

OVERSTRAND MUNICIPALITY



FRAUD PREVENTION AND ANTI-CORRUPTION POLICY

Approved by Council

24 June 2020

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1. INTRODUCTION

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Fraud and corruption undermine the public's confidence in local government. It is a serious risk to the successful delivery of services and the sustainability of any municipality. The Constitution, Municipal Finance Management Act (MFMA) and Municipal Systems Act make it clear that public money must be spend prudently for the benefit of the citizens and municipal officials may not enrich themselves at the cost of the municipality.

Overstrand Municipality will not tolerate any fraud and corruption. Municipal officials found guilty of fraud and/or corruption will be sanctioned and legal proceedings for the recovery of losses will be instituted against perpetrators to recover losses suffered by the municipality due to fraud and/ or corruption.

2. DEFINITIONS

Unless stated otherwise in this policy, the terms listed below have the following meaning:

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| Chief Audit Executive (CAE) | The internal auditor in charge of Internal Audit Services. The Head of Overstrand Municipality's internal audit department. |
| Chief Risk Officer (CRO) | A coordinator of risk management activities throughout the organisation |
| corruption | (1) A municipal official or Councillor directly or indirectly accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; (2) A person directly or indirectly gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner that – (a) is designed to achieve an unjustified result; or (b) amounts to the – (i) illegal, dishonest, unauthorised, incomplete, or biased conduct; (ii) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation; or (iii) the abuse of a position of authority; (iv) a breach of trust; (v) violation of a legal duty or a set of rules; (vi) any other unauthorised or improper inducement to do or not to do anything; |
| ethical behaviour | One does not merely consider what is good for oneself, but also consider what is good for others. |

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| fiduciary | <p>An individual in whom another person has placed the utmost trust and confidence to manage and protect property or money.</p> <p>The relationship wherein one person (the fiduciary) has an obligation to act for another's benefit (the beneficiary) without considering any self-interests.</p> |
| financial misconduct | <p>Any act of financial misconduct referred to in section 171 and 172 of the Municipal Finance Management Act.</p> <p>Financial misconduct includes corruption, fraud, irregular expenditure, unauthorised expenditure and fruitless and wasteful expenditure.</p> |
| fraud | Unlawful and intentional making of a misrepresentation / deceit resulting in actual or potential prejudice to the municipality. |
| fruitless and wasteful expenditure | Expenditure that was made in vain and would have been avoided had reasonable care been exercised. |
| irregular expenditure | <p>(a) Expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Financial Management Act, and which has not been condoned in terms of section 170 of that Act; or</p> <p>(b) Expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act; or</p> <p>(c) Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or</p> <p>(d) Expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law, but excludes expenditure by a municipality which falls within the definition of "unauthorised expenditure."</p> |
| JAPAC | Joint Audit and Performance Audit Committee, the audit committee of Overstrand Municipality established in terms of Section 166 of the Municipal Finance Management Act. |
| mal-administration | <p>Inefficient or dishonest administration, in other words mismanagement or dishonest conduct.</p> <p>Maladministration may be criminal and/or delictual, depending on whether the law was contravened as a result of the mismanagement.</p> |
| Municipal Manager | The Accounting Officer of Overstrand Municipality. Also includes the Acting Municipal Manager. |

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| municipal official / municipal staff | Municipal officials/staff include: (a) an employee of the municipality; (b) a person seconded to the municipality to work as a member of the staff of the municipality; or (c) a person contracted by the municipality to work as a member of the staff of the municipality otherwise than as an employee. |
| prejudice | harm or loss that results or may result from some action or judgment |
| prima facie | A fact presumed to be true unless it is disproved. |
| professional ethics | Implied and/or expected ethical standards and behaviour of the profession relevant to a specific staff member. |
| theft | Unlawful and intentional appropriation of movable corporeal Municipal property with the intention to permanently deprive the municipality of the benefits of its ownership. |
| unauthorised expenditure | Any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3) of the Municipal Finance Management Act and includes – (a) overspending of the total amount appropriated in the municipality's approved budget; (b) overspending of the total amount appropriated for a vote in the approved budget; (c) expenditure from a vote unrelated to the department or functional area covered by the vote; (d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose; (e) spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of "allocation" otherwise than in accordance with any conditions of the allocation; or (f) a grant by the municipality otherwise than in accordance with the Municipal Finance Management Act; |
| unauthorised gratification | (a) Any person who is party to an employment relationship and who, directly or indirectly, accepts or agrees or offers to accept from any other person any unauthorised gratification, whether for the benefit of that person or for the benefit of another person; or (b) Any person who, directly or indirectly, gives or agrees or offers to give to any person who is party to an employment relationship any unauthorised gratification, whether for the benefit of that party or for the benefit of another person in respect of that party doing any act in relation to the exercise, carrying out or performance of that party's powers, duties or functions within the scope of that party's employment relationship. |

3. ETHICS

All fraud and corruption risks arise due to a lack of ethics. Many of the controls implemented to prevent fraud and corruption requires human involvement and can be circumvented by two or more persons colluding. People without a strong ethical character will not report corrupt and/or fraudulent acts which they are aware of.

Fraud prevention and anti-corruption measures will thus only succeed in an environment of ethical behaviour, not only due to the need to prevent fraudulent and corrupt acts, but also to detect fraud and corruption when it does occur.

4. APPLICABLE LEGISLATION

The following legislation is applicable to Overstrand Municipality in its dealings with fraud and corruption:

- Constitution of the Republic of South Africa (No. 108 of 1996)
- Local Government: Municipal Finance Management Act (No. 56 of 2003)
- Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (No. 430 of 2014)
- Local Government: Municipal Structures Act (No. 32 of 2000)
- Code of Conduct for Councillors in terms of Schedule 1 of the Municipal Structures Act (No. 32 of 2000)
- Code of Conduct for Municipal Staff Members in terms of Schedule 2 of the Municipal Structures Act (No. 32 of 2000)
- Overstrand Municipality Code of Ethics for Municipal Staff
- Prevention and Combating of Corrupt Activities Act (No. 12 of 2004)
- Protected Disclosures Act (No. 26 of 2000)
- Labour Relations Act (No. 66 of 1995)

5. ROLE-PLAYERS IN FRAUD PREVENTION AND ANTI-CORRUPTION

5.1. OVERSIGHT

5.1.1. MUNICIPAL COUNCIL

The Municipal Council must hold the Municipal Manager accountable to ensure that properly established and functioning systems of fraud prevention and anti-corruption are in place to protect Overstrand Municipality against losses, comply with legislation and discipline offenders.

* Detailed responsibilities can be found in the Fraud Prevention and Anti-Corruption Strategy.

5.1.2. JOINT AUDIT AND PERFORMANCE AUDIT COMMITTEE (JAPAC)

The JAPAC is responsible for providing the Municipal Manager and Council with independent counsel, advice and direction in respect of fraud prevention and anti-corruption.

The JAPAC will include a specific focus on fraud risks when advising on internal financial control, the accuracy and reliability of the financial statements, governance and compliance with legislation.

5.1.3. FRAUD AND RISK MANAGEMENT COMMITTEE (FARMCO)

The FARMCO is appointed by the Accounting Officer to assist him in the discharge of his risk management responsibilities, including fraud and corruption risk management.

The FARMCO's role, as part of its risk management oversight, is to review the effectiveness of fraud and corruption risk management activities, the key fraud and corruption risks facing the municipality and the responses to address these key risks. The FARMCO must also monitor the implementation of the municipality's Fraud Prevention and Anti-Corruption Strategy and Policy.

5.2. IMPLEMENTERS

5.2.1. MUNICIPAL MANAGER/ ACCOUNTING OFFICER

The Municipal Manager is ultimately accountable for fraud prevention and anti-corruption within the municipality. The Municipal Manager must set the example from the top and promote ethical behaviour within the municipality.

5.2.2. DIRECTORS

Directors support the municipality's fraud prevention and anti-corruption philosophy, integrates it into the operational routines of the municipality and monitors the fraud prevention and anti-corruption activities within their respective areas of responsibility.

The Directors are ultimately accountable to the Municipal Manager and Council for the fraud prevention and anti-corruption measures in their respective directorates.

5.2.3. MANAGEMENT

Management is responsible for designing, implementing and monitoring fraud prevention and anti-corruption controls and integrating it into the day-to-day activities of the municipality.

Management are also risk action owners and must formulate appropriate action plans to combat fraud and corruption if such risks were identified during risk identification and assessment.

Accountability of management in relation to their decision-making and responsibilities is stipulated in Council's Delegation of Powers and Duties Policy.

5.2.4. OTHER MUNICIPAL OFFICIALS

Other municipal officials are responsible for adhering to the process of fraud prevention and anti-corruption and integrating it into their day-to-day activities.

5.3. SUPPORT

5.3.1. RISK MANAGEMENT UNIT

The Risk Management Unit's coordination function enables, through risk identification and assessments, the inclusion of fraud and corruption related risks in the municipality's risk register. Throughout the Risk Management Unit's monitoring activities, special focus is given to ensure that appropriate action plans are formulated by management to mitigate fraud and corruption related risks and sufficient reporting is effected to the relevant oversight structures.

5.3.2. INTERNAL AUDIT SERVICES (IAS)

As part of IAS's consulting services, they may make recommendations for the improvement of fraud prevention and anti-corruption measures in order to prevent and/or detect specific incidents of fraud or corruption.

5.4. ASSURANCE PROVIDERS

5.4.1. INTERNAL AUDIT SERVICES (IAS)

In addition to recommendations, IAS also provides assurance on the municipality's fraud prevention and anti-corruption measures.

Due to the independence requirements of Standard 1130.A1 of the International Standards for the Professional Practice of Internal Auditing, IAS may only provide assurance on fraud prevention and anti-corruption activities they were not involved with.

5.4.2. EXTERNAL AUDIT/ AUDITOR GENERAL (AG)

The AG provides an independent opinion on the effectiveness of the municipality's fraud prevention and anti-corruption measures.

In providing an opinion the AG:

- determines whether the Fraud Prevention and Anti-Corruption Strategy, Policy and Plan are in place and appropriate;
- assesses the implementation of the Fraud Prevention and Anti-Corruption Strategy, Policy and Plan;
- reviews the fraud and corruption risk assessment process to determine whether it is sufficiently robust to facilitate timeous and accurate risk rating and prioritisation;
- determines whether management's action plans to mitigate the key fraud and corruption risks are appropriate and being implemented effectively.

Findings and recommendations from an external audit may be utilised in the evaluation and improvement of fraud prevention and anti-corruption measures.

6. INTERNAL FOCUS

6.1. SYSTEMS, POLICIES, PROCEDURES AND INTERNAL CONTROLS

Fraud prevention and anti-corruption measures must form part of all the systems of the municipality. It can be embedded with policies and procedures which must be complied with by municipal officials and external stakeholders.

Internal controls prevent and detect fraud and corruption. Internal controls are an integral component of fraud prevention and anti-corruption.

6.2. COUNCILLORS

Councillors act in a fiduciary capacity on behalf of the public, ensuring that public funds are well spent and no wasteful practices take place.

Councillors must abide by the Code of Conduct for Councillors, must not engage in corrupt and/or fraudulent activities and must monitor the manner in which the administration of the municipality deals with fraud and corruption.

6.3. STAFF

Key ambassadors for the successful implementation of the Fraud Prevention and Anti-Corruption Strategy for Overstrand municipality are its officials. Overstrand Municipality's officials must demonstrate behaviour that is beyond reproach in the execution of their duties as per the approved policies of the municipality.

Fraud prevention and anti-corruption principles and techniques must form part of the human resources practices and policies of the municipality.

Council must approve an annual budget for the municipality before the start of the financial year. Overstrand Municipality may only incur expenditure in terms of the approved budget and within the limits of the amounts appropriated for the different votes in the approved budget.

Municipal officials must use municipal resources effectively, efficiently and economically and avoid irregular, unauthorised or fruitless and wasteful expenditure.

6.5. INFORMATION

Confidentiality must be maintained for sensitive information received, stored, processed and furnished by the municipality.

Information obtained from the municipality which is not public may not be used for personal gain by municipal officials, Councillors or external parties.

The disclosure and processing of information in possession of the municipality is subject to the provisions of applicable legislation. No information that must legally be disclosed may be withheld from the public or other organs of state.

The relevant acts applicable to Overstrand Municipality are the Protection of Personal Information Act (No. 4 of 2013) and Promotion of Access to Information Act (No. 2 of 2000). These acts have also been included in the Overstrand Municipality Code of Ethics. However, various other laws, legislation and policies are in force that may impact on how information must or must not be used, processed and disclosed.

6.6. PHYSICAL ASSETS

Policies regulating physical assets must assign responsibility for assets to a person or department and include provisions for the recovery of losses resulting from lost or damaged assets.

The significant policies of Overstrand Municipality regulating physical assets are the Asset Management Policy, Administration of Immovable Property Policy and Fleet Management Policy.

7. EXTERNAL FOCUS

7.1. COMMUNITY/ PUBLIC

Structures and processes must be created and maintained to encourage and enable the public to effortlessly communicate corrupt and/or fraudulent activities involving the municipality, to the municipality.

Continuous drive of these structures and processes must be advocated during public participation engagements and by means of Ward Committee structures.

7.2. SUPPLIERS

Fraud prevention and anti-corruption measures must be stipulated in Overstrand Municipality's supply chain policies with regard to the procurement of goods and/or services and supplier performance/contract management.

8. IMPLEMENTATION

8.1. COMMITMENT

The Fraud Prevention and Anti-Corruption Strategy, Policy and Plan must be accepted and embraced by the stakeholders of the municipality for it to be properly implemented and adhered to.

8.2. AWARENESS

The stakeholders of Overstrand Municipality must be aware of the Fraud Prevention and Anti-Corruption Strategy, Policy and Plan and have knowledge of its contents.

8.3. TRAINING

Municipal officials must receive training on how to comply with the Fraud Prevention and Anti-Corruption Strategy, Policy and applicable legislation, to ensure they understand and know how to execute their responsibilities regarding fraud prevention and anti-corruption and for there to be no excuses when they are held accountable for non-compliance.

8.4. EXECUTE

The provisions contained in the Fraud Prevention and Anti-Corruption Strategy and Policy must be carried out. Municipal officials must be held accountable for implementation of its provisions.

8.5. MONITOR

The fraud prevention and anti-corruption activities must be monitored continuously for effectiveness and progress with the execution of the Fraud Prevention and Anti-Corruption Strategy and Policy.

9. ENFORCEMENT

9.1. REPORTING

Before any corrupt and/or fraudulent activity can be addressed, the municipality must be informed of its occurrence.

9.1.1. FINANCIAL MISCONDUCT REGULATIONS

In accordance with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, allegations of financial misconduct (which includes corruption, fraud and theft) must be reported to the following people / institutions:

| Allegations against | Report to |
|--|---|
| Accounting Officer (Municipal Manager) Chief Financial Officer (Director: Finance) Senior Manager (Director) | Council; and Provincial Treasury; and National Treasury |
| Other municipal officials | Accounting Officer (Municipal |

9.1.2. MUNICIPAL OFFICIALS

9.1.2.1. Obligation to report

Section 13 of the Code of Conduct for Municipal Staff Members states that a municipal official must report transgressions of the Code, which include fraud and corruption, to his/her superior.

It is thus a breach of the Code of Conduct for Municipal Staff Members and misconduct if a municipal official does not report fraud and/or corruption he/she is aware of.

9.1.2.2. Reporting lines

A municipal official must report incidents of alleged fraud and/or corruption to his/her immediate senior.

Should it appear that the immediate senior may also be implicated in the alleged fraud and/or corruption or the official has valid concerns that reporting to the immediate senior might jeopardise an investigation or expose himself/herself to victimisation, the official may report to someone on the next level of seniority, up to and including the Municipal Manager.



The person receiving the report must escalate the matter to the attention of the Municipal Manager for further action in the following manner:

- verbally, within one working day after discovery or receiving a report of the incident in question; and
- a detailed written report within five working days after the discovery or reporting of such an incident.

Only if the Municipal Manager is implicated in the alleged fraud and/or corruption, may a municipal official bypass the above reporting line and report to the Executive Mayor.

9.1.2.3. Reporting responsibilities of Municipal Manager

It is the responsibility of the Municipal Manager to report all allegations of corruption, fraud, theft and other acts of financial misconduct to Provincial Treasury.

In addition, the Municipal Manager must comply with the reporting requirements of Section 34 of the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004) and Section 10 of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (No. 37699), that stipulates which cases of corruption, fraud, theft and other financial offences must be reported to the South African Police Service.

When allegations are made against Councillors, the Municipal Manager must report the allegations to the Speaker and if the Speaker is implicated, the Municipal Manager must report the allegations to the Executive Mayor.

9.1.2.4. Reporting to the FARMCO and JAPAC

The relevant Director must report allegations of fraud or corruption to the Chairperson of the FARMCO.

The Municipal Manager must report allegations of fraud or corruption to the Chairperson of the JAPAC.

9.1.2.5. Other reporting lines

If a municipal official is also subject to other legislation or is a member of a South African accredited professional association/institution/board that obligates the official to report in a different manner, the official may follow those reporting requirements as well but must also follow the reporting requirements of Overstrand Municipality.

9.1.3. COUNCILLORS

A Councillor must report alleged incidents of fraud and/or corruption involving Councillors to the Speaker and alleged incidents of fraud and/or corruption involving municipal officials to the Municipal Manager.

When an allegation of corruption, fraud or other financial misconduct is made against the Municipal Manager or the Municipal Manager fails to report an allegation/incident of corruption, fraud or other financial misconduct to Provincial Treasury, the Executive Mayor must report the allegation/incident to Provincial Treasury.

9.1.4. PUBLIC

Members of the public must report alleged corrupt or fraudulent acts by municipal officials or Councillors in the following manner:

| Allegations against | Report to |
|--|-----------------------------|
| Municipal Manager Chief Financial Officer (Director: Finance) Director | Speaker / Municipal Council |
| Other municipal officials | Municipal Manager |
| Councillor (excluding Speaker) | Speaker |
| Speaker | Executive Mayor |

The public may report alleged corrupt or fraudulent acts perpetrated against the municipality by external parties to any municipal official in a managerial position, Director, Municipal Manager or Councillor, who then has the responsibility to escalate the matter to the appropriate person and/or authority.

9.2. INVESTIGATION

Allegations of corrupt and/or fraudulent activities must be investigated. Investigations can be distinguished between an informal, initial investigation to determine whether the allegations have any basis and a formal, full scale investigation to collect all evidence and make a finding.

The relevant authority will determine the scope of the investigation and whether to make use of the Risk Management Unit, Internal Audit Services and/or an external investigator.

All municipal officials and Councillors must cooperate with authorised investigators and provide them access to the municipality's property, personnel and information required to conduct their investigations.

9.2.1. MUNICIPAL OFFICIALS

Allegations of fraud and/or corruption against municipal officials will be escalated to the Municipal Manager who, if there is reasonable cause to believe that an act of fraud or corruption has been committed, must refer the matter within seven calendar days to the disciplinary board established in accordance with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (No. 37699) for a preliminary investigation.

The disciplinary board must conduct a preliminary investigation to determine whether or not the allegation has any merit and make a recommendation to Council as to whether sufficient grounds exists to warrant a full investigation into the allegation.

If the disciplinary board determines that the allegation has merit and Council approves the recommendation, a full investigation must be conducted by the disciplinary board.

When the investigation has been finalised, the Municipal Manager, Executive Mayor or Speaker must table the report of the investigation to Council at the first upcoming Council meeting.

9.2.2. COUNCILLORS

The Speaker, or Executive Mayor if the Speaker is implicated, must deal with allegations of corruption, fraud and other misconduct against Councillors in accordance with the *Procedure for investigation regarding any allegation of misconduct against a member of a Municipal Council*, approved by Council on 12 August 2016.

The Speaker will conduct a preliminary investigation and determine whether there is a prima facie case to answer.

If the Speaker is satisfied that there is a prima facie case to answer, the Speaker will call a meeting of the committee selected by Council, either in general or specifically for that purpose, to consider the matter.

9.3. DISCIPLINARY AND LEGAL ACTION

Investigations that conclude that fraud and/or corruption was committed or attempted must be followed by disciplinary proceedings if the perpetrators are municipal officials or Councillors.

If the municipality suffered a loss due to the fraud and/or corruption, the viability of claims for damages must be assessed and if found to be viable, instituted against the perpetrators (internal and external) for the recovery of the loss.

All cases of fraud and corruption must be assessed against relevant statutes, regulations and the common law to determine whether the fraud and/or corruption must be reported to the South African Police Service (SAPS). The municipality has

the right to report all cases of fraud and corruption to the SAPS even if there is no legal requirement to do so.

The disciplinary board must recommend appropriate disciplinary and legal action, against municipal officials implicated in corruption, fraud or other financial misconduct, where after the responsible manager must institute disciplinary procedures against the official in accordance with the South African Local Government Bargaining Council (SALGBC) Disciplinary Procedure Collective Agreement with the assistance of the Human Resources Department and legal action, if applicable, with the assistance of Legal Services.

The committee of Council established in terms of the *Procedure for investigation regarding any allegation of misconduct against a member of a Municipal Council*, as approved by Council on 12 August 2016, must recommend to the full Council appropriate sanctions against Councillors implicated in corruption, fraud or other misconduct. After receiving the report, the full Council must vote on the sanctions against the implicated Councillors.

10. CONFIDENTIALITY

All information relating to fraud and corruption that is received and investigated will be treated confidentially. The progress of any investigation will be handled in a confidential manner and will not be disclosed or discussed with any persons other than those who have a legitimate right to such information.

11. PROTECTION OF WHISTLE BLOWERS

A process for the protection of whistle blowers has been developed. Please refer to annexure A of this policy.

12. REVIEW

The Fraud Prevention and Anti-Corruption Policy will be reviewed periodically, and/ or as and when necessary, by FARMCO and approved by the Municipal Council.

Review history:

| Policy Section | Risk Management Unit |
|---------------------|----------------------|
| Current update | 24 June 2020 |
| Previous review | 31 October 2018 |
| Approved by Council | 28 March 2018 |

Annexure A**PROTECTION OF WHISTLE BLOWERS****1. INTRODUCTION**

No person will suffer any penalty or retribution for good faith reporting of any suspected or actual incident of illegal activity or maladministration involving Overstrand Municipality.

Overstrand Municipality will not tolerate the victimisation of whistle blowers and will take action to protect whistle blowers when they raise a concern in good faith. This does not mean that if the person is already the subject of disciplinary or legal action, that action will be halted as a result of their whistle blowing.

2. SCOPE

These provisions are applicable to all whistle blowers, internal and external, who report transgressions involving Overstrand Municipality, to the municipality.

Transgressions include any contravention of the law, policy of the municipality, Code of Conduct for Municipal Staff, Code of Conduct for Councillors, Code of Ethics for Municipal Staff, deviations from approved standard operating procedures or any other act of maladministration.

3. PROTECTION OFFERED TO WHISTLE BLOWERS**3.1 ANONYMITY**

A person who reports suspected illegal conduct or maladministration may remain anonymous should he/she so desire. The municipality will do its best to protect the person's identity when he/she raises a concern and wants to remain anonymous. It must be kept in mind though that the investigation could reveal the source of the information.

All whistle blowers who report to someone at the municipality without concealing their identity, but wish to remain anonymous in subsequent investigations, will have their demand for anonymity respected. The employee or Councillor, to whom the report was made, may not disclose the identity of the whistle blower and may not be ordered by the municipal administration or Council to disclose the identity. If the employee or Councillor becomes a target for not disclosing the identity of the whistle blower, they will be entitled to the same protection as whistle blowers.

3.2 PHYSICAL SAFETY

The municipality is aware that sometimes whistle blowers suffer or are threatened with physical harm.

Therefore the municipality's protection goes beyond the usual protection against reprisals that have financial or emotional consequences (e.g. loss of job, intimidation, refusal of service, etc.) and includes the physical security of whistle blowers as well.

Threats to whistle blowers' lives will be treated seriously and investigated. Overstrand Municipality has a law enforcement unit that may be assigned to protect whistle blowers within the boundaries of the municipality. The municipality will also work closely with the SAPS to protect whistle blowers and arrest perpetrators.

When employees or Councillors are threatened for blowing the whistle, the person responsible for workplace security, together with the Assistant Chief: Law Enforcement and Task Team, must arrange security measures to protect the whistle blower at his/her place of work.

3.3 PROTECTED DISCLOSURES ACT

The Protected Disclosures Act (PDA), No. 26 of 2000, provides protection to employees from occupational detriment for certain disclosures made without malice and in good faith to certain persons within or outside the municipality.

The following disclosures are covered by the PDA:

- A criminal offence has been committed, is being committed or is likely to be committed;
- A person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- A miscarriage of justice has occurred, is occurring or is likely to occur;
- The health or safety of an individual has been, is being or is likely to be endangered;
- The environment has been, is being or is likely to be damaged;
- Unfair discrimination;
- Any of the above mentioned matters has been, is being or is likely to be deliberately concealed.

The PDA provides legal protection to employees from occupational detriment for disclosures made:

- in terms of Section 9.1.2 of the Overstrand Municipality Fraud Prevention and Anti-Corruption Policy;
- in terms of Section 13 of the Overstrand Municipality Code of Conduct for Municipal Staff;
- in terms of Section 10 of the Overstrand Municipality Code of Ethics for Municipal Staff;
- to a legal adviser;
- to the Public Protector
- to the Auditor-General;

- to a Cabinet member or member of a provincial Executive, or a body which is appointed by such members, and the disclosed impropriety falls within any description of matters which in the ordinary course are dealt with by the person or body concerned (e.g. reporting fraud with MFMA grants to the minister of finance);
- in terms of Section 8 and 9 of the PDA;
- in terms of any other policy or prescribed procedure of Overstrand Municipality regarding the reporting of transgressions.

“Occupational detriment” in relation to the working environment of an employee, means being:

- subjected to any disciplinary action;
- dismissed, suspended, demoted, harassed or intimidated;
- transferred against his or her will;
- refused transfer or promotion;
- subjected to a term or condition of employment or retirement, which is altered or kept altered to his or her disadvantage;
- refused a reference or being provided with an adverse reference, from his or her employer;
- denied appointment to any employment, profession or office;
- threatened with any of the actions referred to above;
- otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security.

In other words, the municipality is legally forbidden from doing any of the above to an employee who blew the whistle in accordance with the PDA. The forbidden actions are only related to punishment for whistleblowing and do not forbid the municipality from disciplining a whistle blower who is guilty of the offence(s) he/she disclosed in terms of the PDA.

3.4 PROTECTION FROM EMPLOYEES AND COUNCILLORS

Any employee or Councillor who victimise a person for whistleblowing will be disciplined and sanctioned, in addition to any other sanctions that may result from an investigation due to the whistleblowing.

It is the responsibility of the manager, Director or Municipal Manager, whoever is the immediate senior, to institute disciplinary proceedings against employees who victimise whistle blowers. The Municipal Council must institute disciplinary proceedings against Councillors or the Municipal Manager who victimise whistle blowers.

Where a whistle blower’s career advancement in the municipality is in the hands of a person that victimised him/her for whistle blowing or who, as a result of the

investigation that followed, was reprimanded, the interview and judgement of the whistle blower for the position will be conducted by a more senior person who was not involved in the victimisation or negatively affected by the investigation.

3.5 PROTECTION OF EMPLOYEES AND COUNCILLORS FROM EXTERNAL VICTIMISATION

Municipal corruption almost always involves an outside party. Thus there will be people from outside the municipality who will be compromised when corruption is exposed, stopped and remedial action instituted and they may become hostile towards the whistle blower.

Overstrand Municipality will not tolerate victimisation by external people against its employees and Councillors.

Any external person who victimises an employee or Councillor of Overstrand Municipality will be barred from the municipality's premises and the law enforcement unit will be instructed to arrest them for trespassing.

The municipality will assist the whistle blower in laying criminal charges for victimisation that occurs outside his/her workplace.

3.6 PROTECTION OF EXTERNAL WHISTLE BLOWERS FROM EXTERNAL VICTIMISATION

External whistle blowers could be employees of suppliers contracted by the municipality, employees/representatives of other suppliers, people from NGOs, members of rate payers associations and other members of the public.

Overstrand Municipality will do all that is reasonable under the prevailing circumstances to protect external whistle blowers from external victimisation, given the fact that the municipality has no control over the whistle blower or the victimisers.

External whistle blowers exposed to external victimisation should contact the municipality and request assistance to deal with the victimisation.

4. REPORTING WHISTLE BLOWER VICTIMISATION TO THE MUNICIPALITY

4.1 EMPLOYEES

Employees should report any victimisation they are exposed to as a result of their whistleblowing to their immediate senior not involved with the victimisation, up to and including the Municipal Manager. It is the responsibility of the senior to escalate the matter further in order to protect the employee and eliminate the victimisation.

If all the employee's seniors are involved in the victimisation, the employee should report the victimisation to the Executive Mayor or Speaker.

Councillors should report any victimisation they are exposed to as a result of their whistleblowing to the Speaker. If the victimisation is perpetrated by an Overstrand Municipality employee, the Speaker must report the victimisation to the Municipal Manager, who must report it to the employee's senior in order to institute disciplinary proceedings against the employee.

The Speaker may forward cases of Councillor victimisation to the Municipal Manager if the Municipal Administration can assist with the protection of the Councillor and/or eradication of the victimisation.

4.3 EXTERNAL WHISTLE BLOWERS

External whistle blowers should report victimisation they are exposed to as a result of their whistleblowing to a Director, the Municipal Manager, Executive Mayor or other Councillor. It is the responsibility of the person receiving the report to forward the information to the relevant municipal or external officials who may be able to assist the whistle blower.

5. INELIGIBILITY FOR PROTECTION

The protection of whistle blower provisions will not apply to a person who reports allegations knowing that they are false or for reports that have no substance to support the allegations.