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1. PREAMBLE

1.1 Background

The City of Holdfast Bay (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 Purpose

The purpose of this Policy is to ensure that Council:

- properly fulfils its responsibilities under the Whistleblowers Protection Act 1993;
- encourages and facilitates Disclosures of Public Interest Information, so that internal controls may be strengthened;
- provides a process by which Disclosures may be made so that they are properly investigated;
- provides appropriate protection for those who make Disclosures in accordance with the Act; and
- recognises the need to appropriately support the Whistleblower, the Responsible Officer and, as appropriate, those Public Officers affected by any allegation that affects them.

1.3 Scope

- 1.3.1 This Policy applies to appropriate Disclosures of Public Interest Information that are made in accordance with the Act by Council Members, Employees of the Council, and members of the public. This Policy is also intended to complement the reporting framework under the Independent Commissioner Against Corruption Act 2012 (ICAC Act).
- 1.3.2 This Policy is designed to complement the existing communication channels within Council, and operate in conjunction with existing policies, including the Codes of Conduct for Employees and Elected Members and the Internal Review of Council Decisions Policy.
- 1.3.3 The Council is committed to:
- referring, as necessary, appropriate Disclosures to the Appropriate Authority.

- otherwise facilitating the investigation of all appropriate Disclosures of Public Interest Information in a manner which promotes fair and objective treatment of those involved; and
- rectifying any substantiated wrongdoing to the extent practicable in all the circumstances.

1.4 Definitions

Act means the Whistleblowers Protection Act 1993.

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

- a Minister of the Crown;
- a member of the police force - where the information relates to an illegal activity;
- the Auditor-General – where the information relates to the irregular or unauthorised use of public money;
- the Ombudsman – where the information relates to a public officer;
- a Responsible Officer - where the information relates to a matter falling within the sphere of responsibility of a Local Government body; or
- any other person to whom, in the circumstances of the case, it is reasonable and appropriate to make the disclosure.

Corruption in public administration means an offence against Part 7 Division 4 (Offences relating to public officers) or any other offence (including an offence against Part 5 (Offences of dishonesty) of the Criminal Law Consolidation Act 1935.

Directions and Guidelines is a reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act.

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

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.

Maladministration has the same definition as set out in Section 4 of the ICAC Act.

Misconduct has the same definition as set out in Section 4 of the ICAC Act.

Responsible Officer is a person appointed pursuant to Section 302B of the Local Government Act 1999 who is authorised to receive and act upon public interest information received from a Whistleblower.

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

1.5 Strategic Reference

Culture: Supporting excellent, efficient operations

2. PRINCIPLES

2.1 Confidentiality

- 2.1.1 The identity of a Whistleblower will be maintained as confidential in accordance with the Act. Confidentiality will remain in all circumstances, unless the Whistleblower consents to his/her identity being disclosed or, disclosure is otherwise required so that the matter may be properly investigated. The Act does not expressly require any other information relating to a Disclosure (i.e. the nature of the allegations) to be maintained as confidential.
- 2.1.2 A Whistleblower may wish to remain anonymous. In the event that an anonymous Disclosure is made, the Whistleblower must ensure that the allegation is sufficiently supported by the provision of necessary details and evidence to enable the matter to be properly investigated. Accordingly, if an allegation is not supported by sufficient evidence it will not be investigated under the provisions of the Act.

2.2 Disclosure Process

- 2.2.1 A Disclosure is to be made to the Responsible Officer. A Whistleblower may alternatively choose to disclose Public Interest Information directly to an Appropriate Authority.
- 2.2.2 The following are relevant considerations for the Whistleblower in determining where to direct a Disclosure:
 - 2.2.2.1 subject to this clause, when choosing to make a Disclosure internally, Disclosures relating to an elected member or a member of council staff, other than the Chief Executive Officer (or person acting in that position), should be made to a Responsible Officer;
 - 2.2.2.2 any Disclosure relating to a person appointed as a Responsible Officer should be made to the other person appointed as a Responsible Officer or failing this, to an Appropriate Authority external to the Council;
 - 2.2.2.3 any Disclosure relating to the Chief Executive Officer should be made external to the Council to the Ombudsman or, where it relates to Corruption in public administration to the OPI;
 - 2.2.2.4 any Disclosure relating to Maladministration or Misconduct in public administration may be reported in accordance with the ICAC Act or, if there is a reasonable suspicion that the Maladministration or Misconduct is serious or systemic, it must be reported to the OPI in accordance with the Directions and Guidelines;
 - 2.2.2.5 if a Disclosure contains allegations of Fraud or Corruption, the Whistleblower should report the matter to the OPI in the first

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

2.2.2.6 Any allegations of Fraud or Corruption and/or criminal conduct will not be investigated by an Independent Assessor under this Policy.

2.2.3 Nothing in this Policy prevents a person from making a Disclosure to an Appropriate Authority external to the Council (i.e. the Ombudsman or the OPI). This is a choice to be made by the Whistleblower at his/her discretion.

2.2.4 A Disclosure made to the Responsible Officer may be made in person, by telephone or in writing. The relevant contact details are:

Telephone 8229 9999

Email whistleblower@holdfast.sa.gov.au

Address Confidential - Whistleblowers

PO Box 19

Brighton SA 5048

2.2.5 Where a Disclosure is made by telephone, the Responsible Officer must take notes of the conversation and, where possible ask the Whistleblower to verify and sign the notes.

2.3 Role of the Responsible Officer

2.3.1 Upon the receipt of a Disclosure, the Responsible Officer will:

2.3.1.1 undertake a preliminary assessment in accordance with this Policy to determine the nature of the Public Interest Information contained within the Disclosure; and

2.3.1.2 either refer the Disclosure to the Appropriate Authority, or proceed with the an investigation process outlined this Policy.

2.3.2 If the Disclosure relates to the Chief Executive Officer (or a person acting in that position), the Responsible Officer will immediately refer it to the Ombudsman for investigation as the Ombudsman deems appropriate. Alternatively, if the Disclosure relates to Corruption in public administration, the Responsible Officer must immediately report the matter to the OPI in accordance with the Directions and Guidelines.

2.3.3 In making any determination under this Policy (i.e. such as to refer a disclosure to the Appropriate Authority or proceed with an assessment or otherwise determining whether to pursue an investigation):

2.3.3.1 the Responsible Officer may seek legal advice from Council's Lawyers and/or seek guidance from SAPOL or the Ombudsman in relation to the best course of action to pursue; and

2.3.3.2 is authorised to incur costs in accordance with the Council's Budget for this purpose.

2.3.4 In the event that the Responsible Officer determines that the Disclosure warrants further investigation by the Council, the Responsible Officer will appoint an Independent Assessor for these purposes.

- 2.3.5 The Responsible Officer will liaise with the Independent Assessor and the Whistleblower in relation to any ensuing investigation process and will ensure that the Whistleblower is provided with adequate support and protection as necessary.
- 2.3.6 The Whistleblower will be notified of the progress of any investigation by the Responsible Officer and, wherever practicable and in accordance with the law, of the final outcome.

2.4 Preliminary Assessment of Complaint

- 2.4.1 Where the identity of the Whistleblower is known to the Responsible Officer or is reasonably ascertainable, the Responsible Officer will acknowledge receipt of the Disclosure within 2 days and in doing so, will provide a copy of this Policy to the Whistleblower.
- 2.4.2 Upon receipt of a disclosure, the Responsible Officer will undertake a preliminary assessment to determine whether it:
- 2.4.2.1 is frivolous, vexatious or trivial, in which case, no further action will be taken in relation to the complaint; or
 - 2.4.2.2 warrants referral to an Independent Assessor for a formal investigation and report to Council; or
 - 2.4.2.3 requires referral to an Appropriate Authority external to the Council.
- 2.4.3 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). Where the Responsible Officer determines the disclosure warrants investigation, the Responsible Officer will, having regard to available resources, appoint the Independent Assessor and refer the Disclosure for investigation.
- 2.4.4 Where the Responsible Officer determines the Disclosure warrants referral to an external body, the Responsible Officer will undertake the referral.
- 2.4.5 The Responsible Officer will inform the Whistleblower of the outcome of his/her determination in writing as soon as is reasonably practicable after the determination has been made.
- 2.4.6 If the Whistleblower is dissatisfied with the Responsible Officer's determination it is open to him/her to report the Disclosure to an Appropriate Authority external to the Council.

2.5 Investigation Procedure

- 2.5.1 The objectives of the investigation process are:
- to investigate the substance of the disclosure and to determine whether there is evidence in support of the matters raised or, alternatively, to refute the report made;

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- to collate information relating to the allegation as quickly as possible, which may involve taking steps to protect or preserve documents, materials and equipment;
 - to consider the information collected and to draw conclusions objectively and impartially;
 - to observe procedural fairness in the treatment of any person who is subject of the disclosure; and
 - to make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.
- 2.5.2 The Independent Assessor will observe the principles of natural justice throughout the investigation process. The investigation will be conducted in an efficient manner and will involve a thorough and balanced assessment of the available evidence and any other factors deemed relevant to making a fair and reasonable judgement about the matter.
- 2.5.3 The Act requires that the Whistleblower assist with certain investigations that may result from his/her Disclosure. In the event that the Whistleblower fails, without reasonable excuse, to assist with an investigation process the protection afforded to him/her under the Act may be forfeited.
- 2.5.4 Upon receipt of a Disclosure, the Independent Assessor will bring the fact of the Disclosure to the attention of the person who is the subject of it in writing within 5 days, and provide them with an opportunity to respond to the disclosure within a reasonable timeframe (either in writing or in person). The full details of any allegations contained in the Disclosure need not be brought to the person's attention if the Independent Assessor considers that doing so will compromise the success of the investigation.
- 2.5.5 When the Independent Assessor is required to communicate with the person subject of the Disclosure, the Whistleblower and/or other witnesses for the purposes of the investigation, the Independent Assessor will ensure the relevant person is aware of the reason for and purpose of the communication. Such notification will be provided to the relevant person at least 48 hours before such communication is to take place.
- 2.5.6 During any interview with the Independent Assessor, the person who is the subject of a Disclosure may be accompanied by any person providing support to him/her (including a lawyer) as he/she considers fit. Any costs incurred in relation to obtaining the assistance of a support person are the personal expenses of the person subject of the Disclosure. The support person is bound by a duty of confidentiality in relation to any matter discussed during such interview.
- 2.5.7 The investigation will be undertaken in confidence. The Independent Assessor will keep the identity of the Whistleblower confidential unless

Disclosure of his/her identity is necessary to ensure that the proper investigation of the Disclosure.

- 2.5.8 The Independent Assessor will keep the Responsible Officer informed of the expected timeframes for completion of the investigation and the provision of a report to the Council.

2.6 Final Report and Recommendation

- 2.6.1 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.

- 2.6.2 The report will be accompanied by:

- the transcript or other record of any verbal evidence taken, including tape recordings; and
- all documents, statements or other exhibits received by the officer and accepted as evidence during the course of the investigation.

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

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

2.7 Handling of Information

- 2.7.1 The Independent Assessor must ensure accurate records of the investigation process are maintained including notes of all discussions, phone calls, and interviews. It is recommended that the interviewee sign written records of interviews and interviews be taped, but only where the interviewee has consented to this. Witness statements should also be signed.

- 2.7.2 In performing his/her duties, the Independent Assessor will maintain a confidential file of information (including written documents, disks, tapes, film or other objects that contain information) that relates to a disclosure and/or is a product of the associated investigation/reporting process. All such information will be recorded in a register which is to remain confidential and be securely stored.

2.8 Information to Elected Body

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- 2.8.1 As a matter of discretion, the Chief Executive Officer may inform the elected body, on a confidential basis, of the fact an investigation of a Disclosure took place and the outcome of the investigation.
- 2.8.2 Factors the Chief Executive Officer will take into account in determining whether to inform the elected body, and the level of detail provided in doing so are as follows:
 - 2.8.2.1 the identity of the person subject of the Disclosure;
 - 2.8.2.2 the impact (if any) of the investigation upon the Council's achievement of its objectives under its Strategic Plan and/or policies; and
 - 2.8.2.3 the nature of the impact of any action taken to finalise the matter upon the Council's operations and/or budget.
- 2.8.3 In the event the Disclosure and investigation process is confined only to issues impacting upon Council staff and human resource processes, the Chief Executive Officer will not inform the elected body of the fact of the Disclosure and/or investigation since these matters fall outside the roles and responsibilities of elected members under the Local Government Act 1999.

2.9 Protection for the Whistleblower

- 2.9.1 The Act provides immunity from criminal or civil liability for Whistleblowers, and protection for Whistleblowers against victimisation. Council will take action to protect Whistleblowers from victimisation, and in the event that a Whistleblower is victimised, the Council will, immediately refer the matter to the SA Police.
- 2.9.2 The Act does not provide any protection to people who knowingly make false disclosures or are reckless as to whether their disclosures are true.
- 2.9.3 A person who knowingly makes a false Disclosure or is reckless as to whether the disclosure is true is guilty of an offence and may be prosecuted.
- 2.9.4 A Public Officer who knowingly makes a false disclosure, or is reckless as to whether the Disclosure is true, in addition to being guilty of an offence under the Act, may face disciplinary action taken by the Council.

2.10 Availability of the Policy

This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website. Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.

3. REFERENCES

3.1 Legislation

- *Local Government Act 1999*
- *Whistleblowers Protection Act 1993*
- *ICAC Act 2012*

3.2 Other References

Internal Review of Council Decisions Policy