



Whistleblowers Policy

Reference Number:	2.12
Type:	Council
Category:	Corporate Governance
Relevant Community Plan Outcome:	<ul style="list-style-type: none"> Be bold and innovative in our practices, leadership and decision making. Practise transparent and accountable governance.
Responsible Officer(s):	Manager Governance & Operational Support
First Issued/Approved:	October 1997
Minutes Reference:	CoS 4/06/2018, Item 3.29
Last Reviewed:	June 2018
Next Review Due:	June 2020
Applicable Legislation:	Whistleblowers Protection Act 1993 Local Government Act 1999 (section 302B) Local Government (General) Regulations 1999 (Regulation 21B) Independent Commissioner Against Corruption (ICAC) Act 2012
Related Policies:	Staff Code of Conduct Policy Council Members Code of Conduct Policy
Related Procedures:	

1. Purpose

The purpose of this policy is to ensure that City of Charles Sturt:

- properly fulfils its responsibilities under the Whistleblowers Protection Act 1993 (“the Act”);
- encourages and facilitates disclosures of public interest information which may include occurrences of maladministration and waste within the Council, or corrupt or illegal activity occurring in the organisation so that internal controls and procedures can 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 allegations that affects them.

2. Scope

This Policy applies to appropriate disclosures of public interest information that concerns a public officer in relation to activities and functions provided by the City of Charles Sturt. Disclosures can be made 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 2012.

3. Policy Statement

The City of Charles Sturt is committed to a working environment which promotes honesty and integrity and upholds the principles of transparency and accountability in its administrative and management practices.

The Council is committed to:

- referring, as necessary, appropriate disclosures to the Appropriate Authority, which, depending on the nature of the disclosure may include a Minister of the Crown, the SA Police, the Anti-Corruption Branch of the SA Police, the Auditor-General or the Ombudsman;
- reporting, where the disclosure relates to Corruption, directly to the Office of Public Integrity (OPI) in accordance with the directions and guidelines issued pursuant to section 20 of the ICAC Act 2012;
- reporting directly to the OPI if the disclosure give 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;
- reporting a complaint directly to the OPI if the Ombudsman refuses to accept the complaint;
- 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.

3.1 Who are Whistleblowers?

A *Whistleblower* is any person who makes an “*appropriate disclosure*” of “*public interest information*” which they believe, on reasonable grounds, *is or may be true* and is made to an appropriate authority. The “*appropriate authorities*” for Council related matters are listed below:

Information Relative To	Appropriate Authority
An illegal activity by an adult person, body corporate or government agency	Member of the police force
Irregular/unauthorised use of public money	Auditor-General
Matters relating to public officer	A <i>Responsible Officer</i> of the Council or the Ombudsman

Activities or conduct disclosed by a *Whistleblower* can be current or past, even before the Act came into force in 1993.

A *Whistleblower’s* identity is to remain confidential in accordance with the Act and cannot be passed on to other authorities or persons without their permission, except where necessary to ensure the matters are properly investigated.

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 with details and evidence to enable the matter to be properly investigated. If an allegation is not supported by sufficient evidence it will not be investigated.

3.2 Level of Protection

If *public interest information* is disclosed to a “*responsible officer*” or an “*appropriate authority*” the person making the disclosure will be protected from civil or criminal liability by doing so.

The Council will also take appropriate action to protect the *Whistleblower* from victimisation. They will be protected from victimisation including:

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- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in their employment; and
- threats of reprisal.

If the Council becomes aware that the *Whistleblower* has been victimised the Council will refer the matter to the SA Police.

3.3 Responsible Officers

Responsible Officers designated by the Council must have the prescriber qualifications determined under regulation 21B of the Local Government (General) Regulations 1999. They are required to maintain a supportive relationship with a *Whistleblower* and keep them informed on the progress of the investigation. The current *Responsible Officer* for the City of Charles Sturt is:

- Donna Dunbar, Manager Public Health & Safety – ph 8408 1239
ddunbar@charlessturt.sa.gov.au

The Act **requires** *Responsible Officers* to refer information relating to corruption to the OPI who will determine if the complaint will be investigated.

3.4 Whistleblower’s Obligations

A *Whistleblower* will be guaranteed protection under the Act if:

- the information disclosed is of public interest;
- disclosure is made to an appropriate authority; and
- they provide assistance to the police or any official investigating authority.

The Act does **not** protect *Whistleblowers* who knowingly make false claims or who are reckless about whether their claims are false.

A *Whistleblower* must assist with any investigation of the matter to which the information relates unless the investigation is conducted by a body, authority or person to whom the public interest information relates.

3.5 Availability of the Act

A copy of the Act is available from the Responsible Officers or at:

<http://www.legislation.sa.gov.au/LZ/C/A/WHISTLEBLOWERS%20PROTECTION%20ACT%201993.aspx>

Anyone interested is encouraged to refer to the Act for further information.⁴

4. Managing Disclosures

4.1 Generally

The City of Charles Sturt will ensure that arrangements are in place to allow employees or members of the public to provide an “*appropriate disclosure*” of “*public interest information*” to the organisation and to ensure, where the person making the disclosure is entitled to protection, that the person receives protection in accordance with the Act.

The organisation is committed to investigating all information disclosed in a confidential manner and taking appropriate action.

Responsible Officers are to:

- receive information from a *Whistleblower*
- undertake a preliminary investigation, and
- determine if the disclosure should be referred to the appropriate authority
- report to the Chief Executive on the matter (general details of the allegation and intended actions are to be provided – but **NOT** the *Whistleblower* ‘s identity).

In the case of a person disclosing information about or relating to the Chief Executive, the *Responsible Officer* will report the matter to the Ombudsman or where it relates to corruption to the Office of Public Integrity.

4.2 Disclosing Information

Any person wishing to make a disclosure under the Act may do so by the following means:

- Disclosures can be made to a *Responsible Officer* in person, by telephone, in writing, or via email.
- Written disclosures should be addressed to:

CONFIDENTIAL
Whistleblowers Responsible Officer
PO Box 1
WOODVILLE SA 5011

If you are uncomfortable with divulging information to a Council employee, contact the SA Police or disclose the information to another “*appropriate authority*” as detailed above (refer 3.1).

4.3 Investigation

After a preliminary investigation the Responsible Officer will determine, in consultation with the Chief Executive, whether the matter can be dealt with and resolved internally or if it needs to be referred to an appropriate authority, eg:

- Office of Public Integrity
- Ombudsman
- Anti Corruption Branch of SA Police.

Arrangements will be put in place for the investigation which will be undertaken in accordance with the principles of natural justice and procedural fairness.

The *Whistleblower* and the Chief Executive will be regularly advised of the progress of the investigation. Frequency of contact will depend on the nature of the investigation.

If the matter is referred to a more appropriate authority, it may not be possible to be kept informed of the progress.

The *Whistleblower* will be followed up regularly to ensure they are supported and that assistance is provided throughout the process.

5. Definitions

Key Term – Acronym	Definition
Appropriate Disclosure	<p>(a) Is if the person</p> <ul style="list-style-type: none"> 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 <p>(b) the disclosure is made to an Appropriate Authority</p>
Maladministration	<p>As defined in the Whistleblowers Protection Act 1993 to include impropriety or negligence. Section 4 of the <i>Independent Commissioner Against Corruption Act 2012</i> defines Maladministration in public administration to mean:</p> <ul style="list-style-type: none"> 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 relation to the performance of official business; and <p>(a) includes conduct resulting from impropriety, incompetence or negligence; and</p> <p>(b) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.</p>

Misconduct	<p>As defined in Section 4 of the Independent Commissioner Against Corruption Act 2012 to mean:</p> <p>(a) 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</p> <p>(b) other misconduct of a public officer while acting in his or her capacity as a public officer.</p>
Office of Public Integrity	<p>Is the office established under the Independent Commissioner of Corruption Act that has a function to:</p> <p>(a) receive and assess complaints about public administration from members of the public;</p> <p>(b) receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;</p> <p>(c) make recommendations as to whether and by whom complaints and reports should be investigated;</p> <p>(d) perform other functions assigned to the Office by the Commissioner.</p>
Public Interest Information	<p>Any information that tends to show that any adult, body corporate or government agency is or has been involved:</p> <ul style="list-style-type: none"> • in an illegal activity • in an irregular or unauthorised use of public money • in substantial mismanagement of public resources; or • in conduct that causes a substantial risk to public health or safety, or to the environment; or <p>That a public officer is guilty of maladministration in relation to the performance of official functions.</p>
Public Officer	<p>Is</p> <ul style="list-style-type: none"> • an 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.
Responsible Officer	<ul style="list-style-type: none"> • is a person authorised to receive and act upon public interest information received from a Whistleblower pursuant to Section 302B of the Local Government Act 1999