



POLICY DOCUMENT

9.63.21

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| Policy Name | Fraud, Corruption, Misconduct and Maladministration Prevention |
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| Responsible Department: | Corporate and Community |
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| Minute reference: | CO 24/055 |
| Next review date: | Council will endeavour to review this policy 4 years after adopted date or following significant change to legislation or aspects included within this policy. |
| Applicable Legislation: | Local Government Act 1999 Local Government (Financial Management) Regulations 2011 Independent Commissioner Against Corruption Act 2012 (ICAC Act) Public Interest Disclosure Act 2018 (PID Act) |
| Related Policies: | Public Interest Disclosure Policy 9.63.27 Risk Management Policy 18.63.5 Internal Control Policy 7.63.5 Employee Conduct Policy 12.63.12 Behavioural Standards for Council Members 9.63.3 |
| Related Documents: | Public Interest Disclosure Procedure OPI SA Directions and Guidelines |

1. **INTRODUCTION**

The City of Port Lincoln ("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.

Council has established a number of policies and procedures to assist with the prevention and control of Fraud, Corruption, Misconduct and Maladministration, and this Policy forms part of that suite of internal controls. The effectiveness of these procedures will be continuously reviewed and assessed and will remain up to date with any future developments in Fraud, Corruption, Maladministration and Misconduct prevention controls techniques.

2. **PURPOSE**

The purpose of this Policy is to ensure that the City of Port Lincoln:

properly fulfils its responsibilities under the Independent Commission Against Corruption Act 2012 (ICAC Act);

takes appropriate steps towards compliance and relevant legislation, policies and instruments;

provides a clear statement to all employees through practices, policies and procedures that fraudulent conduct, misconduct and/or maladministration is not acceptable and will not be tolerated;

protects Council assets, interests and reputation from the risks associated with fraudulent conduct, misconduct and/or maladministration;

outlines the Council's approach to the prevention, detection and response to Fraud, Corruption, Misconduct and Maladministration;

fosters an ethical environment and culture which is conscious of, actively discourages, does not tolerate and appropriately deals with Fraud, Corruption, Misconduct and Maladministration;

identifies the relevant responsibilities of council members, employees, the Chief Executive Officer, managers, supervisors and Council's Audit and Risk Committee;

educates employees and council members about their obligations to report conduct reasonably suspected of being Fraud, Corruption, Misconduct and/or Maladministration;

evaluates practices, policies and procedures it has in place in order to further advance Council systems for preventing or minimising Fraud, Corruption, Misconduct and Maladministration; and

develops a consistent approach to the management of relevant conduct across the organisation through the establishment and maintenance of effective systems and internal controls to guard against Fraud, Corruption, Misconduct and Maladministration.

3. SCOPE

This Policy applies to all council members, employees, contractors, consultants and volunteers of the Council. It is intended to complement and be implemented in conjunction with other relevant Council policies and procedures including:

Public Interest Disclosure Policy 9.63.27

Public Interest Disclosure Procedure

Risk Management Policy 18.63.5

Internal Control Policy 7.63.5

Employee Conduct Policy 12.63.12

Behavioural Standards for Council Members 9.63.3

Council Members Allowance & Benefits Policy 9.63.20

4. DEFINITIONS

For the purposes of this Policy the definitions that apply are included in Appendix 1 to this policy.

5. PREVENTION

The Council recognises that the occurrence of Fraud, Corruption, Misconduct and Maladministration will be more likely to prevail in an administrative environment where opportunities exist for waste and abuse.

The Council also recognises that the most effective way to prevent the occurrence of Fraud, Corruption, Misconduct and Maladministration is to instil and continually reinforce a culture across the Council of acting lawfully, ethically and in a socially responsible manner, and to support this culture with the implementation of appropriate internal control mechanisms.

The Council expects employees and council members will assist in facilitating a sound ethical culture and preventing Fraud, Corruption, Misconduct and Maladministration by:

- understanding the responsibilities of their position;
- familiarising themselves with the Council policies and procedures and adhering to them;
- understanding what behaviour constitutes fraudulent or corrupt conduct, misconduct and/or maladministration;
- maintaining an awareness of the strategies that have been implemented by Council to minimise Fraud, Corruption, Misconduct and Maladministration;
- being continuously vigilant to the potential for Fraud, Corruption, Misconduct and Maladministration to occur in the council environment; and
- reporting suspected or actual occurrences of Fraud, Corruption, Misconduct and Maladministration in accordance with Part 7 and 8 of this Policy.

6. **ROLES AND RESPONSIBILITIES**

Every person that this policy applies to has the following responsibilities:

- a) Comply with this policy and any related legislation, policy, protocol or procedure
- b) At all times in the performance of duties or in association with their role with Council, act in an ethical manner and in accordance with any relevant code or policy.
- c) Remain scrupulous in the use of Council information, assets, funds, property, goods or services
- d) Where relevant, comply with the *Public Interest Disclosure Act 2018*
- e) Report all instances of conduct known or reasonably suspected to be Fraud, Corruption, Maladministration or Misconduct in accordance with Council's policies
- f) Cooperate as required with any investigations undertaken whether internally or by an external authority

As well as the responsibilities above the following outlines the responsibilities of key individuals and groups with respect to Fraud, Corruption, Misconduct and Maladministration prevention within Council.

6.1. Council Members

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

- a) Promote a culture and environment in which Fraud, Corruption, Misconduct and Maladministration is discouraged and not tolerated
- b) promotes community awareness of the Council's commitment to the prevention of Fraud, Corruption, Misconduct and Maladministration;
- c) Undertake awareness training or education regarding Fraud, Corruption, Maladministration and Misconduct
- d) ensures that, where appropriate, proper investigations are conducted into allegations that involve Fraud, Corruption, Misconduct or Maladministration;
- e) review the effectiveness of the implemented policies that ensure risks are identified and that controls implemented by management are adequate

6.2. Chief Executive Officer

The Chief Executive Officer is responsible for:

- a) Promoting a culture and environment in which Fraud, Corruption, Misconduct and Maladministration is discouraged and not tolerated;
- b) Providing adequate security, including the provision of secure facilities for storage of assets, to assist in the prevention of Fraud, Corruption, Misconduct and Maladministration
- c) Ensure effective screening (e.g. criminal history) of employees, prospective employees and volunteers (as relevant) is undertaken, including by use of appropriate and effective contractual arrangement
- d) Ensuring all powers and authorities are appropriately delegated in order to minimise the risk of Fraud, Corruption, Misconduct or Maladministration
- e) Develop mechanisms for receiving allegations of Fraud, Corruption, Misconduct or Maladministration including appointing a responsible officer
- f) Ensuring that where appropriate, proper investigations are conducted into allegations of Fraud, Corruption, Misconduct or Maladministration
- g) Facilitate cooperation with any investigations undertaken by an external authority
- h) ensuring procedures are in place to deter fraudulent or corrupt activity from occurring
- i) Ensuring appropriate internal controls are in place and operating effectively to minimise the risks of incidents;
- j) Provides mechanisms for receiving allegations of Fraud, Corruption, Misconduct and Maladministration
- k) Undertake risk assessments on a regular basis
- l) Review the effectiveness of the implemented policies that ensure risks are identified and that controls implemented by management are adequate

6.3. Executive and Managers

Executive and Managers are responsible for:

- a) Promoting a culture and environment in which Fraud, Corruption, Misconduct and Maladministration is discouraged and not tolerated;
- b) ensuring all employees under their supervision have been educated regarding Fraud, Corruption, Maladministration and Misconduct
- c) Providing adequate security, including the provision of secure facilities for storage of assets, to assist in the prevention of Fraud, Corruption, Misconduct and Maladministration
- d) Develop procedures to deter fraudulent or corrupt activity from occurring
- e) Ensure appropriate internal controls are in place and operating effectively to minimise the risks of incidents;
- f) identifying potential fraud and corruption risks; and
- g) leading by example to promote ethical behaviour.

6.4. Employees

Employees are responsible for:

- a) Promoting a culture and environment in which Fraud, Corruption, Misconduct and Maladministration is discouraged and not tolerated
- b) performing their functions and duties with care, diligence, honesty and integrity;
- c) conducting themselves in a professional manner at all times;
- d) Undertaking awareness training or education regarding Fraud, Corruption, Maladministration and Misconduct
- e) Develop procedures to deter fraudulent or corrupt activity from occurring
- f) adhering to this policy and other Council procedures that have been established to prevent Fraud, Corruption, Misconduct and Maladministration;
- g) taking care for Council's property which includes avoiding the waste or misuse of the Council's resources;
- h) maintaining and enhancing the reputation of the Council;
- i) remaining scrupulous in their use of the Council's information, assets, funds, property, goods or services; and

6.5. Audit & Risk Committee

The Audit & Risk Committee are responsible for:

- a) ensuring appropriate internal controls are in place and operating effectively to minimise risks of incidents
- b) reviewing and evaluating the effectiveness of the policies, systems and procedure established to ensure that risks are identified and that the controls implemented by management are adequate.

7. **REPORTING FRAUD OR CORRUPTION IN PUBLIC ADMINISTRATION,**

Any Public Officer who has or acquires knowledge of actual or suspected corruption in public administration in the Council or in other public administration, must report this information to the Office of Public Integrity (OPI) as soon as practicable.

All reasonable suspicions of Corruption in public administration, must be reported to the OPI in accordance with the reporting requirements as identified in the Directions and Guidelines issued by the Director of OPI, pursuant to Section 18B of the ICAC Act 2012.

A report to the OPI can be made using the online form on the OPI website www.publicintegrity.sa.gov.au. Other ways in which a public officer can make a report to the OPI are also set out on the OPI website.

When reporting actual or suspected Corruption in public administration in the Council or in other public administration to the OPI under the *ICAC Act*, any requirements of other documents that form part of the Council's Fraud, Corruption, Misconduct and Maladministration framework (including those documents identified at clause 3 of this Policy) should also, to the extent possible, be adhered to.

Nothing in this section is intended to prevent a Public Officer from reporting suspected Corruption in public administration in the Council or in other public administration to a Relevant Authority, like a Council's Responsible Officer, for the purposes of the *PID Act*. Such a disclosure may be protected

under the *PID Act* and, if made to the Council's Responsible Officer, will be managed in accordance with the Council's Public Interest Disclosure Policy and Procedure. Public Officers are encouraged to have regard to the Council's Public Interest Disclosure Procedure when determining where to direct a disclosure.

Further information about reporting requirements is available at the Office for Public Integrity SA website www.publicintegrity.sa.gov.au

8. REPORTING MISCONDUCT AND MALADMINISTRATION IN PUBLIC ADMINISTRATION

Where an employee, council member, contractor or volunteer has a reasonable suspicion or acquires knowledge of actual Misconduct or Maladministration in public administration, they should report the matter either direct to the OPI or to Council's Responsible Officer under Section 12 of the *PID Act*. Such a disclosure may be protected under the *PID Act* and will be managed in accordance with the Council's Public Interest Disclosure Policy and Public Interest Disclosure Procedure.

9. CONFIDENTIALITY AND PUBLICATION PROHIBITIONS

A person who receives information knowing that the information is connected with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under the *ICAC Act* must not disclose that information, other than in the limited circumstances set out in section 54(3) of the *ICAC Act*.

A person must not, other than as authorised by the Commissioner or a court, publish or cause to be published any of the following:

- a) information tending to suggest that a particular person is, has been, may be, or may have been, the subject of a complaint, report, assessment, investigation or referral under the *ICAC Act*;
- b) information that might enable a person who has made a complaint or report under the *ICAC Act* to be identified or located;
- c) the fact that a person has made or may be about to make a complaint or report under the *ICAC Act*;
- d) information that might enable a person who has given or may be about to give information or other evidence under the *ICAC Act* to be identified or located;
- e) the fact that a person has given or may be about to give information or other evidence under this Act; or
- f) any other information or evidence which the Commissioner has prohibited from publication.

A failure to comply with the requirements in this part can constitute an offence. A Council employee who fails to comply with these requirements may also face disciplinary action which may include dismissal from employment.

In addition to the requirements of this part, council members and employees should also be mindful to the confidentiality provisions in the Council's Public Interest Disclosure Policy.

10. INVESTIGATION

Unless otherwise directed by OPI or SAPOL, the CEO or the Executive Management will investigate how the alleged Corruption, Fraud, Misconduct or Maladministration occurred to determine the cause for the breakdown in controls and identify if any recommendations as to changes in policies, procedures or internal controls should be made to the Council.

The investigation should:

- a) occur as soon as practicable after the alleged incident; and
- b) not impose on or detract from any investigation being undertaken by the OPI or SAPOL;
- c) have regard to any recommendations in any report received from the Commissioner or SAPOL on the incident.

The CEO or the Executive Management will, in conducting the investigation and deciding whether and how to report on the investigation to Council, have regard to the provisions of the Public Interest Disclosure Policy, and any confidentiality requirements under the *PID Act* and/or *ICAC Act*.

Action taken by the CEO or the Executive Management following an investigation into alleged Corruption, Fraud, Misconduct or Maladministration may include disciplinary action against any employee involved in the incident.

11. FALSE DISCLOSURE

A person who knowingly makes a false disclosure or a false or misleading statement in a complaint or report will be guilty of an offence under the *ICAC Act* and the *PID Act*.

A Council employee who makes a false disclosure may also face disciplinary action which may include dismissal from employment.

12. EDUCATING FOR AWARENESS

The Council recognises that the success and credibility of this Policy 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:

- a) 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;
- b) referring to the Council's Fraud, Corruption, Misconduct and Maladministration initiatives in the Council's Annual Report; and
- c) facilitating public access to all of the documents that constitute the Council's Fraud, Corruption, Misconduct and Maladministration framework, including those documents identified at clause 3 of this policy.

13. RELEVANT DELEGATED POWERS AND DUTIES

Any actions or decisions made regarding this policy, will be enacted upon as per Council's current Delegations Register.

14. APPENDIX 1**Definitions:**

Commissioner means the person holding or acting in the office of the Independent Commissioner Against Corruption per section 4 of the *ICAC Act*, who has the powers and functions described at section 7 of the *ICAC Act*.

Corruption in public administration, as provided for in section 5(1) of the *ICAC Act*, means conduct that constitutes:

- 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; or
- b) an offence against the *Public Sector (Honesty and Accountability) Act 1995* or the *Public Corporations Act 1993*, or an attempt to commit such an offence; or
- c) an offence against the *Lobbyist Act 2015*, or an attempt to commit such an offence; or
- d) 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
- e) 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 affect the commission of the offence.

Council means City of Port Lincoln

Directions and Guidelines means the Directions and Guidelines issued by the Commissioner and as in force from time to time pursuant to section 18B of the *ICAC Act* and/or section 14 of the *Public Interest Disclosure Act 2018 (PID Act)*, which are accessible via the Commissioner's website (www.icac.sa.gov.au).

Employee refers to all the Council's employees whether they are working in a full-time, part-time or casual capacity.

False disclosure is a disclosure of information relating to Fraud or Corruption, Maladministration or Misconduct that is made by a person who knows the information to be false.

Fraud¹ includes an intentional dishonest act or omission done with the purpose of deceiving.

ICAC Act is the Independent Commission Against Corruption Act 2012.

Maladministration in public administration has the same meaning as defined in the *Ombudsman Act 1972* and

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

Misconduct in public administration has the same meaning as defined in the *Ombudsman Act 1972* and means:

- a) an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer; or

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 inquiry agencies, public authorities and public officers;
- c) refer complaints and reports to inquiry agencies, public authorities and public officers or to determine no action in accordance with the *ICAC Act*;

PID Act means the Public Interest Disclosure Act 2018.

Public administration defined at section 4 of the *ICAC Act* and, 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. For the purposes of this Policy, references to Corruption, Misconduct and Maladministration are taken to mean references to such conduct in public administration.

Public Officer has the meaning given by section 4 and Schedule 1 of the *ICAC Act*, and includes:

- a council member; and
- an employee or officer of the Council;

¹ There is no statutory or agreed common law definition of Fraud. Offences addressed under Part 5 and Part 6 of the *Criminal Law Consolidation Act 1935* are considered to constitute Fraud offences. An ordinary or lay meaning of Fraud is 'to obtain dishonestly that which the person is not entitled to'. Fraud is a broad label applicable to conduct / practices that involve knowingly dishonest or deceitful behaviour meant to obtain an unjust benefit. Dishonesty is the key element in fraudulent behaviour, as provided for under section 131 of the *Criminal Law Consolidation Act 1935*.

Publish is defined in section 4 of the *ICAC Act*, and means publish by:

- a) newspaper, radio or television;
- b) internet or other electronic means of creating and sharing content with the public or participating social networking with the public; or
- c) any similar means of communication with the public.

Relevant Authority for the purposes of the *PID Act* means the person or entity that receives an appropriate disclosure of public interest information in accordance with the *PID Act*.

Responsible Officer is a person who has completed any training courses approved by the Commissioner for the purposes of the *Public Interest Disclosure Regulations 2019* and has been designated by the Council as a responsible officer under section 12 of the *PID Act*.