a Subsidiary of the council.

*Maximum Penalty: \$10,000.00.*

Conflict of Interest (section 120(1), (2) & (4))

The Chief Executive of a Council who has an interest in a matter in relation to which he or she is required or authorised to act in the course of official duties must disclose the interest to the Council and must not, unless the Council otherwise determines during a Council meeting that is open to the public, act in relation to the matter.

*Maximum Penalty: \$5,000.00.*

An employee of the Council (other than the Chief Executive Officer) who has an interest in a matter in relation to which he or she is required or authorised to act in the course of official duties must disclose the interest to the council and must not, unless the council otherwise determines during a council meeting that is open to the public, act in relation to the matter.

*Maximum Penalty: \$5,000.00.*

If an employee is entitled to act in relation to a matter and the employee is providing advice or making recommendations to the Council or a Council Committee on the matter, the employee must also disclose the relevant interest to the Council or Council Committee.

*Maximum Penalty: \$5,000.00.*

CEO to Assist Auditor (section 130)

The Chief Executive Officer must, at the request of the auditor of the Council, produce to the auditor for inspection the accounts, accounting records and other documents relating to the financial affairs or internal controls of the Council, or to any other matter that is being examined or considered by the auditor. The Chief Executive Officer must, at the request of the auditor of the Council, provide to the auditor explanations or information required by the auditor. A Chief Executive Officer must not, without reasonable excuse, fail to comply with subsection (1) or (2).

*Maximum Penalty: \$10,000.00.*

Other Investigations (section 130A(4))

The Chief Executive Officer must, at the request of a person conducting an examination under section 130A(1) produce to the person for inspection any documents relevant to the examination, and provide to the person explanations or information required by the person.

*Maximum Penalty: \$10,000.00.*

Powers under this Act (section 261(10))

An authorised person, or a person assisting an authorised person, who addresses offensive language to any other person; or without lawful authority hinders or obstructs or uses or threatens to use force in relation to any other person, is guilty of an offence.

*Maximum Penalty: \$5,000.00.*

**Local Government (Elections) Act 1999**

Conduct of officers (section 65)

An electoral officer must not fail, without proper excuse, to carry out his or her official duties in connection with the conduct of an election or poll.

*Maximum Penalty: \$2,500.00 or imprisonment for six months*

Offences (section 85)

A person who fails to furnish a return that the person is required to furnish under Part 14 Division 1 within the time required is guilty of an offence.

*Maximum Penalty: \$10,000.00*

A person who furnishes a return or other information that the person is required to furnish under Division 1; and that contains a statement that is, to the knowledge of the person, false or misleading in a material particular, is guilty of an offence.

*Maximum Penalty: \$10,000.00*

Elected person refusing to act (section 91)

A duly qualified person who, having been duly appointed or elected as a member of a council refuses to assume office and to act in it; or neglects to assume the office and to act in it for the first three ordinary meetings of the council (without leave of the council), is guilty of an offence.

*Maximum Penalty: \$750.00*

**Development Act 1993**

Powers of authorised officers to inspect and obtain information (section 19(11))

An authorised officer, or a person assisting an authorised officer, who addresses offensive language to any other person; or without lawful authority hinders or obstructs or uses or threatens to use force in relation to any other person, is guilty of an offence.

*Maximum Penalty: \$4,000.00*

#### Delegations (section 20(4))

Subject to section 20(7), a delegate must not act in any matter pursuant to the delegation in which the delegate has a direct or indirect private interest.

*Maximum Penalty: \$8,000.00 or imprisonment for two years*

#### Investigations (section 31A(4))

An investigator may, for the purposes of an investigation require a member or employee of the council to answer, orally or in writing, questions put by the investigator to the best of his or her knowledge, information and belief; require a person to whom questions are put under paragraph (a) to verify the answers to those questions by declaration; require a person to produce for examination by the investigator books, papers or other records relevant to the subject matter of the investigation; retain books, papers or other records produced under paragraph (c) for such reasonable period as the investigator thinks fit and make copies of any of them or of any of their contents.

Subject to subsection (8), a person who refuses or fails to comply with a requirement under section 31A(4) is guilty of an offence.

*Maximum Penalty: \$20,000.00*

#### Conflict of Interest (Regional Development Assessment Panel) (section 34(7))

A member of a regional development assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the regional development assessment panel (other than an indirect interest that exists in common with a substantial class of persons) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel; and must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.

*Maximum Penalty: \$15,000.00*

### Investigation of development assessment performance (section 45A(3))

An investigator may, for the purposes of an investigation require a member or employee of the relevant authority, or a public sector employee or council employee assigned or engaged to assist the relevant authority, to answer, orally or in writing, questions put by the investigator to the best of his or her knowledge, information and belief; require a person to whom questions are put under paragraph (a) to verify the answers to those questions by declaration; require a person to produce for examination by the investigator books, papers or other records relevant to the subject matter of the investigation; retain books, papers or other records produced under paragraph (c) for such reasonable period as the investigator thinks fit and make copies of any of them or of any of their contents.

Subject to section 45A(7), a person who refuses or fails to comply with a requirement under section 45A(3) is guilty of an offence.

*Maximum Penalty: \$20,000.00*

### Conflict of interest (Council Development Assessment Panel) (section 56A(7))

A member of a council development assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the council development assessment panel (other than an indirect interest that exists in common with a substantial class of persons) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel; and must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.

*Maximum Penalty: \$15,000.00*

### Declaration of interest (section 88B)

If a person commences any relevant proceedings; or becomes a party to any relevant proceedings; and the person has a commercial competitive interest in the proceedings, then the person must disclose the commercial competitive interest.

If a person commences any relevant proceedings; or becomes a party to any relevant proceedings; and the person receives, in connection with those proceedings, direct or indirect financial assistance from a person who has a commercial competitive interest in the proceedings, then both the person referred to in section 88B and the person who provided the financial assistance referred to in paragraph (b) must disclose the commercial competitive interest.

A disclosure must be made to the Registrar of the relevant court and to the other parties to the relevant proceedings in accordance with any requirements prescribed by the regulations.

A person who fails to make a disclosure in accordance with the requirements of this section is guilty of an offence.

*Maximum Penalty: \$30,000.00*

#### Interactions with a private certifier (section 97)

A person who improperly gives, offers or agrees to give a benefit to a private certifier or to a third person as a reward or inducement for an act done or to be done, or an omission made or to be made, by the private certifier in the performance of a function under this Act is guilty of an offence.

*Maximum Penalty: \$30,000.00*

In this section— benefit does not include a benefit that consists of remuneration or any condition of appointment or employment properly attaching or incidental to the work of a private certifier under this Act.

#### Confidential Information (section 102)

A person performing any function under this Act must not use confidential information gained by virtue of his or her official position for the purpose of securing a private benefit for himself or herself personally or for some other person.

*Maximum Penalty: \$8,000.00 or imprisonment for two years*

A person performing any function under this Act must not intentionally disclose confidential information gained by virtue of his or her official position unless the disclosure is necessary for the proper performance of that function; or the disclosure is made to another who is also performing a function under this Act; or the disclosure is made with the consent of the person who furnished the information or to whom the information relates; or the disclosure is authorised or required under any other Act or law; or the disclosure is authorised or required by a court or tribunal constituted by law; or the disclosure is authorised by the regulations.

*Maximum Penalty: \$8,000.00 or imprisonment for two years*

#### Disclosure of financial interests – Compliance with Schedule (Schedule 2 (4))

A prescribed member of an assessment panel who fails to comply with a requirement under Schedule 2 is guilty of an offence.

*Maximum Penalty: \$10,000.00*

A prescribed member of an assessment panel who submits a return under this Schedule that is to the knowledge of the member false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence.

*Maximum Penalty: \$10,000.00*

### Restrictions on publication (Schedule 2 (5))

A person must not publish information derived from a register under Schedule 2 unless the information constitutes a fair and accurate summary of the information contained in the register and is published in the public interest; or comment on the facts set forth in a register under Schedule 2 unless the comment is fair and published in the public interest and without malice.

If information or comment is published by a person in contravention of Schedule 2 clause 5(1), the person, and any person who authorised the publication of the information or comment, is guilty of an offence.

*Maximum Penalty: \$10,000.00*

*NOTE: This is not an exhaustive list of offences that may be committed by a public officer and fall within the definition of 'corruption' in accordance with section 5(1)(c) of the ICAC Act.*