# WHISTLE BLOWING POLICY

# 2022/23

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| Document last reviewed | 29 June 2022 |
| Document Duration | 1(one) year |
| Department | Risk Management |
| Document Owner | Chief Risk Officer |

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extent of the law and the implementation of appropriate prevention and detection controls. These controls include the existing financial and other controls and checking mechanisms as prescribed in legislation, policies and procedures.
Moqhaka Local Municipality takes all malpractice very seriously, whether it is committed by an employee, service provider.
This policy statement applies to all permanent and temporary employees,

The following examples demonstrate what is meant by serious malpractice:

(i) Fraud, corruption, bribery or other malpractice which could lead to a financial loss to the Municipality;
(ii) Criminal offences, e.g. Theft
(iii) Failure to comply with legal obligations
(iv) Actions which are intended to conceal any of the above.

If you become aware of any such activities or other possible malpractices, you are encouraged to follow the procedures set out in the approved Municipal fraud management policy. It will not always be clear that a particular action falls within one of these categories and you will need to use your own judgment. However, if you believe the matter to be serious, Moqhaka Local Municipality would prefer you to report your concerns rather than keep them to yourself.

### 1.4. Definition of Whistleblowing

Whistleblowing is not about informing in the negative, anonymous sense but rather about reporting about malpractice within an organization. The bravery of being prepared to blow the whistle is directly related to the cultural resistance in many organizations' transparency and accountability.
Whistleblowing is therefore a key tool for promoting individual responsibility and organizational accountability. Whistleblowers act in good faith and in the public interest to raise concerns around suspected impropriety within their place of employment. However, they often risk victimization, recrimination and sometimes dismissal.

### 1.5. Who can report?

(i) Any employee who has a reasonable belief that there is corruption or misconduct relating to any of the protected matters specified above may report under the procedure detailed in the fraud management policy.

(ii) Reporting must be without malice, in good faith and not for personal gain and the individual must reasonably believe that the information disclosed, and any allegations contained in it, are substantially true. The issues raised may relate to a manager, another employee, a group of employees, the individuals own chief-directorate/directorate or a different chief-directorate/directorate of the Municipality. The perpetrator can be an outsider, an employee, a manager, a customer or an ex-employee.

## 2. Why is whistleblowing important to Moqhaka local municipality?

Whistleblowing is an early warning system to avert possible risks to the Organization, an effective policy to encourage whistleblowing enables the Municipality to find out when something is going wrong in time to take necessary corrective action. A positive whistleblowing culture is a critical element in the success of any risk management system.

An organization that positively encourages whistleblowing stands a far better chance of demonstrating that it is properly run and managed. The existence of a working whistleblowing policy can be important in legal proceedings. This is because, in determining liability and in setting the penalties, the courts may well take the matter should be looked into by those in charge must consider their own position. Might they be disadvantaged, disciplined or even dismissed or speaking up. Press reports, which focus on whistleblowers who find themselves out of a job or out of a career, only fuel these fears. In such circumstances, it is not surprising that most employees who find themselves in this position speak only to friends or family - rather than to their employer, the person best able to look into the issue.

The result of this communication breakdown is that the employer loses a valuable opportunity to avert what might become a damaging crisis or to reassure employees that their concerns are mistaken, and also loses access to a valuable pool of information

## 3. Protected disclosure Act 2000

In South Africa the Protected Disclosures Act (no 26 of 2000) makes provision for procedures in terms of which employees in both the public and private sector who disclose information of unlawful or corrupt conduct by their employers or fellow employees are protected from occupational detriment.
This law aims to encourage honest employees to raise their concerns and report wrongdoing within the workplace without fear. This law should be welcomed as a crucial corporate governance tool to promote safe, accountable and responsive work environments.

The Protected Disclosures Act sets out a clear and simple framework to promote responsible whistleblowing by:

(i) Reassuring workers that silence is not the only safe option;
(ii) providing strong protection for workers who raise concerns internally;
(iii) reinforcing and protecting the right to report concerns to public protection agencies such as the Public Protector and Auditor-General, and
(iv) Protecting more general disclosures provided that there is a valid reason for going wider and that the particular disclosure is a reasonable one.

If a disclosure is protected it means that any "occupational detriment" that the employee who made the disclosure subsequently suffers as a result of the disclosure will attract a legal remedy. "Occupational detriment" is very widely defined by the Protected Disclosures Act and includes harassment, dismissal, transfer against the will of the employee, non-promotion, a denial of appointment, or "otherwise adversely affected".

People who are victimized in breach of the Act, whether they are dismissed or not, can refer a dispute to the Commission for Conciliation, Mediation and Arbitration for conciliation and thereafter to the Labour Court. People who are dismissed for making a protected disclosure can claim either compensation, up to a maximum amount of two years' salary, or reinstatement. People who are not dismissed but who are disadvantaged in some other way as a result of making a protected disclosure can claim compensation or ask the court for any other appropriate order.

A disclosure is a protected disclosure under the Protected Disclosures Act if:

i. The disclosure contains information about impropriety. and

ii. The disclosure has been made to the right person, according to the scheme established by the Act (see The Four Doors to Legal Protection below).

## 4. Prevention & combating of corrupt activities (PRECCA)

PRECCA was approved on the 27 April 2004 to provide for the strengthening of measures to prevent and combat fraud and corruption.

It outlines the following:

b. General offence of corruption – S3.
c. Relating to specific persons (public officers) – S4.
d. Receiving unauthorized gratification – S10.
e. Contracts – S12.
f. Procurement and tenders – S13.
g. Conflict of interest – S17.
h. Duty to report – S34.

It also emphasizes that any person who knows or ought reasonably to have known or suspected that any other person has committed fraud or any activity relating to malpractice needs to report such to the relevant authorities as explained below:

## 5. Reporting process

Employees must report the suspected fraud through one of the following:

(i) *Non-Anonymous Reporting*:
(a) Report in writing, verbally or telephonically to the line Manager
(b) Report in writing, verbally or telephonically to the Manager: Security Service
(c) Report in writing to the Municipal Manager.

(ii) *Anonymous Reporting*:
(a) The confidential Fraud Hotline: **0800 701 701.**
(b) Anonymous Letter to the Manager: Security Services.

## 6. The four doors to legal protection

### 6.1. Door 1: Legal Advice

The first door is marked "legal advice". A disclosure made by a whistle-blower to someone for the purposes of getting legal advice about the disclosure is a protected disclosure. This would include the employee's attorney or shop steward.

### 6.2. Door 2: An Internal Disclosure

The Protected Disclosures Act signals that, it is safest if concerns are raised internally. A disclosure to the employer will be protected if the whistle-blower acts in good faith, and follows the process set out for such disclosures by the employer. They should have a reason to believe that there is a problem of some sort, including the law being broken, the health or safety of people being endangered, or discrimination taking place. This is the door that the Protected Disclosures Act wants the potential whistle-blower to walk through, in everyone's interest. But it assumes that the employer will take the disclosure seriously and respond appropriately.

### 6.3. Door 3: Regulatory Disclosures

The Act reinforces and strengthens the right to make disclosures to specified regulatory bodies. These currently include:

(i) The office of the Public Protector

(ii) The office of the Auditor-General. Disclosures to these bodies will be protected where the whistleblower makes the disclosure in good faith and the employee reasonably believes the Public Protector or Auditor General would usually deal with the kind of problem that the whistleblower wants to talk about. There is no requirement that the concern should first have been raised with the employer

### 6.4. Door 4: Wider Disclosures

Employees can also be protected under the Act if they make wider disclosures (e.g., to the police, MPs, and even the media). This is known as a general protected disclosure. This protection applies where the whistleblower honestly and reasonably believes that the information and any allegation contained in it are substantially true and that the disclosure

is not made for personal gain. Crucially, to be protected there must also be a good cause for going outside and the particular disclosure must be reasonable.

## 7. Management's assurance to you

Management is committed to this policy. Moqhaka Local Municipality will ensure that any employees who make a disclosure in the above mentioned circumstances will not be penalized or suffer any occupational detriment for doing so.

Once the whistleblower has told management of their concern, the Municipality will look into it to assess initially what action should be taken. This may involve an internal inquiry or a more formal investigation. The issue raised will be acknowledged within 7 working days. If it is requested, an indication of how the Municipality proposes to deal with the matter and a likely time scale could be provided. If the decision is made not to investigate the matter reasons will be given. The Municipality will tell the whistleblower who would be handling the matter, how the whistleblower can contact him / her and whether the whistleblower's further assistance may or will be needed.

While the purpose of this policy is to enable the Municipality to investigate possible malpractice and take appropriate steps to deal with it, the Municipality will give the whistleblower as much feedback as possible. If requested, the Municipality will confirm its response to the whistleblower in writing. Please note, however, that the Municipality may not be able to tell the whistleblower the precise action to be taken where this could infringe a duty of confidence owed by the Municipality to someone else.

## 8. Policy review

The custodian of this Policy is the Municipal Risk Management unit. The policy will be reviewed annually and submitted for approval to the council.

## 9. Approval

As approved/ adopted by means of council resolution no **68** in an ordinary/special Council, held at **Kroonstad** on the **22 November 2022**

**Compiled by:**

**DR Shuping**
**Chief Risk Officer**

09/January/2023
**Date**

**Recommended for approval by:**

**C Mahlaba**
**Risk Committee Chairperson**

09/January/2023
**Date**

**Approved by:**

**Adv: M Mofokeng**
**Acting Municipal Manager**

09/January/2023
**Date**