



Fraud and Corruption Prevention Policy (Includes Whistleblowers Protection)

Responsible Officer	Chief Executive Officer
Relevant Delegations	Manager Governance & Community
Legislation and References	Local Government Act 1999. Whistleblowers Protection Act 1993 Independent Commissioner Against Corruption 2012

1. Purpose

- To protect public funds and assets and the integrity, security and reputation of the Council.
- To ensure compliance with the Local Government Act, 1999 Section 302B – “Whistleblowing”
- To ensure compliance with the Whistleblowers Protection Act 1993
- To facilitate the disclosure, in the public interest, of maladministration and waste in the public sector and of corrupt or illegal conduct generally:
 - (a) by providing means by which such disclosures may be made; and
 - (b) by providing appropriate protection for those who make such disclosures

2. Background

Section 302B of the Local Government Act 1999 states that each Council must ensure that a member of the staff of the Council (with qualifications by the Regulations) is designated as a responsible officer for the Council for the purposes of the Whistleblowers Protection Act 1993.

Section 3 of the Whistleblowers Act 1993 states that the object of the Act is to facilitate the disclosure, in the public interest of maladministration and waste in the public section and of corrupt or illegal conduct generally.

3. Policy Statement

The Clare & Gilbert Valleys Council ("the Council") is committed to acting in the best interest of the community and to upholding the principles of honesty, integrity and transparency, which are all key components of good governance.

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The Council recognises that Fraud and Corruption have the potential to cause significant financial and non-financial harm and therefore, the prevention and control of Fraud and Corruption should feature predominantly within the systems and procedures of a responsible Council.

The Council will not tolerate fraudulent or corrupt activity and is committed to its control and prevention by:

- complying with the requirements of the Independent Commission Against Corruption Act 2012 (ICAC Act);
- establishing and maintaining an effective system of internal controls and enforcing compliance with those controls;
- regularly undertaking risk assessments to identify circumstances in which fraud and corruption could potentially occur;
- implementing fraud and corruption prevention and mitigation strategies in its day to day operations;
- taking appropriate action in response to allegations of fraudulent and/or corrupt activity including, reporting allegations in accordance with the ICAC Act and the reporting system established by the Independent Commissioner Against Corruption (ICAC) under section 20 of the ICAC Act and where allegations are substantiated, in addition to applicable criminal sanctions, may take disciplinary action in accordance with the Codes of Conduct for Council Members and Council Employees or, if relevant, a Council Employee's contract of employment with the Council;
- ensuring all Council Employees and Council Members are aware of their obligations in regards to the prevention of fraud and corruption within the Council;
- active participation in education and evaluation of practices relevant to Fraud and Corruption;
- fostering an ethical environment in which dishonest and fraudulent behaviour is actively discouraged; and
- generating community awareness of the Council's commitment to the prevention of fraud and corruption.

4. Scope

This Policy and the associated procedure apply to actual or suspected occurrence of Fraud and / or corruption within the Council and is intended to compliment the reporting framework under the ICAC Act.

5. Prevention

The Council recognises that:

- the occurrence of fraud and corruption will prevail in an administrative

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environment where opportunities exist for waste, abuse and maladministration; and

- the most effective way to prevent the occurrence of fraud and corruption is to promote an ethical environment in which internal control mechanisms have been implemented.

In general, the Council expects that Public Officers will assist in preventing fraud and corruption within the Council by:

- understanding the responsibilities of their position;
- familiarising themselves with the Councils policies and procedures and adhering to them;
- understanding what behaviour constitutes fraudulent and/or corrupt conduct;
- maintaining an awareness of the strategies that have been implemented by the Council to minimise fraud and corruption;
- being continuously vigilant to the potential for fraud and/or corruption to occur;
- reporting suspected or actual occurrences of fraud or corruption in accordance with this Policy and Procedure.

6. Council Commitment

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, the Office for Public Integrity (OPI) or the Ombudsman;
- 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 the circumstances.

7. Responsible Officers

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The Responsible Officers appointed by Council are:

Helen Macdonald, Chief Executive Officer

Leanne Kunoth, Manager Governance & Community

Contact details and appropriate disclosure processes are available in Council's Fraud and Corruption Prevention Procedure.

8. Confidentiality

The identity of a Whistleblower will be kept confidential in accordance with the Act. This 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.

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.

Except for the identity of the Whistleblower, the Act does not expressly require any other information relating to a public interest disclosure (i.e. the nature of the allegations) to be maintained as confidential.

9. False Disclosure

A person who knowingly makes a false or misleading statement in a complaint or report under the ICAC Act or makes a false or misleading disclosure, under the Whistleblowers Protection Act 1993, is guilty of an offence. An Employee who makes a false disclosure, in addition to being guilty of an offence, will face disciplinary action that may include dismissal.

Council Members who make a false disclosure, in addition to being guilty of an offence, may face disciplinary action pursuant to the Legislated Council Member Code of Conduct.

10. Educating Awareness

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The Council recognises that the success and credibility of this Policy and the associated procedure will largely depend upon how effectively it is communicated throughout the organisation and beyond.

The Council will, therefore, from time to time take proactive steps towards ensuring that the wider community is aware of the Council's zero-tolerance stance towards fraud and corruption.

The Council will increase community awareness by:

- promoting the Council's initiatives and policies regarding the control and prevention of fraud and corruption on the Council's website and at the Council's offices;
- make reference to the Council's fraud and corruption initiatives in the Council's Annual Report; and
- facilitating public access to all of the documents that constitute the Council's fraud and corruption framework.

11. Other Relevant Policies and Procedures

Fraud and Corruption Prevention Procedure (Includes Whistleblowing Protection)

Procurement Policy 2017

Internal Review of Council Decisions

Complaint Handling Policy

Complaint Handling Procedure for Code of Conduct Elected Members

Disposal of Land & Assets Policy

Code of Conduct Elected Members

Code of Conduct Employees

12. Review & Availability

This policy will be reviewed every two years, or as required.

The public may inspect a copy of this policy without charge at the Council offices during office hours and may obtain a copy for a fee fixed by Council

The policy is also available on Council's website www.claregilbertvalleys.sa.gov.au

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13. References

Local Government Act 1999

Whistleblowers Protection Act

Independent Commissioner Against Corruption 2012

14. Document History

Approved by	Issue Date	Minute Reference – Details of Review
CGVC	30/07/07	MB53/03
CGVC	1/08/13	Minor Review by Council
CGVC	29/01/18	Reviewed by Council incorporating Fraud and Corruption Policy with Whistleblower Protections Policy 29/01/18 – 25-18

SIGNED:

CEO

Date: ____/____/____

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FRAUD AND CORRUPTION PREVENTION PROCEDURE (INCLUDES WHISTLEBLOWERS PROTECTION)

1. PURPOSE OF PROCEDURE

- To provide a process by which disclosures may be made so that they are properly investigated
- To provide appropriate protection for those who make disclosures in accordance with the Whistleblowers Protection Act 1993
- To ensure compliance with the Whistleblowers Protection Act 1993

2. BACKGROUND

This procedure complements Council's Fraud and Corruption Prevention Policy and should be read in conjunction with this Policy.

3. DEFINITIONS

For the purposes of this Procedure the following definitions apply:

Act means the Whistleblowers Protection Act 1993

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

- 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
- any other person¹ to whom, in the circumstances of the case, it is reasonable and appropriate to make the disclosure

¹ 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

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- The OPI where the disclosure relates to corruption, maladministration or misconduct in public administration

Corruption in public administration means:

- a) 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.
- b) 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
- c) 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.

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.

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).

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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:
 - a. believes on reasonable grounds that the information is true; or
 - b. 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.

An **Employee** is any person who is employed by the Council, but also includes trainees, work experience students, contractors, volunteers and consultants undertaking work for, or on behalf of the Council.

A **False Disclosure** is a disclosure of information relating to Fraud or Corruption that is made by a person who knows the information to be false or, who is reckless as to whether it is false.

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

Note: unlike 'Corruption' there is no statutory definition of 'Fraud'. Fraud is a style of offending. The offences addressed under Part 5 and Part 6 of the *Criminal Law Consolidation Act 1935* are considered to constitute Fraud offences.

ICAC Act is the Independent Commissioner Against Corruption Act 2012

Immunity is an undertaking given by the Council (in accordance with the Whistleblower Protection 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.

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 this procedure and associated policy. **Independent Commissioner Against Corruption (Commissioner)** means the person holding or acting in the office of the Independent Commissioner Against Corruption.

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Maladministration is defined in the *Whistleblowers Protection Act 1993* to include impropriety or negligence. Section 4 of the *Independent Commission Against Corruption Act 2012* defines **Maladministration in public administration** to mean:

- (a) 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
- (b) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
- (c) includes conduct resulting from impropriety, incompetence or negligence; and
- (d) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

Manager means any Employee of the Council who is responsible for the direct supervision of other Employees, and/or, for the management of a Council Department.

Misconduct in public administration is defined at Section 4 of the ICAC Act means;

- (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
- (b) other misconduct of a public officer while acting in his or her capacity as a public officer.

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

- (a) receive and assess complaints about public administration from members of the public;
- (b) receive and assess reports about Corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;
- (c) make recommendations as to whether and by whom complaints and reports should be investigated;
- (d) perform other functions assigned to the Office by the Commissioner.

Public Administration 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 *Ombudsman Act 1972* will be taken to be carried out in the course of public administration.

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Public Interest Information means information that tends to show:

- (a) *that an adult person, a Council or other Government Agency, is or has been involved in:*
- (i) *an illegal activity; or*
 - (ii) *an irregular and unauthorised use of public money; or*
 - (iii) *substantial mismanagement of public resources; or*
 - (iv) *conduct that causes a substantial risk to public health or safety, or to the environment; or*
- (b) *that a public officer is guilty of maladministration in or in relation to the performance of official functions.*

Public Officer defined under the *ICAC Act 2012* includes:

- a Council Member;
- a member of a Local Government body (including a subsidiary of a Council established under the *Local Government Act 1999*); and
- an Employee or Officer of the Council.

A **Responsible Officer** is a person (or persons) appointed by the Council pursuant to section 302B of the *Local Government Act 1999* who is (are) authorised to receive and act upon disclosures of public interest information reported to him/her under the *Whistleblowers Protection Act 1993*.

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.

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.

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

4. SPECIFIC RESPONSIBILITIES

Collectively, as the decision making body of the Council, **Council Members** are responsible for ensuring that the **Council**:

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- promotes community awareness of the Council's commitment to the prevention of fraud and corruption;
- provides adequate security for the prevention of fraud and corruption. This includes the provision of secure facilities for storage of assets and procedures to deter fraudulent or corrupt activity from occurring;
- provides mechanisms for receiving allegations of fraud or corruption, including by ensuring a Responsible Officer is appointed;
- ensures that, where appropriate, proper investigations are conducted into allegations that involve fraud or corruption;
- makes reports in accordance with this Procedure and facilitates cooperation with any investigation undertaken by an external authority (such as SAPOL or the Commissioner);
- ensures that all Employees are aware of their responsibilities in relation to fraud and corruption through the provision of appropriate and regular training;
- promotes a culture and environment in which fraud and corruption is actively discouraged and is readily reported should it occur; and
- undertakes a fraud and corruption risk assessment on a regular basis.

Chief Executive Officer **and Managers** are responsible for:

- the conduct of any Employee whom they supervise and, will be held accountable for such;
- any property under their control and, will be held accountable for such;
- reporting in accordance with this Procedure;
- creating an environment in which fraud and corruption is discouraged and readily reported by Employees. Such an environment shall be fostered by the Chief Executive Officer's, Director's or Manager's own attitude to fraud and corruption and, by the accountability and integrity they both display and encourage from other Employees;
- ensuring that new Employees for whom they are responsible are aware of their responsibilities in relation to fraud and corruption and, of the standard of conduct expected from all Employees as outlined in the Council's Employee Code of Conduct;
- identifying potential fraud and corruption risks; and
- leading by example to promote ethical behaviour.

Employees are responsible for:

- performing their functions and duties with care, diligence, honesty and integrity;
- conducting themselves in a professional manner at all times;
- adhering to these guidelines and other Council procedures that have been established to prevent fraud or corruption;
- taking care for Council's property which includes avoiding the waste or

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- misuse of the Council's resources;
- maintaining and enhancing the reputation of the Council;
- remaining scrupulous in their use of the Council's information, assets, funds, property, goods or services; and
- reporting in accordance with this Procedure.

5. FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS

The Council's main objective in the prevention and control of Fraud and Corruption is to minimise the occurrence of Fraud and Corruption within the Council. This objective is generally achieved by:

- identifying Fraud and Corruption Risks;
- determining strategies to control those risks; and
- defining responsibility for and, the time frame within which the strategies will be implemented.

The Chief Executive Officer, Directors and Managers must be alert to the potential of fraud and corruption to occur and remain wary of factors which may leave the Council vulnerable to fraud and corruption, including:

- changes to Council delegations;
- implementation of cost cutting measures;
- contracting out and outsourcing;
- the impact of new technology; and
- changes to risk management practices.

6. REPORTING FRAUD AND CORRUPTION

Reporting Corruption in Public Administration to the Office of Public Integrity OPI.

6.1 Reports by Council Employees or Council Members

Any Employee or Council Member who has or acquires knowledge of actual or suspected Corruption in public administration must report this information to the OPI as soon as practicable.

Where an Employee or Council Member suspects Corruption in public administration, that suspicion must be reasonably held. Section 6 of the Directions and Guidelines address what is required to form a reasonable suspicion. In this regard it is to be noted that

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suspicion is a state of mind that is distinct from a belief. It is not necessary for the Employee or Council Member to *believe* the relevant conduct amounts to Corruption in public administration. All that is required to make a report to the OPI is a reasonable suspicion based upon a proper consideration of the available facts (i.e. there must be a factual basis for the suspicion).

Reports to the OPI by an Employee or Council Member must be made in accordance with the reporting obligations contained in section 11 of the Directions and Guidelines. In particular, the following information must be included in the report:

- the Employee or Council Member identity; and
- the identity of the Council;
- the Employee's or Council Member's Council address, telephone number and email.

In addition, the report must:

- identify the matter by reference to the conduct that the Employee or Council Member suspects is Corruption in public administration; and
- expressly identify that the Employee or Council Member suspects the conduct to be Corruption; and
- identify any public officer or other person suspected of having engaged in the conduct; and
- be accompanied by:
 - a statement as to how the Employee or Council Member became aware of the conduct; and
 - the evidence known to the Employee or Council Member including any documentation relevant to the conduct; and
 - a list of those persons who the Employee or Council Member believes can give evidence relevant to the conduct.

A report to the OPI by an Employee or Council Member must be made on the online report form available at www.icac.sa.gov.au.

Where the Employee's or Council Member's knowledge of Corruption has arisen due to a complaint/report he/she has received from another person (the informant), the Employee or Council Member should not include the informant's details in the report to the OPI if:

- the report/complaint was made under the *Whistleblowers Protection Act 1993*; and
- the informant has not consented to their identity being divulged; and
- it is not necessary to divulge the identity of the informant to ensure that the matters to which the report to the OPI relates are properly investigated.

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Nothing in this section is intended to prevent an Employee or Council Member from reporting Corruption in public administration internally to a Responsible Officer in accordance with this Procedure. Where an internal report relating to Corruption in public administration is received by another, the Responsible Officer must report the matter to the OPI in accordance with this Procedure.

6.2 Reports by the Council to the OPI

Where the Council (i.e. Council Members collectively) has or acquires knowledge of actual or suspected Corruption in public administration it must report this information to the OPI as soon as practicable after the Council becomes aware of the matter. The Chief Executive Officer is responsible for preparing a report to the OPI on behalf of the Council for these purposes. The Chief Executive Officer must prepare the report immediately upon receiving direction from the Council (such as via the Mayor) to do so.

Any suspicion the Council has regarding conduct that constitutes Corruption in public administration must be reasonably held. Section 6 of the Directions and Guidelines address what is required to form a reasonable suspicion. In this regard it is to be noted that suspicion is a state of mind that is distinct from a belief. It is not necessary for the Council to *believe* the relevant conduct amounts to Corruption in public administration. All that is required to make a report to the OPI is a reasonable suspicion based upon a proper consideration of the available facts (i.e. there must be a factual basis for the suspicion).

The report must:

- identify the matter by reference to the conduct that the Council suspects is Corruption; and
- expressly identify that the Council suspects the conduct to be Corruption in public administration; and
- identify any public officer or other person suspected of having engaged in the conduct; and
- be accompanied by:
 - a statement as to how the Council became aware of the conduct; and
 - the evidence known to the Council including any documentation relevant to the conduct; and
 - a list of those persons who the Council believes can give evidence relevant to the conduct.

A report to the OPI by the Chief Executive Officer on behalf of the Council must be made on the online report form available at www.icac.sa.gov.au.

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Where the Council's knowledge of Corruption has arisen due to a complaint/report it received from another person (the informant), the Chief Executive Officer should not include the informant's details in the report to the OPI if:

- the report/complaint was made under the *Whistleblowers Protection Act 1993*; and
- the informant has not consented to their identity being divulged; and
- it is not necessary to divulge the identity of the informant to ensure that the matters to which the report to the OPI relates are properly investigated.

Any consideration by the Council of information relating to Corruption in public administration or a Council report to the OPI during a Council meeting must be considered in confidence. The grounds under section 90(3)(f) and (g) of the *Local Government Act 1999* may be relied upon to move into confidence for these purposes.

7. REPORTING FRAUD

Any Employee or Council Member that has or acquires knowledge of actual or suspected Fraud that:

- does not constitute Corruption in public administration; and
- impacts or causes detriment (or has the potential to impact or cause detriment) to the Council - must report such information to the Responsible Officer or the Anti-Corruption branch of SAPOL.

A report made under this clause may be made under the *Whistleblowers Protection Act 1993*.

¹ Such conduct may, for example, relate to persons who are not a public officer such as a non-elected member of a Council Committee and/or a member of a Development Assessment Panel

Action by the Chief Executive Officer following report and or investigation into Fraud or Corruption.

Following any report to the OPI or SAPOL under this Procedure of which the Chief Executive Officer has knowledge and, subject to the finalisation of any investigation undertaken by the Commissioner or SAPOL, the Chief Executive Officer will undertake a review into the area in which the Fraud or Corruption occurred to determine the cause for the breakdown in controls and, will report the findings of the review and provide recommendations (if any) to the Council. In undertaking any review, the Chief

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Executive Officer will have regard to any recommendations received from the Commissioner or the Ombudsman.

In the event that allegations of Fraud and/or Corruption are substantiated, disciplinary action may be taken against any employee who was involved.

8. DISCLOSURE UNDER THE WHISTLEBLOWER PROTECTION

Disclosure Process

A disclosure is to be made to the Responsible Officer. Alternatively, a Whistleblower may choose to disclose Public Interest Information directly to an appropriate authority.

Any disclosure relating to a person appointed as a Responsible Officer should be made to the Chief Executive Officer.

Any disclosure relating to the Chief Executive Officer should be made to the Council or Ombudsman or where it relates to Corruption in public administration to the OPI.

Any disclosure relating to Maladministration or Misconduct in public administration may be reported in accordance with the ICAC Act or, if there is 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.

An appropriate disclosure made to the Responsible Officer may be made in person, by telephone or in writing.

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

Upon the receipt of an appropriate disclosure, the Responsible Officer will determine the nature of the public interest information contained within the disclosure and either refer the disclosure to the Appropriate Authority (where it is appropriate to do so), or proceed with an investigation process.

9. RESPONSIBLE OFFICER

The Responsible Officers appointed by the Council are:

Helen Macdonald

Chief Executive Officer

Phone: (08) 88426400

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Email: hmacdonald@cgvc.sa.gov.au

Leanne Kunoth

Manager Governance & Community

Ph. (08) 88426400

Email: lkunoth@cgvc.sa.gov.au

Postal Address: "Confidential"

Whistleblowers

4 Gleeson Street

CLARE SA 5453

Physical Address: Clare Council Office

4 Gleeson Street, CLARE SA 5453

10. INVESTIGATION PROCESS

Preliminary Assessment of Complaint

- Where the identity of the Whistleblower is known, or is reasonably ascertainable, receipt of the Disclosure will be acknowledged within 2 working days. A copy of this procedure will be provided to the Whistleblower.
- The Responsible Officer will undertake a preliminary assessment to determine whether the Disclosure is:
 - frivolous, vexatious or trivial, in which case, no further action will be taken;
 - warrants referral to an Independent Assessor for a formal investigation and report to Council;
 - requires referral to an Appropriate Authority external to the Council.
- If the Disclosure relates to the Chief Executive Officer, the Responsible Officer will immediately refer it to the Ombudsman for investigation. 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.
- To assist in making a determination the Responsible Officer may seek legal advice from Council's solicitors or guidance from SAPOL or the Ombudsman.

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- The Responsible Officer must report the outcome of his/her determination to the Chief Executive Officer (unless the Disclosure relates to the Chief Executive Officer).
- The Responsible Officer must notify the Whistleblower of the outcome of his/her determination as soon as reasonably practicable.
- 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.
- In the Event that the Responsible Officer determines that the Disclosure warrants further investigation an Independent Assessor will be appointed.
- The Responsible Officer will liaise with the Independent Assessor and the Whistleblower in relation to the investigation and will ensure that the Whistleblower is provided with adequate support and protection as necessary.

Independent Assessor - Investigation Process

The objectives of the investigation process are:

- to investigate the substance of the disclosure and to determine whether there is evidence in support of the matters raised or, alternatively, to refute the report made;
- to collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;
- to consider the information collected and to draw conclusions objectively and impartially;
- to maintain procedural fairness in the treatment of witnesses and the person who is subject of the disclosure;
- to make recommendations arising from the conclusions drawn concerning remedial or other appropriate action; and

The principles of natural justice will be observed 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.

The Act requires that the Whistleblower assist with certain investigations that results 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

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the Act may be forfeited.

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. 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.

- The Independent Assessor will provide relevant persons 48 hours notice of intent to communicate for purposes of the investigation. Such notification shall include reason for and purpose of the communication.
- The person who is the subject of the Disclosure may be accompanied by any person providing support to him/her (including a lawyer) during any interview with the Independent Assessor. All costs incurred are the responsibility of the person obtaining such support. The support person is bound by a duty of confidentiality in relation to any matter discussed during the interview.
- 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 the proper investigation of the Disclosure.
- 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.

Final Report and Recommendation

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

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

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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 and accepted as evidence during the course of the investigation.
- The report will not disclose particulars that will or are likely to lead to the identification of the Whistleblower.
- The report must be provided to the Chief Executive Officer to action as he/she considers appropriate.
- The Whistleblower will be notified of the progress of the investigation and, wherever practicable and in accordance with the law, of the final outcome.

Record Keeping

- Accurate records of the investigation process must be maintained including notes of all discussions, phone calls and interviews. It is recommended that the interviewee sign written records of interviews. Witness statements should also be signed.
- Interviews may be taped subject to the consent of the interviewee.
- All records must be maintained in a confidential file.

Information to the Elected Body

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. PROTECTION FOR THE WHISTLEBLOWER

The Whistleblowers Protection 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.

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

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.

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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.

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