

# Fraud, Corruption, Misconduct and Maladministration Prevention Policy



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## PURPOSE

The purpose of this Policy is to:

- Document Council's approach to the prevention, detection, control and response to Fraud, Corruption, Misconduct and Maladministration in connection with Council's activities and by Public Officers
- Provide a statement to the community and Public Officers that Fraudulent Conduct, Misconduct and Maladministration is unacceptable and will not be tolerated
- Protect Council's assets and the integrity, security and reputation of Council from the risk of incidents of Fraudulent Conduct, Misconduct and Maladministration
- Ensure Public Officers are aware of their individual legislative reporting obligations to report conduct reasonably suspected of being Fraud, Corruption, Misconduct and/or Maladministration, and the manner in which such reports must be made
- Adopt risk management strategies for the identification, mitigation and monitoring of Fraud, Corruption, Misconduct and Maladministration
- Identify relevant responsibilities.

## POLICY

The City of Tea Tree Gully is committed to acting in the best interest of the community and to upholding the principles of honesty, integrity, accountability and transparency, which are all key components of good governance and Council's Corporate Values.

Council recognises that Fraud, Corruption, Misconduct and Maladministration in Public Administration have the potential to cause significant financial loss and/or reputational damage, and that it is essential for the prevention and control of these risks to feature within Council's systems and procedures.

This policy applies to all Public Officers of Council.

## General Principles

Council is committed to the prevention of Fraud, Corruption, Misconduct and Maladministration by:

- Fostering a culture of honesty, integrity and respect and promoting an environment in which Fraud, Corruption, Misconduct and Maladministration is not tolerated
- Educating Public Officers on their obligations to prevent Fraud, Corruption, Misconduct and Maladministration within Council
- Taking appropriate steps to comply with relevant legislation, policies and instruments
- Generating community awareness of Council's commitment to preventing Fraud, Corruption, Misconduct and Maladministration
- Applying risk management principles and techniques in the identification, mitigation, assessment and monitoring of Fraud, Corruption, Misconduct and Maladministration risks
- Establishing and maintaining an effective system of internal controls, and fostering an environment in which proactive control is the responsibility of all Public Officers
- Evaluating the practices, policies, procedures and controls in place in order to further advance Council's systems for preventing or minimising Fraud, Corruption, Misconduct and Maladministration
- Implementing a proactive and robust internal audit program that focuses on high risk areas

- Establishing formal procedures for receiving allegations of Fraud, Corruption, Misconduct and Maladministration
- Taking appropriate action in response to allegations of Fraud, Corruption, Misconduct and Maladministration, including reporting allegations in accordance with the *ICAC Act* and the Directions and Guidelines
- Taking appropriate disciplinary action as necessary where allegations against Public Officers are substantiated.

## Prevention

Council recognises that:

- The occurrence of Fraud, Corruption, Misconduct and Maladministration may prevail in an administrative environment where opportunities exist for waste, abuse and maladministration of public resources, and
- The most effective preventative action Council can take is to promote an ethical environment in which internal controls have been implemented.

Council expects that all Public Officers will assist in preventing Fraud, Corruption, Misconduct and Maladministration by:

- Understanding their responsibilities
- Familiarising themselves with Council's procedures and adhering to them
- Understanding what behaviour constitutes Fraudulent Conduct, Misconduct and Maladministration
- Maintaining an awareness of the strategies that have been implemented to minimise Fraud, Corruption, Misconduct and Maladministration, and being vigilant to the potential for their occurrence
- Reporting reasonably suspected or actual occurrences of Fraud, Corruption, Misconduct and Maladministration as envisaged by this Policy.

## Specific Responsibilities

### Elected Members

Elected Members as a decision making body are responsible for:

- Promoting Council's commitment to the prevention of Fraud, Corruption, Misconduct and Maladministration to employees, volunteers and the community
- Reporting any suspected or actual occurrences of Fraud, Corruption, Misconduct and Maladministration as envisaged by this Policy, and
- Complying with the Code of Conduct for Council Members.

### CEO

The CEO, as the officer who is responsible for the efficient and effective operation of the organisation, will:

- Promote Council's commitment to the prevention of Fraud, Corruption, Misconduct and Maladministration to Council's employees, volunteers and the community

- Establish and implement processes and systems to assist with the prevention and control of Fraud, Corruption, Misconduct and Maladministration
- Regularly review the effectiveness of Council's processes and systems to ensure they are adequate, current and legislatively compliant, and
- Report any suspected or actual occurrences of Fraud, Corruption, Misconduct and Maladministration as envisaged by this Policy.

## Corporate Leaders

Corporate Leaders are responsible for:

- Leading by example to promote and foster a culture of ethical behaviour both generally and in their respective departments
- Creating an environment in which Fraud, Corruption, Misconduct and Maladministration is discouraged and readily reported
- Ensuring compliance with this Policy and promoting it
- Reporting any suspected or actual occurrences of Fraud, Corruption, Misconduct and Maladministration as envisaged by this Policy
- Ensuring all employees and volunteers for whom they are responsible have received Fraud, Corruption, Misconduct and Maladministration awareness training/education, including in relation to the standard of conduct expected as outlined in the Employee Conduct Policy
- Identifying, assessing and documenting in departmental risk registers Fraud, Corruption, Misconduct and Maladministration risks in their area of responsibility and identifying and implementing appropriate risk management strategies, and
- Ongoing monitoring, reviewing and reporting of risks.

## Employees and Volunteers

Employees and volunteers are responsible for:

- Demonstrating their commitment to the prevention, detection and reporting of any actual or suspected Fraud, Corruption, Misconduct and Maladministration by behaving in a manner consistent with the Employee Conduct Policy, Volunteer Code of Conduct (in the Volunteer Handbook) and Council's Values and the Directions and Guidelines
- Adhering to this Policy and other Council procedures that have been established to prevent Fraud, Corruption, Misconduct and Maladministration
- Taking care of Council's property
- Maintaining and enhancing Council's reputation
- Remaining scrupulous in their use of Council's information, assets, funds, property, goods and/or services
- Understanding their delegations and ensuring decisions are made strictly in accordance with such delegations, and
- Participating in any required awareness and education training.

## Audit Committee

Council's Audit Committee is an advisory body that plays a pivotal role in Council's governance framework. It provides independent oversight in the areas of risk, control, compliance and financial reporting. The Audit Committee will:

- Review this Policy and make recommendations for amendments as appropriate
- Review the approach to maintaining an effective internal control framework to seek to ensure it is sound and internal controls are being consistently applied
- Evaluate associated controls in relation to the risk of Fraud, Corruption, Misconduct and Maladministration as part of the risk management process.

## Risk Assessment Process

Council's main objective in the prevention and control of Fraud, Corruption, Misconduct and Maladministration is to minimise the likelihood of such occurrences. This objective will be achieved by:

- Identifying risks and documenting them (where appropriate) on departmental risk registers
- Determining and observing risk management strategies to control risks
- Defining responsibility for and the timeframe within which the strategies will be implemented
- Regularly reviewing, monitoring and reporting of risks.

Corporate Leaders must uphold and monitor control strategies, initiatives and systems within their area of responsibility. They must be alert to the possibilities of Fraud, Corruption, Misconduct and Maladministration occurring within their business areas, assess risks associated with their particular activities and actively manage those risks within Council's Enterprise Risk Management Framework and in accordance with Council's Risk Management Policy.

## Reporting and Investigation

### Office of Public Integrity (OPI)

The OPI manages complaints about Public Administration with a view to identifying Fraud, Corruption, Misconduct and Maladministration in Public Administration. The OPI's role is to ensure that complaints are dealt with by the most appropriate person or body and to achieve an appropriate balance between the public interest in exposing Fraud, Corruption, Misconduct and Maladministration in Public Administration, and the public interest in avoiding undue prejudice to a person's reputation.

## Reporting Corruption or Serious or Systemic Misconduct and Maladministration

Any Public Officer who has or acquires knowledge of actual or suspected Corruption, or Serious or Systemic Misconduct or Maladministration in the Council or in other Public Administration, must report this information to the OPI as soon as practicable.

All reasonable suspicions of Corruption or Serious or Systemic Misconduct or Maladministration must be reported to the OPI in accordance with the Commissioner's reporting requirements as identified in the Directions and Guidelines.

A report to the OPI must be made using the online report form available at: <https://icac.sa.gov.au/opi>.

When reporting actual or suspected Corruption, or Serious or Systemic Misconduct or Maladministration in the Council to the OPI under the *ICAC Act*, any requirements of other documents that form part of Council's Fraud, Corruption, Misconduct and Maladministration framework should also, to the extent possible, be adhered to.

Nothing in this section is intended to prevent a Public Officer from reporting suspected Corruption or Serious or Systemic Misconduct or Maladministration in the Council or in other Public Administration to a Relevant Authority, 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.

## Reporting Fraud, Misconduct and Maladministration

Where a Public Officer or volunteer has or acquires knowledge of actual or suspected Fraud or other similar conduct that does not constitute Corruption or Systemic or Serious Misconduct or Maladministration (and is therefore not required to be reported to OPI), that knowledge should be reported to Council's Responsible Officer. Such a disclosure may be protected under the *PID Act* and will be managed in accordance with Council's Public Interest Disclosure Policy and Procedure.

## Confidentiality and Public Prohibitions

A person who receives information knowing that it 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:

- 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*
- information that might enable a person who has made a complaint or report under the *ICAC Act* to be identified or located
- the fact that a person has made or may be about to make a complaint or report under the *ICAC Act*
- 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
- the fact that a person has given or may be about to give information or other evidence under this Act; or
- 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 termination of employment.

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

## Action by the CEO following a report and investigation into Fraud, Corruption, Misconduct and/or Maladministration

Unless otherwise directed by OPI or SAPOL, the CEO 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:

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

The CEO 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 *ICAC Act*.

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

## 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.

## Increasing Awareness

Council recognises that the success of this Policy will largely depend upon how effectively it is communicated throughout the organisation and beyond. Council will take proactive steps towards ensuring that the wider community is aware of Council's zero-tolerance stance towards Fraud, Corruption, Misconduct and Maladministration.

Council will increase community awareness by:

- Promoting Council's initiatives and policies regarding the control and prevention of Fraud, Corruption, Misconduct and Maladministration on Council's website and at Council's Civic Centre
- Educating new employees and volunteers as part of its induction process
- Making reference to Council's prevention initiatives in its Annual Report, and
- Facilitating public access to this policy and related documents.

## LEGISLATIVE FRAMEWORK

There is no legislative requirement for Council to have a policy relating to this area; however, it is considered best practice and consistent with principles of good governance.

The following legislation applies to this Policy:

### [Independent Commissioner against Corruption Act 2012](#)

The *ICAC Act* establishes the Office of the Independent Commission against Corruption (the Commissioner) and the Office of Public Integrity (OPI). The role of the Commissioner is to:

- identify, investigate, and refer to prosecution, Corruption in Public Administration
- assist in identifying and dealing with Misconduct and Maladministration in Public Administration; and
- Facilitate educational programs to prevent Corruption, Misconduct and Maladministration.

The Commissioner may perform functions under the *ICAC Act* to address any issue of Corruption, Misconduct or Maladministration in Public Administration. However, the primary function of the Commissioner is to investigate allegations of Corruption in Public Administration and to refer Serious or Systemic Misconduct or Maladministration in Public Administration to an Inquiry Agency or to a Public Authority.

### [Local Government Act 1999](#)

Section 125 of the *Local Government Act* requires Council to implement and maintain appropriate internal control policies, practices and procedures to safeguard Council's assets.

### [Public Interest Disclosure Act 2018](#)

The Public Interest Disclosure Act encourages and facilitates disclosures of certain information in the public interest by ensuring that proper procedures are in place for making and dealing with such disclosures and by providing protection for persons making such disclosures; and for other purposes.

The Council's Public Interest Disclosure Policy applies in respect of such disclosures.

## Other references

Council's document including:

- Elected Member Allowances and Benefits Policy
- Employee Conduct Policy
- Gift registers
- Enterprise Risk Management Framework
- Fees and Charges Register
- Risk Management Policy
- Public Interest Disclosure Policy
- Public Interest Disclosure Procedure
- Volunteer Handbook

External document including:

- Code of Conduct for Council Members
- Guide: Gifts and Benefits under the Code of Conducts (Local Government Association)
- [ICAC Directions and Guidelines](#)
- Australian Standard AS8001:2008 Fraud and Corruption Control\_ This Standard provides guidance regarding the control of Fraud and Corruption that is applicable to all entities (including local government) that engage in business or business-like activities.



## STRATEGIC PLAN/POLICY

### Strategic Plan

Council's Strategic Plan is supported by an Organisation Plan which focuses on five key themes of organisational excellence. The relevant themes are People and Leadership, Governance and Finance and Systems. They deal with how Council defines roles, powers and responsibilities within the organisation with the aim of modelling best practice in local government.

### Organisation Plan

Council's Strategic Plan is supported by an Organisation Plan which focuses on five key themes of organisational excellence. The themes most relevant to this report are: People and Leadership; Customers and community relations; Governance; Finance and systems, Continuous improvement

## DEFINITIONS

For the purposes of this policy the following definitions apply:

### CEO

Refers to the Chief Executive Officer (including their delegate) of the City of Tea Tree Gully.

### Commissioner

The person appointed under the *ICAC Act* as the Independent Commissioner against Corruption.

### Corporate Leader

Means any employee who directly supervises other employees or volunteers, and is responsible for the management of a Council Department.

### Corruption (in Public Administration)

Is as defined in section 5(1) of the *ICAC Act* and means conduct that constitutes:

- An offence against Part 7 Division 4 (Offences relating to Public Officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:
  - Bribery or Corruption of Public Officers
  - Threats or reprisals against Public Officers
  - Abuse of public office
  - Demanding or requiring benefit on the basis of public office, and
  - Offences relating to appointment to public office.
- 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; and
- Any of the following in relation to an offence referred to in a preceding paragraph:
  - Aiding, abetting, counselling or procuring the commission of the offence
  - Inducing, whether by threats or promises or otherwise, the commission of the offence

- Being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence
- Conspiring with others to effect the commission of the offence.

### Council

Is the City of Tea Tree Gully.

### Directions and Guidelines

Is a reference to the Directions and Guidelines issued pursuant to section 20 of the *ICAC Act* and section 14 of the *Public Interest Disclosure Act 2018*, which are available on the Commissioner's website ([www.icac.sa.gov.au](http://www.icac.sa.gov.au))

### Employee

Any person who is employed by Council, whether they are working in a full-time, part-time or casual capacity.

### False disclosure

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

### Fraud

Includes an intentional dishonest act or omission done with the purpose of deceiving. Offences addressed under Part 5 and Part 6 of the *Criminal Law Consolidation Act 1935* are considered to constitute Fraud offences. An ordinary 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.

### ICAC

Independent Commissioner against Corruption as appointed under the *ICAC Act*.

### *ICAC Act*

Independent Commissioner against Corruption Act 2012

### Inquiry Agency

As listed in section 4 of the *ICAC Act*. Relevant in the context of Local Government, this includes the Ombudsman, and also includes:

- The Police Ombudsman, and
- A person declared by regulation to be an Inquiry Agency (as at the last Policy review, no persons are declared by regulation for this purpose).

### Maladministration - (in Public Administration)

Is defined in section 5(4) of the *ICAC Act*, and means:

- 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 and
- Conduct of a Public Officer involving substantial mismanagement in or in relation to the performance of official functions.

It includes conduct resulting from impropriety, incompetence or negligence and

- Is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

### Misconduct - (in Public Administration)

Is defined in section 5 (3) of the *ICAC Act*, and means:

- Contravention of a code of conduct by a Public Officer while acting in his or her capacity as a Public Officer that constitutes a ground for disciplinary action against the officer, or
- Other Misconduct of a Public Officer while acting in his or her capacity as a Public Officer.

For the purposes of the *ICAC Act*, Misconduct or Maladministration in Public Administration will be taken to be **Serious or Systemic** if the Misconduct or Maladministration —

- is of such a significant nature that it would undermine public confidence in the relevant public authority, or in Public Administration generally; and
- has significant implications for the relevant public authority or for Public Administration generally (rather than just for the individual Public Officer concerned).

### OPI - Office for Public Integrity

Is the office established under the *ICAC Act* that has the function to:

- Receive and assess complaints about Public Administration from members of the public
- Receive and assess reports about Corruption, Misconduct and Maladministration in Public Administration from the Ombudsman, the Council and Public Officers
- Refer complaints and reports to inquiry agencies, Public Authorities and Public Officers in circumstances approved by the Commissioner, or make recommendations as to whether and by whom complaints and reports should be investigated
- Give directions or guidance to public authorities in circumstances approved by the Commissioner
- Perform other functions assigned to the Office by the Commissioner.

### *PID Act*

Means the *Public Interest Disclosure Act 2018*.

### Public Administration

Defined in section 4 of the *ICAC Act* and means (without limitation) an administrative act within the meaning of the *Ombudsman Act 1972* 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 Authorities and Public Officers

Are for the purposes of the *ICAC Act*, those authorities and officers listed in Schedule 1 of the *ICAC Act*.

Relevant in the context of this Policy:

- Public Authority – includes the Council in addition to:
  - The Governor
  - Both Houses of Parliament
  - South Australian government departments, agencies and statutory bodies, and
  - Other local councils
- Public Officer - includes:
  - An Elected Member of Council, including the Mayor
  - An Independent Member of Council's Development Assessment Panel

- An Independent Member of a Council Committee or subsidiary of Council
- A member of a Council regional subsidiary
- An officer or Employee of Council (including a person performing contract work)
- An officer or Employee of the Local Government Association of South Australia.

### Publish

Is defined in Section 4 of the *ICAC Act* and means publish by:

- Newspaper, radio or television
- Internet or other electronic means of creating and sharing content with the public or participating in social networking with the public or
- 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

Refers to 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*.

### SAPOL

South Australian Police.

### Waste

Public resources includes the irregular or unauthorised use of public resources.

## POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.

## ACCESSIBILITY

This Policy and Council's Fees and Charges Register are available to be downloaded free of charge from Council's website: [www.cttg.sa.gov.au](http://www.cttg.sa.gov.au)

Hard copies, for a fee, can be provided in accordance with Council's Fees and Charges Register at Council's Civic Centre at 571 Montague Road, Modbury SA 5092.