

 <p>DISTRICT COUNCIL OF TUMBY BAY</p>	<p><b>POLICY# 2.15</b></p> <p><b>Whistleblowers Protection</b></p> <p><b>POLICY AREA</b></p> <p><b>Governance</b></p>	Version No:	2
		Issued:	Nov 2015
		Next Review:	2018 – After next election

## 1. Introduction

1.1. District Council of Tumby Bay 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 District Council of Tumby Bay:

- 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.

1.3. The Council will review and update this Policy each year as part of its annual policy review.

## 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:

- Fraud & Corruption Prevention Policy;
- Code of Conduct for Council Employees;
- Code of Conduct for Council Members; and
- Internal Review of Council Decisions Policy under section 270 of the *Local Government Act 1999*.

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 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 facilitating the investigation of 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 *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. **Corruption in public administration** means:

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

- (i) bribery or corruption of public officers;

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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.

- (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.

3.3.2 any other offence (including an offence against Part 5 (Offences of dishonesty) of the *Criminal Law Consolidation Act 1935*) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or

3.3.3 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

3.4. **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.

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

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

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

- (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.

- 3.7. **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.
- 3.8. **Fraud** is an intentional dishonest act or omission done with the purpose of deceiving.
- 3.9. **ICAC Act** is the *Independent Commissioner Against Corruption Act 2012*.
- 3.10. **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.
- 3.11. **Independent Assessor** is the person responsible for investigating, a disclosure made to a Responsible Officer. The Independent Assessor will be appointed by the Responsible Officer on a case-by-case basis (depending upon the nature of the disclosure) in accordance with clause 7.3 of this Policy. The Council may prepare a list of pre-approved persons who may be appointed as an Independent Assessor in any given circumstances, in which case, the Responsible Officer must have regard to this list in appointing the Independent Assessor.
- 3.12. **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
- 3.12.1. includes conduct resulting from impropriety, incompetence or negligence; and
- 3.12.2. is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
- 3.13. **Misconduct** in public administration defined at Section 4 of the *ICAC Act* means:
- 3.13.1. 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
  - 3.13.2. other misconduct of a public officer while acting in his or her capacity as a public officer.
- 3.14. **Office for Public Integrity (OPI)** is the office established under the *ICAC Act* that has the function to:
- 3.14.1. receive and assess complaints about public administration from members of the public;

- 3.14.2. receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;
- 3.14.3. make recommendations as to whether and by whom complaints and reports should be investigated;
- 3.14.4. perform other functions assigned to the Office by the Commissioner.

3.15. **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.

3.16. **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.

3.17. **Public Officer** includes:

- a Council Member; and
- an Employee or Officer of the Council;

3.18. **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 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.

3.19. **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.

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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.

<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.

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3.20. **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.

3.21. **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. The Act does not expressly require any other information relating to a Disclosure (i.e. the nature of the allegations) to be maintained as confidential.

4.2. 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. Disclosure Process

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

5.2.1. subject to this clause, when choosing to make a Disclosure internally, Disclosures relating to an elected 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;

5.2.2. 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;

5.2.3. 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;

5.2.4. 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;

5.2.5. 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

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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.

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Disclosure relates to Fraud, it may be reported to the Responsible Officer or direct to SAPOL.

- 5.2.6. Any allegations of Fraud or Corruption and/or criminal conduct will **not** be investigated by an Independent Assessor under this Policy.
- 5.3. 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.
- 5.4. A Disclosure made to the Responsible Officer may be made in person, by telephone or in writing. The relevant contact details are:
- Telephone 08 8688 2101
  - Email [dwatson@tumbybay.sa.gov.au](mailto:dwatson@tumbybay.sa.gov.au)
  - Address Confidential  
Whistleblowers  
PO Box 61  
TUMBY BAY SA 5605
- 5.5. 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.

## 6. The Role of the Responsible Officer

- 6.1. Upon the receipt of a Disclosure, the Responsible Officer will:
- 6.1.1. undertake a preliminary assessment in accordance with Part 7 of this Policy below to determine the nature of the Public Interest Information contained within the Disclosure; and
  - 6.1.2. either refer the Disclosure to the Appropriate Authority (where it is appropriate to do so), or proceed with the an investigation process outlined in Part 8 of this Policy.
- 6.2. 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.
- 6.3. 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) :
- 6.3.1. the Responsible Officer may seek legal advice from Council's Lawyers and/or seek guidance from SAPOL or the Ombudsman in relation to the best course of action to pursue; and
  - 6.3.2. is authorised to incur costs in accordance with the Council's Budget for this purpose.

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- 6.4. 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 7.3 of this Policy.
- 6.5. 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.
- 6.6. 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.

## **7. Preliminary Assessment of Complaint**

- 7.1. 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.
- 7.2. Upon receipt of a disclosure, the Responsible Officer will undertake a preliminary assessment to determine whether it:
  - 7.2.1. is frivolous, vexatious or trivial, in which case, no further action will be taken in relation to the complaint; or
  - 7.2.2. warrants referral to an Independent Assessor for a formal investigation and report to Council; or
  - 7.2.3. requires referral to an Appropriate Authority external to the Council;
- 7.3. The Responsible Officer must report the outcome of his/her determination under paragraph 7.2 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 6.2 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.
- 7.4. Where the Responsible Officer determines the Disclosure warrants referral to an external body, the Responsible Officer will undertake the referral.
- 7.5. The Responsible Officer will inform the Whistleblower of the outcome of his/her determination under paragraph 7.2 above in writing as soon as is reasonably practicable after the determination has been made.
- 7.6. 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.

## **8. Investigation Procedure**

- 8.1. 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;

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- 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 observe procedural fairness in the treatment of any person who is subject of the disclosure;
  - to make recommendations arising from the conclusions drawn concerning remedial or other appropriate action; and
- 8.2. 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.
- 8.3. 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>.
- 8.4. 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.
- 8.5. 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.
- 8.6. 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 person is bound by a duty of confidentiality in relation to any matter discussed during such interview.
- 8.7. 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.
- 8.8. 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.

## 9. Final Report and Recommendation

- 9.1. Upon finalising a detailed investigation the Independent Assessor must prepare a report that will contain the following:

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

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- 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.

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

9.3. The report must be provided to the Chief Executive Officer to action as he/she considers appropriate.

## **10. Handling of Information**

10.1. 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.

10.2. 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>.

## **11. Information to Elected Body**

11.1. 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.

11.2. Factors the Chief Executive Officer will take into account in determining whether to inform the elected body under paragraph 11.1 above and the level of detail provided in doing so are as follows:

11.2.1. the identity of the person subject of the Disclosure;

11.2.2. the impact (if any) of the investigation upon the Council's achievement of its objectives under its Strategic Plan and/or policies; and

11.2.3. the nature of the impact of any action taken to finalise the matter upon the Council's operations and/or budget.

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

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11.3. 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 elected members under the *Local Government Act 1999*.

## 12. Protection for the Whistleblower

12.1. 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.

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

12.3. 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.

12.4. 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.

## 13. Availability of the Policy

13.1. This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website [www.tumbybay.sa.gov.au](http://www.tumbybay.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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### Strategic Link:

### Delegation:

The Chief Executive Officer  
The Responsible Officer – The Deputy Chief Executive Officer

### Documentation:

Whistleblower Protection Act 1993;  
Fraud Prevention Policy;  
Employee Code of Conduct;  
Council Members Code of Conduct; and  
Internal Review of Council Decisions Policy under section 270 of the *Local Government Act 1999*.

**Authority:** Adopted by Council:10/11/2015 {Motion 7c/112015}

SIGNED: .....

Responsible Officer

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

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