

S-HR16 Whistleblower Policy

Purpose	The purpose of the policy is to ensure Councillors and Council employees as public officers, are aware of the requirements of, and are supported in, making protected disclosures in respect of corrupt behaviour or improper conduct.
Department	Governance
File No.	PUB/0300
Council Meeting Date	22/05/2024
Minute Number	102.05.2024
Next Review Date	Four (4) years from Council Resolution Date
Review History	New

Definitions as per the *Public Interest Disclosures Act 2002* (the *Act*)

<u>Improper Conduct</u>	<p>Under the <i>Act</i>, improper conduct means:</p> <ul style="list-style-type: none"> a) conduct that constitutes an illegal or unlawful activity; or b) corrupt conduct; or c) conduct that constitutes maladministration; or d) conduct that constitutes professional misconduct; or e) conduct that constitutes a waste of public resources; or f) conduct that constitutes a danger to public health or safety or to both public health and safety; or g) conduct that constitutes a danger to the environment; or h) misconduct, including breaches of applicable codes of conduct; or i) conduct that constitutes detrimental action against a person who makes a public interest disclosure under this <i>Act</i> – that is serious or significant as determined in accordance with guidelines issued by the Ombudsman; <p>that is serious or significant as determined in accordance with guidelines issued by the Ombudsman.</p>
<u>Ombudsman</u>	<p>(1) The Ombudsman’s functions under this <i>Act</i>, are:</p> <ul style="list-style-type: none"> a) to determine whether disclosures received or referred to the Ombudsman are public interest disclosures; and b) to investigate matters disclosed in public interest disclosures; and c) to prepare and publish guidelines and standards for the procedures to be followed by public bodies in relation to – <ul style="list-style-type: none"> (i) disclosures under Part 2 ; and

	<p>(ii) investigations under Part 7 ; and</p> <p>(iii) the protection of persons from reprisals by public bodies or members, officers or employees of public bodies because of protected disclosures; and</p> <p>(iv) the application of natural justice to all parties involved in an investigation of a public interest disclosure; and</p> <p>d) to approve procedures developed by public bodies in accordance with the guidelines and standards, and review those procedures at least once in each 3-year period; and</p> <p>e) to receive notification of all public interest disclosures made internally to public bodies; and</p> <p>f) to prepare and publish guidelines and standards for the purpose of determining whether improper conduct is serious or significant; and</p> <p>g) to monitor the progress of investigations by public bodies under Part 7 ; and</p> <p>h) to provide advice to public bodies on this Act; and</p> <p>i) any other function conferred on the Ombudsman by or under this Act.</p> <p>(2) The Ombudsman may from time to time amend the guidelines and standards prepared and published under subsection (1) .</p>
<p><u>Principal Officer</u> <u>(General Manager)</u></p>	<p>(1)The Principal Officer is responsible for –</p> <p>a) preparing procedures for approval by the Ombudsman; and</p> <p>b) receiving public interest disclosures and ensuring they are dealt with in accordance with this Act; and</p> <p>c) ensuring the protection of witnesses; and</p> <p>d) ensuring the application of the principles of natural justice in the public body's procedures; and</p> <p>e) ensuring the promotion of the importance of public interest disclosures, including general education of all staff about the legislation, and ensuring easy access to information about both the legislation and the public body's procedures; and</p> <p>f) providing access, for persons making a disclosure and others involved in the process of investigation, to confidential employee assistance programs; and</p> <p>g) providing access, for persons making a disclosure and others involved in the process of investigation, to appropriately trained internal support staff.</p> <p>(2) The principal officer of a public body is to appoint one or more persons as public interest disclosure officers.</p> <p>(3) A public interest disclosure officer may be appointed for a period not exceeding 3 years and may be reappointed for further periods not exceeding 3 years.</p>

	(4) Prior to the appointment or reappointment of a public interest disclosure officer, the principal officer must ensure that the officer to be appointed or reappointed has the skills and knowledge to fulfil the role of a public interest disclosure officer.
<u>Public body</u>	In accordance with section 4(1d), a Council is a public body for the purposes of the Act.
<u>Protected Disclosure</u>	Is a disclosure of improper conduct or detrimental action made by a public officer or contractor in respect of a public officer or a public body.
<u>Public Interest Disclosure</u>	Is a disclosure where the public body is satisfied that the disclosure shows or tends to show that a public officer to whom the disclosure relates: <ol style="list-style-type: none"> a) has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a public officer; or b) has taken, is taking or proposes to take detrimental action in contravention of section 19 of the <i>Act</i>.
<u>Public Interest Disclosure (PID) Officer</u> (Executive Officer)	The Public Interest Disclosure Officer is appointed by the Principal Officer to assist them to carry out their functions and responsibilities under the <i>Act</i> .
<u>Public Officer</u>	In accordance with section 4(2b&e) of the Act, a councillor or an employee of a council is a public officer.
<u>Reprisal or detrimental action</u>	Includes: <ol style="list-style-type: none"> a) action causing injury, loss or damage; and b) intimidation or harassment; and c) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action; and d) threats of detrimental action.
<u>Whistleblower</u>	A generic term for a person who reports corrupt behaviour or improper conduct. The Act identifies 'improper conduct' as including: <ul style="list-style-type: none"> • illegal activity; • corrupt conduct; • endangering public health, safety or the environment; • misusing or wasting government funds; • maladministration; and • breaches of professional codes of conduct.

1. Objective

This policy aims to:

- encourage disclosures of misconduct;
- help deter misconduct;
- protect those who disclose misconduct can do so safely, securely and in the knowledge they will be protected and supported;
- deal with any disclosures appropriately and in a timely manner; and
- provide transparency around the Council's processes for receiving, handling and investigating disclosures.

2. Scope

This policy applies to councillors and council employees, as public officers.

3. Policy

It is the policy of Flinders Council to support its councillors and employees in speaking up if they become aware of possible corrupt behaviour or improper conduct within the Council.

Reporting corrupt behaviour or improper conduct is known as whistleblowing and the *Public Interest Disclosures Act 2002* (the *Act*) is Tasmania's whistleblowing legislation.

4. Guidelines

The purpose of the *Public Interest Disclosures Act 2002* is to:

- encourage and facilitate disclosure of improper conduct by public bodies and public officials;
- protect persons making a disclosure from reprisals;
- provide for matters disclosed to be properly investigated and dealt with; and
- provide all parties involved in those disclosures with fair and natural justice.

When disclosing corrupt behaviour or improper conduct, Flinders Council encourages its councillors and employees to use the information below, as prescribed by the *Act*, in conjunction with the Personal Interest Disclosure Model Procedures.

4.1. What is a Disclosure?

Disclosures are complaints about serious or significant improper conduct by a public officer. Improper conduct also relates to any detrimental or retaliatory action (reprisal) by a public officer or public body against someone who makes a protected disclosure under the *Act*.

A disclosure is automatically protected if it complies with Part 2 of the *Act*. The threshold requirements include that the disclosure be:

- made by a public officer or a contractor;
- made to the correct entity;
- related to the conduct of a public officer or a public body;
- made by a discloser who believes that the public officer or public body has engaged, is engaging or proposes to engage in improper conduct;
- related to conduct that could fall within the definition of improper conduct; and
- about conduct which occurred on or after 1 January 2001.

The low threshold for what constitutes a protected disclosure is to encourage public officers to report concerns about wrongdoing, and for the discloser to be protected under the *Act*. If the criteria are met, Council must notify the discloser that their disclosure is protected.

If it is determined that the conduct disclosed is not serious or significant, Council will deal with the disclosure using existing internal policies or procedures. A determination of whether a protected disclosure is a public interest disclosure must be determined within 45 days of receipt.

In assessing the disclosure there must be evidence or an indication that evidence can be found to show or demonstrate the existence of improper conduct – a mere allegation is not enough. The improper conduct must be considered serious or significant and factor such considerations as whether it demonstrates a course of conduct; the seniority of the person; and the harm or potential harm associated with the conduct or misconduct.

Anonymous disclosures may also be made, if the person receiving the disclosure is satisfied the disclosure is being made by a public officer or contractor.

4.2. How to disclose and to whom

The following table details to whom a disclosure can be made:

Officer or public body to which the disclosure relates	Where the disclosure may be made
A member, officer or employee of Flinders Council	Flinders Council; or the Ombudsman; or the Integrity Commission
The Principal Officer of Flinders Council or Flinders Council as a whole	the Ombudsman; or the Integrity Commission
A councillor, within the meaning of the <i>Local Government Act 1993</i>	the Ombudsman
In any other case, including if the disclosure is about a public body as opposed to an individual public officer	the Ombudsman; or the Integrity Commission

A disclosure must be made to the correct entity. Generally, a disclosure about a public officer can be made to the public body the person is employed with, but this is not always the case. A disclosure about a Councillor is to be made to the Ombudsman.

A public body cannot investigate itself, only its employees. Therefore, disclosures relating to Flinders Council should be submitted to the Ombudsman or Integrity Commission. Contractors (and volunteers also) may make disclosures about a public body directly to either the Ombudsman or Integrity Commission.

A disclosure that relates to a public officer may be reported to another public officer, but it is recommended that it be disclosed directly to the Principal Officer or a Public Interest Disclosure (PID) Officer. Disclosures can be made verbally or in writing, and can be sent, delivered or left at Flinders Council, 4 Davies St, or to PO Box 40, Whitemark, or emailed to governance@flinders.tas.gov.au.

If a public officer receives a disclosure, they are to refer the disclosure to the Principal Officer or the PID Officer, at their earliest opportunity, for assessment.

4.3. Assessment of Disclosure¹

The PID Officer will assess the disclosure to determine if its disclosure is protected and if it is a public interest disclosure. If it is determined that it is not a public interest disclosure, the Ombudsman will review the decision.

4.4. Investigation

If it is determined that the protected disclosure is a public interest disclosure, Council must, under the *Act*, investigate the matter.

Exceptions to this are detailed in section 64 of the *Act* and include scenarios where, for example:

- the discloser knew for more than a year about the improper conduct and did not adequately explain the delay in making the disclosure; and/or
- the content of the disclosure has already been adequately dealt with by the Ombudsman or certain other bodies.

If it determines not to investigate, the Ombudsman and the discloser are to be provided with the reasons for the decision within 14 days, and the Ombudsman will review the decision.

If an investigation finds that improper or corrupt conduct has occurred, Council:

- must take all reasonable steps to prevent the conduct from continuing or reoccurring in the future; and
- may take action to remedy any harm or loss arising from the conduct.

The Ombudsman and the discloser must be notified of the findings of the investigation. If the investigation finds that improper conduct occurred, the Ombudsman and the discloser must be

¹ https://www.ombudsman.tas.gov.au/_data/assets/pdf_file/0020/593210/Disclosure-flowchart-at-25-November-2020.PDF

informed of the action taken in response.

4.5. Referrals

Council may refer a protected disclosure to the Integrity Commission if it is considered the disclosure relates to misconduct as defined in the *Integrity Commission Act 2009*. If conduct appears criminal in nature, Council may contact Tasmania Police or the Ombudsman for advice.

4.6. Notification of the Ombudsman and discloser

Where the Principal Officer or PID Officer determines that the disclosure amounts to a public interest disclosure, they must:

- advise the Principal Officer (if not the person assessing the disclosure); and
- notify the Ombudsman within 14 days of the decision.

4.7. Reprisals/Detrimental action

Under the *Act*, it is an offence to take reprisal action against someone who has made a protected disclosure. This is referred to as detrimental action. The fear of reprisals is a significant deterrent to disclosers coming forward with information. Protections are offered to disclosers under the *Act* for detrimental action that includes:

- action causing injury, loss or damage;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action; and
- threats of detrimental action.

This applies also if a protected disclosure does not meet the higher threshold test of being a public interest disclosure – the protections of making a disclosure still apply.

Blowing the whistle does not exempt a person from disciplinary action, as not all disciplinary action necessarily represents reprisal action.

If a whistleblower believes that someone has taken detrimental action against them for making a disclosure, they can make a further disclosure about this. Detrimental action itself is considered to be improper conduct, and the process for making and assessing the disclosure is the same.

It is an offence to take reprisal action. A person can be fined up to 240 penalty units and/or imprisoned for up to two years for taking detrimental action against a person in reprisal for them having made a disclosure.

Persons subject to reprisals also may undertake civil action, including:

- seeking damages in court;
- seeking an order that the person who took the detrimental action remedy that action; and
- seek an injunction to stop the detrimental action.

4.8. Penalties for false disclosures

Under section 87 of the *Act*, a person must not :

- knowingly provide false information, intending that it be acted on as a disclosed matter, to a public body, or
- knowingly provide false information to a person conducting an investigation under the *Act*.

Penalties of up to 240 penalty units or imprisonment for up to two years, or both, may apply.

5. Procedure

This Policy should be read in conjunction with the Personal Interest Disclosure Model Procedures.

6. Legislation and Related Policies

Integrity Commission Act 2009

Local Government Act 1993

Public Interest Disclosures Act 2002

Public Interest Disclosure Model Procedures

7. Responsibility

The responsibility for implementation of this policy lies with the General Manager and the Personal Interest Disclosure Officer.