

# THE BAROSSA COUNCIL PUBLIC INTEREST DISCLOSURE POLICY



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| <b>Corporate Plan Link:</b>      | 6.2 Ensure that Council's policy and process frameworks are based on principles of sound governance and meet legislative requirements. |                                   |            |
| <b>Policy Owner:</b>             | Chief Executive Officer  | <b>Previous Approval Date(s):</b> | New Policy |
| <b>Document Control Officer:</b> | Governance Advisor   | <b>Current Approval Date:</b>     | 15/10/2019 |
| <b>HPE Content Manager Ref:</b>  | 18/35498*  | <b>Next Review Date:</b>          | 15/10/2021 |

## 1. Purpose

- 1.1 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 *Public Interest Disclosure Act 2018* ("the Act");
  - encourages and facilitates Disclosures of Public Interest Information and provides appropriate oversight in accordance with the objects and requirements of the Act, and of public interest disclosures about corruption, misconduct and maladministration in public administration;
  - provides appropriate protection for those who make Disclosures in accordance with the Act; and
  - recognises the need to appropriately support Informants, Responsible Officers and, as appropriate, those Public Officers affected by any allegation that affects them.

## 2. Scope

- 2.1 This Policy, along with the supporting *Public Interest Disclosure Process*, applies to appropriate Disclosures of Public Interest Information that are made in accordance with the Act by Public Officers, including, Elected Members, officers and Employees, and by members of the public, and is intended to complement the separate reporting framework under the Independent Commissioner Against Corruption Act 2012 (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 and Corruption Prevention Policy;
  - Code of Conduct for Council Employees;
  - Code of Conduct for Council Members;

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- Human Resource Management Policy; and
- Internal Review of Council Decisions Policy.

| 3.   | Definitions   |
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| <b>Act</b>   | <i>Public Interest Disclosure Act 2018</i>  |
| <b>Assessor</b>  | Determined by the Responsible Officer at their discretion.<br>A relevant senior Worker who has the skills, qualifications, authorisation and delegation (whether directly from Council or sub-delegation from the Chief Executive Officer) to deal with such matters in accordance with Council's policies, processes and / or usual operations.  |
| <b>Business Days</b>   | A day when the Council is normally open for business, i.e. Monday to Friday, excluding public holidays and when Council's principle office may be closed (eg. over the Christmas holiday period).   |
| <b>Commissioner</b>  | The person holding or acting in the office of the Independent Commissioner Against Corruption   |
| <b>Corruption in Public Administration</b><br><br>[as defined in section 5(1) of the ICAC Act] | <p>(a) An offence against Part 7 Division 4 (Offences relating to Public Officers) of the <i>Criminal Law Consolidation Act 1935</i>, which includes the following offences:</p> <ul style="list-style-type: none"> <li>(i) bribery or corruption of Public Officers;</li> <li>(ii) threats or reprisals against Public Officers;</li> <li>(iii) abuse of public office;</li> <li>(iv) demanding or requiring benefit on basis of public office;</li> <li>(v) offences relating to appointment to public office; or</li> </ul> <p>(b) an offence against the <i>Public Sector (Honesty and accountability) Act 1995</i> or the <i>Public Corporations Act 1993</i>, or an attempt to commit such an offence; or</p> <p>(ba) an offence against the <i>Lobbyists Act 2015</i>, or an attempt to commit such an offence; or</p> <p>(c) any other offence (including an offence against Part 5 (Offences of dishonesty) of the <i>Criminal Law Consolidation Act 1935</i>) 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</p> <p>(d) Any of the following in relation to an offence referred to in a preceding paragraph:</p> <ul style="list-style-type: none"> <li>(i) aiding, abetting, counselling or procuring the commission of the offence;</li> <li>(ii) inducing, whether by threats or promises or otherwise, the commission of the offence;</li> <li>(iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;</li> <li>(iv) conspiring with others to effect the commission of the offence.</li> </ul> |

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| <b>Council</b>  | The Barossa Council  |
| <b>Detriment</b>  | Includes –<br>(a) injury, harm (including psychological harm), damage (including damage to reputation) or loss;<br>(b) intimidation or harassment; or<br>(c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or<br>(d) threats of reprisal (which may be expressed or implied, and/or conditional or unconditional)  |
| <b>Disclosure</b>   | Means an appropriate disclosure of public interest information made by an Informant to a Relevant Authority.<br><br><u>For Environmental and Health Information -</u><br>A person makes an appropriate Disclosure of Environmental and Health Information if the disclosure is made to a Relevant Authority and the person -<br>(i) believes on reasonable grounds that the information is true; or<br>(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<br><br><u>For Public Administration Information –</u><br>A person makes an appropriate Disclosure of Public Administration Information if they are a Public Officer and –<br>(i) the disclosure is made to a Relevant Authority; and<br>(ii) the public officer reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration. |
| <b>Elected Member</b>   | A person who has been elected as a member of The Barossa Council. This includes the Mayor (unless specifically stated).  |
| <b>Employee</b>   | Refers to all Council's employees, whether they are working in a full-time, part-time or casual capacity.  |
| <b>Environmental and Health Information</b>   | Information that raises a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public (whether occurring before or after the commencement of the Act).  |
| <b>Fraud</b>  | Includes an intentional dishonest act or omission done with the purpose of deceiving.  |
| <b>Guidelines</b>   | Refers to the Public Interest Disclosure Guidelines issued pursuant to section 14 of the <i>Public Interest Disclosure Act 2018</i> , and which are available on the Commissioner's website ( <a href="http://icac.sa.gov.au">icac.sa.gov.au</a> ).  |
| <b>ICAC Act</b>   | <i>Independent Commissioner Against Corruption Act 2012</i>  |
| <b>Informant</b>  | A person who makes an appropriate Disclosure of Environmental and Health Information; or Public Administration Information (together referred to as Public Interest Information).  |
| <b>Maladministration (in public administration)</b><br><br>[as defined in section 5(4) of the ICAC Act] | (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<br><br>(ii) conduct of a Public Officer involving substantial mismanagement in or in relation to the performance of official functions; and  |

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|   | (iii) includes conduct resulting from impropriety, incompetence or negligence; and is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.   |
| <b>Misconduct (in public administration)</b><br><br><i>[As defined in section 5(3) of the ICAC Act]</i> | <p>Contravention of a code of conduct by a Public Officer while acting in his/her capacity as a Public Officer that constitutes a ground for disciplinary action against the officer; or other misconduct of a Public Officer while acting in his/her capacity as a Public Officer.</p> <p>Note: Reference to "a code of conduct" includes Council's Human Resource Policy and related codes of conduct, in addition to any legislated Code of Conduct for Employees.</p>   |
| <b>Office for Public Integrity (OPI)</b>  | <p>The office established under the ICAC Act that has the function to:</p> <p>(i) receive and assess complaints about public administration from members of the public;</p> <p>(ii) receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and Public Officers;</p> <p>(iii) refer complaints and reports to inquiry agencies, public authorities and public officers in circumstances approved by the Commissioner or make recommendations as to whether and by whom complaints and reports should be investigated;</p> <p>(iv) give directions or guidance to public authorities in circumstances approved by the Commissioner;</p> <p>(iv) perform other functions assigned to the Office by the ICAC.</p> |
| <b>Policy</b>   | <p>Council's <i>Public Interest Disclosure Policy</i> available on Council's website <a href="http://www.barossa.sa.gov.au">www.barossa.sa.gov.au</a></p>   |
| <b>Process</b>  | <p>This Process – i.e. the <i>Public Interest Disclosure Process</i> available on Council's website <a href="http://www.barossa.sa.gov.au">www.barossa.sa.gov.au</a></p>  |
| <b>Public administration</b>  | <p>The administration of government policy (Macquarie dictionary). Defined at section 4 of the ICAC Act 2012 means: without limiting the acts that may comprise public administration, an administrative act within the meaning of the <i>Ombudsman Act 1972</i> will be taken to be carried out in the course of public administration.</p>  |
| <b>Public Administration Information</b>  | <p>Information that raises a potential issue of corruption, misconduct or maladministration in public administration (whether occurring before or after the commencement of the Act).</p>   |
| <b>Public Interest information</b>  | <p>There are two types of Public Interest Information:</p> <p>(a) Environmental and Health Information; and</p> <p>(b) Public Administration Information</p>  |
| <b>Public Officer</b><br><br><i>[See section 4 and Schedule 1 of the ICAC Act]</i>                      | <p>Includes:</p> <ul style="list-style-type: none"> <li>• a Council Member of Council, including the Mayor; and</li> <li>• an Employee or officer of Council;</li> <li>• a person performing contract work for Council;</li> <li>• a Volunteer of Council where they hold a delegation from Council or the Chief Executive Officer or in accordance with an Act, assist a Public Officer in the enforcement of the Act (it will be rare for a Volunteer to be a Public Officer)</li> </ul>  |

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|                            | <b>Volunteer</b> is defined as: A person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses) [As defined in the <i>Work Health Safety Act 2012</i> ]   |
| <b>Regulations</b>         | <i>Public Interest Disclosure Regulations 2019</i>   |
| <b>Relevant Authority</b>  | A person or entity that receives an appropriate Disclosure of Public Interest Information in accordance with the Act, as set out in Appendix A to this Policy.   |
| <b>Responsible Officer</b> | A person(s) designated by the Chief Executive Officer pursuant to Section 12 of the Act who is (are) authorised to receive and act upon Appropriate Disclosures of Public Interest Information, and who has completed the relevant training course approved by the Commissioner for the purposes of the <i>Public Interest Disclosure Regulations 2019</i> . |
| <b>Supervisor</b>          | The person who is responsible for the management or supervision of the public officer who is the subject of a Disclosure of public administration information.   |
| <b>Victimisation</b>       | 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.   |

#### **4. Policy Statement**

4.1 Council is committed to:

- referring, as necessary, appropriate Disclosures to another Relevant Authority;
- Where the Disclosure relates to Corruption, or serious or systemic Misconduct or Maladministration in public administration, reporting the Disclosure directly to the OPI in accordance with the Guidelines and the requirements of the ICAC Act
- Facilitating the investigation of appropriate Disclosures in a manner which promotes fair and objective treatment of those involved and affected; and
- Rectifying any substantiated wrongdoing to the extent practicable in all the circumstances.

4.2 **Confidentiality**

4.2.1 The identity of an Informant must be maintained as confidential in accordance with the Act. A recipient of an appropriate Disclosure may only divulge the identity of an Informant in accordance with the *Public Interest Disclosure Process*.

4.2.2 An Informant may wish to remain anonymous, but in that event is required to ensure that the allegation is sufficiently supported by the provision of necessary details and evidence to enable the matter to be properly investigated.

4.3 **Disclosure Process**

4.3.1 A Disclosure may be made to one of Council's designated Responsible Officers in person, by telephone or in writing. The details of Council's Responsible Officer can be found in the *Public Interest Disclosure Process*.

4.3.2 Nothing in this Policy prevents a person from making an appropriate Disclosure to a Relevant Authority external to Council (i.e. the Ombudsman or the OPI). This is a choice to be made by the Informant at his/her discretion. It is recommended that an Informant have regard to factors at clause 6.4 of the *Public Interest Disclosure Process* when deciding where to direct a Disclosure.

4.4 **The Responsible Officer**

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- 4.4.1 The Responsible Officer will receive and deal with Disclosures in accordance with the Process, Policy and the Act.
- 4.4.2 If an Informant believes that his/her Disclosure is not being dealt with appropriately or in accordance with the Policy or Process, they should contact the Responsible Officer in the first instance.
- 4.4.3 The role of the Responsible Officer is further set out in the *Public Interest Disclosure Process*.

#### 4.5 Information to the Elected Body

- 4.5.1 As a matter of discretion, the Chief Executive Officer may inform the Elected Body, on a confidential basis, of the fact that an investigation of a Disclosure took place and the outcome of the investigation.
- 4.5.2 Factors the Chief Executive Officer will take into account in determining whether to inform the Elected Body under clause 4.5.1 and the level of detail provided in doing so include:
- (i) If the Informant's identity is known, the identity of the Informant if the Informant has consented to his/her identity being divulged or the exemptions under the Act apply;
  - (ii) if applicable, the identity of any person who is the subject of the Disclosure;
  - (iii) the impact (if any) of the investigation upon the Council's achievement of its objectives under its Strategic Plan and/or policies; and
  - (iv) the impact of any action taken to finalise the matter upon the Council's operations and/or budget.
- 4.5.3 In the event that the Disclosure and/or any subsequent investigation process is confined to issues that impact only upon Employees and Human Resource processes, the Chief Executive Officer may not inform the Elected Body of the fact of the Disclosure and/or investigation, if the matter falls outside the roles and responsibilities of the Elected Members under the *Local Government Act 1999*.

#### 4.6 Protection for the Informant

- 4.6.1 An Informant who makes an appropriate Disclosure is protected by:
- (i) Immunity from any liability as a result of that disclosure. This would include criminal or civil liability (section 5(1) of the Act);
  - (ii) A prohibition on disclosure of his/her identity (section 8 of the Act);
  - (iii) A prohibition against Victimisation (section 9 of the Act);
  - (iv) A prohibition against hindering, obstructing or preventing an Informant from making an appropriate Disclosure (section 11 of the Act).
- 4.6.2 A person who knowingly makes a Disclosure that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) is guilty of an offence and may be prosecuted, and does not receive protection under the Act, this Policy or the *Public Interest Disclosure Process*.
- 4.6.3 A person who personally commits an act of Victimisation against an Informant is guilty of an offence and may be prosecuted. Victimisation may also be dealt with as a tort or as if it were an act of victimisation under the *Equal Opportunity Act 1984*, but only as one or the other, in accordance with section 9 of the Act.
- 4.6.4 Council will take action as appropriate in the circumstances to protect Informants from Victimisation, including acting in accordance with the risk management

clauses set out in the *Public Interest Disclosure Process* and/or referring the matter to SAPOL.

4.6.5 Any Employee or Elected Member of Council who:

- (i) knowingly makes a disclosure that is false or misleading in a material particular; or
- (ii) commits an act of Victimisation in relation to an Informant; or
- (iii) acts otherwise that in accordance with this Policy or the *Public Interest Disclosure Process* (including with respect to divulging the identity of an Informant) in relation to a Disclosure

may also face investigation and disciplinary action in accordance with the relevant Code of Conduct and/or *Human Resource Management Policy*.

## 5. Supporting Process

Public Interest Disclosure Process

## 6. Related Policies

Code of Conduct for Council Members  
Code of Conduct for Employees  
Fraud and Corruption Prevention Policy  
Internal Review of Council Decisions Policy and Process  
Human Resource Management Policy  
Customer Service Policy  
Knowledge Management Policy

## 7. Legislation and References

Public Interest Disclosure Act 2018  
Public Interest Disclosure Regulations 2019  
Local Government Act 1999  
Independent Commissioner Against Corruption Act 2012  
ICAC Public Interest Disclosure Guidelines

## 8. Review

8.1 This Policy will be reviewed by the Council in consultation with the relevant stakeholders every two years annually or more frequently if legislation or Council's need changes.

## 9. Further Information

9.1 This Policy is available on Council's website at [www.barossa.sa.gov.au](http://www.barossa.sa.gov.au). It can also be viewed electronically at Council's principal office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Policy can be obtained at those venues upon payment of a fixed fee.

9.2 Complaints regarding this Policy or its application can be made to the Customer Service team on 8563 8444 or [barossa@barossa.sa.gov.au](mailto:barossa@barossa.sa.gov.au) at first instance, who will refer you to the most appropriate officer according to Council's *Complaints Handling Policy* (see clause 9.1 above for availability).

Signed: .....

Mayor Michael Lange

Dated: 16/10/2019 .....

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| APPENDIX A   |  | Relevant Authorities   |  |
|--|--|--|--|
| Where the information relates to...  |  | the relevant authority is...   |  |
| a public officer*<br><br>*as defined and set out in Schedule 1 of the <i>Independent Commissioner Against Corruption Act 2012</i> - relevantly, this includes members, officers and employees of local government bodies |  | either: <ul style="list-style-type: none"> <li>• the person who is designated by the Guidelines as being taken to be responsible for management or supervision of the public officer; or</li> <li>• the person who is in fact responsible for the management or supervision of the public officer; or</li> <li>• the relevant responsible officer (as designated by the Council in accordance with section 12 of the PID Act)</li> </ul> |  |
| a public sector agency or public sector employee   |  | either: <ul style="list-style-type: none"> <li>• the Commissioner for Public Sector Employment; or</li> <li>• the responsible officer for the relevant public sector agency</li> </ul>   |  |
| an agency to which the <i>Ombudsman Act 1972</i> applies   |  | the Ombudsman  |  |
| a location within the area of a particular council established under the <i>Local Government Act 1999</i>  |  | a member, officer or employee of that Council  |  |
| a risk to the environment  |  | the Environment Protection Authority   |  |
| an irregular and unauthorised use of public money or substantial   |  | the Auditor-General  |  |
| the commission, or suspected commission, of any offence  |  | a member of the police force   |  |
| a judicial officer   |  | the Judicial Conduct Commissioner  |  |
| a member of Parliament   |  | the Presiding Officer of the House of Parliament to which the member belongs   |  |
| a person or a matter of a prescribed class (no prescribed persons/classes have been identified)  |  | an authority declared by the regulations to be a relevant authority in relation to such information  |  |



| Where the information relates to...  | the relevant authority is...   |
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| <p>public interest information - being:</p> <ul style="list-style-type: none"> <li>• environmental and health information (information that raises a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public); or</li> <li>• public administration information (information that raises a potential issue of corruption, misconduct or maladministration in public administration)</li> </ul> | <ul style="list-style-type: none"> <li>• the OPI;</li> <li>• a Minister of the Crown; or</li> <li>• any other prescribed person or person of a prescribed class</li> </ul> |

