



# Fraud and corruption prevention policy

<b>Classification</b>	Policy
<b>Strategic reference</b>	Goal 4 Organisational : Effective governance and organisational efficiencies
<b>Relevant legislation</b>	Local Government Act 1999 Crime and Misconduct Act 2001 Independent Commissioner Against Corruption Act 2012 Whistleblowers Protection Act 1993
<b>Relevant documents</b>	Internal Controls Policy & procedures Elected Member code of conduct Elected members allowance, Benefits and General Policy Employee Code of Conduct Risk Management Policy Whistleblower Protection Policy Council Delegations
<b>Responsible officer</b>	Manager Corporate Services
<b>Date adopted</b>	May 2019
<b>Next review date</b>	May 2022

## 1. Introduction

Southern Mallee District Council ("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.

The Council recognises that Fraud and Corruption have the potential to cause significant financial and non-financial harm and that, therefore, the prevention and control of Fraud and Corruption should feature predominantly within the systems and procedures of a responsible Council.

There are a number of procedures to assist with the prevention and control of fraud and corruption. The effectiveness of these procedures will be continuously reviewed and assessed and will remain up to date with any future developments in fraud and corruption prevention and control techniques. The Council's vision for fraud and corruption prevention includes Internal Controls [Policies and Procedures], Council Members Code of Conduct and Employees Code of Conduct, Procurement Policy and Gift Benefits and Hospitality Policy.

## 2. Policy statement

This Policy is designed to protect public funds and assets and the integrity, security and reputation of the Council. It outlines Council's approach to the prevention, detection and control of fraudulent and/or corrupt activity and summarises the associated responsibilities of Council Members and Council Employees.

Council will not tolerate fraudulent or corrupt activity and is committed to its control and prevention by:

- Complying with the requirements of the Independent Commissioner Against Corruption Act 2012 (ICAC Act).
- establishing and maintaining an effective system of internal controls and enforcing compliance with those controls;

- regularly undertaking risk assessments to identify circumstances in which fraud and corruption could potentially occur;
- implementing fraud and corruption prevention and mitigation strategies in its day to day operations;
- establishing formal procedures for the investigation of allegations relating to fraudulent and/or corrupt activity;
- taking appropriate action in response to allegations of fraudulent and/or corrupt activity including reporting allegations in accordance with the ICAC Act and the reporting system established by the Independent Commissioner Against Corruption (ICAC) under section 20 of the ICAC Act and where allegations are substantiated, in addition to applicable criminal sanctions, may take disciplinary action in accordance with the Codes of Conduct for Council Members and Council Employees or , if relevant, a Council Employee's contract of employment with the Council;
- ensuring all Council Employees and Council Members are aware of their obligations in regards to the prevention of fraud and corruption within the Council and the inclusion of preliminary education in any induction process;
- active participation in education and evaluation of practices relevant to Fraud and Corruption;
- fostering an ethical environment in which dishonest and fraudulent behaviour is actively discouraged; and
- generating community awareness of the Council's commitment to the prevention of fraud and corruption.

This Policy applies to all disclosures that relate to the actual or suspected occurrence of fraud and corruption within the Council.

### 3. **Policy Scope**

This Policy is intended to complement and be implemented in conjunction with other Council policies, including:

- Whistleblowers Protection Policy;
- Risk Management Policy
- Internal Control Policy & Procedures;
- Code of Conduct for Council Employees;
- Code of Conduct for Council Members;
- Council Members Allowances / Benefits and General Policy

#### 4. Definitions

For the purposes of this Policy the following definitions apply:

**Corruption** in public administration means:

- 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.
- b. 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 (see Appendix 1 for examples of offences under the Local Government Act 1999, Local Government (Elections) Act 1999 and Development Act 1993); or
- c. 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 effect the commission of the offence.

**“Directions and Guidelines”** is a reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act, which are available on the Commissioner’s website ([www.icac.sa.gov.au](http://www.icac.sa.gov.au)).

An **“Employee”** is any person who is employed by the Council, but also includes any contractors, volunteers, trainees, work experience students and consultants undertaking work for, or on behalf of the Council whether they are working in a full-time, part-time or casual capacity.

A **“False Disclosure”** is a disclosure of information relating to fraud or corruption that is made by a person who knows the information to be false or, who is reckless as to whether it is false.

**“Fraud”** is an intentional dishonest act or omission done with the purpose of deceiving.

Note: unlike ‘Corruption’ there is no statutory definition of ‘Fraud’. Fraud is a style of offending. The offences addressed under Part 5 and Part 6 of the Criminal Law Consolidation Act 1935 are considered to constitute Fraud offences.

***“Independent Commissioner Against Corruption (Commissioner)”*** means the person holding or acting in the office of the Independent Commissioner Against Corruption.

***“Manager”*** means any Employee of the Council who is responsible for the direct supervision of other Employees, and/or, for the management of a Council Department.

***“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 Ombudsman, the Council and public officers;
- c. make recommendations as to whether and by whom complaints and reports should be investigated;
- d. perform other functions assigned to the Office by the Commissioner.

***“Public administration”*** defined at section 4 of the *ICAC Act 2012* means 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.

***“Public Officer”*** defined under the *ICAC Act 2012* includes:

- a Council Member;
- a member of a Local Government body (including a subsidiary of a Council established under the *Local Government Act 1999*); and
- an Employee or Officer of the Council.

A ***“Responsible Officer”*** is a person (or persons) appointed by the Council pursuant to section 302B of the *Local Government Act 1999* who is (are) authorised to receive and act upon public interest information reported to him/her under the *Whistleblowers Protection Act 1993*.

## 5. Prevention

The Council recognises that:

- the occurrence of fraud and corruption will prevail in an administrative environment where opportunities exist for waste, abuse and maladministration
- the most effective way to prevent the occurrence of fraud and corruption is to promote an ethical environment in which internal control mechanisms have been implemented

In general, the Council expects that Public Officers will assist in preventing fraud and corruption within the Council by:

- understanding the responsibilities of their position
- familiarising themselves with Council’s policies and procedures and adhering to them
- understanding what behaviour constitutes fraudulent and/or corrupt conduct
- maintaining an awareness of the strategies that have been implemented by the Council to minimise fraud and corruption
- being continuously vigilant to the potential for fraud and/or corruption to occur and reporting suspected or actual occurrences of fraud or corruption in accordance with Part 7 of this Policy.

## 5.1 Specific responsibilities

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

- promotes community awareness of the Council's commitment to the prevention of fraud and corruption
- provides adequate security for the prevention of fraud and corruption. This includes the provision of secure facilities for storage of assets and procedures to deter fraudulent or corrupt activity from occurring
- provides mechanisms for receiving allegations of fraud or corruption, including by ensuring a Responsible Officer is appointed.
- makes reports in accordance with Part 7 of this Policy and facilitates cooperation with any investigation undertaken by an external authority (such as SAPOL or the Commissioner)
- ensures that all Employees are aware of their responsibilities in relation to fraud and corruption through the provision of appropriate and regular training
- promotes a culture and environment in which fraud and corruption is actively discouraged and is readily reported should it occur, and
- undertakes a fraud and corruption risk assessment on a regular basis

**Managers** are responsible for:

- the conduct of any Employees whom they supervise and, will be held accountable for such
- any property under their control and, will be held accountable for such
- reporting in accordance with Part 7 of this Policy
- creating an environment in which fraud and corruption is discouraged and readily reported by Employees. Such an environment shall be fostered by the Manager's own attitude to fraud and corruption and, by the accountability and integrity they both display and encourage from other Employees
- ensuring that new Employees for whom they are responsible are aware of their responsibilities in relation to fraud and corruption and, of the standard of conduct expected from all Employees as outlined in Council's Employee Code of Conduct and this Policy
- identifying potential fraud and corruption risks
- leading by example to promote ethical behaviour

**Employees** are responsible for:

- performing their functions and duties with care, diligence, honesty and integrity
- conducting themselves in a professional manner at all times
- adhering to these guidelines and other Council procedures that have been established to prevent fraud or corruption
- taking care for Council's property which includes avoiding the waste or misuse of the Council's resources
- maintaining and enhancing the reputation of the Council
- remaining scrupulous in their use of the Council's information, assets, funds, property, goods or services
- reporting in accordance with Part 7 of this Policy.

## **6. Fraud and corruption risk assessment process**

**6.1** Council's main objective in the prevention and control of fraud and corruption is to minimise its occurrence within the Council. This objective is generally achieved by:

- identifying fraud and corruption risks
- determining strategies to control those risks
- defining responsibility for and, the time frame within which the strategies will be implemented

**6.2** Managers must be alert to the potential of fraud and corruption to occur and remain wary of factors which may leave the Council vulnerable to fraud and corruption, including:

- changes to Council delegations
- implementation of cost cutting measures
- contracting out and outsourcing
- the impact of new technology
- changes to risk management practices

## **7. Reporting fraud and corruption**

### **7.1 Reporting Corruption in Public Administration to the OPI**

- Any Employee or Council Member who has or acquires knowledge of actual or suspected Corruption in public administration must report this information to the OPI as soon as practicable.
- Where an Employee or Council Member suspects Corruption in public administration, that suspicion must be reasonably held. Section 6 of the Directions and Guidelines address what is required to form a reasonable suspicion. In this regard it is to be noted that suspicion is a state of mind that is distinct from a belief. It is not necessary for the Employee or Council Member to believe the relevant conduct amounts to Corruption in public administration. All that is required to make a report to the OPI is a reasonable suspicion based upon a proper consideration of the available facts (i.e. there must be a factual basis for the suspicion).

#### **7.1.1 Reports by Employees or Council Members**

- Reports to the OPI by an Employee or Council Member must be made in accordance with the reporting obligations contained in section 11 of the Directions and Guidelines. In particular, the following information must be included in the report:
  - the Employee or Council Member identity; and
  - the identity of the Council;
  - the Employee's or Council Member's Council address, telephone number and email.
- In addition, the report must:
  - identify the matter by reference to the conduct that the Employee or Council Member suspects is Corruption in public administration; and
  - expressly identify that the Employee or Council Member suspects the conduct to be Corruption; and
  - identify any public officer or other person suspected of having engaged in the conduct; and
  - be accompanied by:

- a. a statement as to how the Employee or Council Member became aware of the conduct; and
  - b. the evidence known to the Employee or Council Member including any documentation relevant to the conduct; and
  - c. a list of those persons who the Employee or Council Member believes can give evidence relevant to the conduct.
- A report to the OPI by an Employee or Council Member must be made on the online report form available at [www.icac.sa.gov.au](http://www.icac.sa.gov.au).
- Where the Employee's or Council Member's knowledge of Corruption has arisen due to a complaint/report he/she has received from another person (the informant), the Employee or Council Member should not include the informant's details in the report to the OPI if:
  - the report/complaint was made under the *Whistleblowers Protection Act 1993*; and
  - the informant has not consented to the informant's identity being divulged; and
  - it is not necessary to divulge the identity of the informant to ensure that the matters to which the report to the OPI relates are properly investigated.
- Nothing in this section is intended to prevent an Employee or Council Member from reporting Corruption in public administration internally to a Responsible Officer in accordance with the Council's Whistleblowers Protection Policy. Where an internal report relating to Corruption in public administration is received by another under the Whistleblowers Protection Policy the Responsible Officer must report the matter to the OPI in accordance with this Policy.

#### **7.1.2 Reports by the Council to the OPI**

- Where the Council (i.e. Council Members collectively) has or acquires knowledge of actual or suspected Corruption in public administration it must report this information to the OPI as soon as practicable after the Council becomes aware of the matter. The Chief Executive Officer is responsible for preparing a report to the OPI on behalf of the Council for these purposes. The Chief Executive Officer must prepare the report immediately upon receiving direction from the Council (such as via the Mayor) to do so.
- Any suspicion the Council has regarding conduct that constitutes Corruption in public administration must be reasonably held. Section 6 of the Directions and Guidelines address what is required to form a reasonable suspicion. In this regard it is to be noted that suspicion is a state of mind that is distinct from a belief. It is not necessary for the Council to *believe* the relevant conduct amounts to Corruption in public administration. All that is required to make a report to the OPI is a reasonable suspicion based upon a proper consideration of the available facts (i.e. there must be a factual basis for the suspicion).
- The report must:
  - identify the matter by reference to the conduct that the Council suspects is Corruption; and
  - expressly identify that the Council suspects the conduct to be Corruption in public administration; and
  - identify any public officer or other person suspected of having engaged in the conduct; and
  - be accompanied by:

- a. a statement as to how the Council became aware of the conduct; and
  - b. the evidence known to the Council including any documentation relevant to the conduct; and
  - c. a list of those persons who the Council believes can give evidence relevant to the conduct.
- A report to the OPI by the Chief Executive Officer on behalf of the Council must be made on the online report form available at [www.icac.sa.gov.au](http://www.icac.sa.gov.au).
- Where the Council's knowledge of Corruption has arisen due to a complaint/report it received from another person (the informant), the Chief Executive Officer should not include the informant's details in the report to the OPI if:
  - the report/complaint was made under the *Whistleblowers Protection Act 1993*; and
  - the informant has not consented to the informant's identity being divulged; and
  - it is not necessary to divulge the identity of the informant to ensure that the matters to which the report to the OPI relates are properly investigated.
- Any consideration by the Council of information relating to Corruption in public administration or a Council report to the OPI during a Council meeting must be considered in confidence. The grounds under section 90(3)(f) and (g) of the *Local Government Act 1999* may be relied upon to move into confidence for these purposes.

### **7.1.3 Reporting Fraud**

- Any Employee or Council Member that has or acquires knowledge of actual or suspected Fraud that:
    - does not constitute Corruption in public administration; (1) and
    - impacts or causes detriment (or has the potential to impact or cause detriment) to the Council must report such information to their immediate manager or if fraud is being perpetrated by that person to the next level of authority or the Anti-Corruption branch of SAPOL.
- (1) Such conduct may, for example, relate to persons who are not a public officer such as a non-elected member of a Council Committee and/or a member of a Council Assessment Panel.
- A report made under clause 714 may be made under the *Whistleblowers Protection Act 1993* and managed in accordance with the Council's Whistleblower Protection Policy.

## **8. Action by the Chief Executive Officer Following Report and/or Investigation into Fraud or Corruption**

- 8.1** Following any report to the OPI or SAPOL under this Policy (or the Whistleblower Protection Policy as the case may be) of which the Chief Executive Officer has knowledge and, subject to the finalisation of any investigation undertaken by the Commissioner or SAPOL, the Chief Executive Officer will undertake a review into the area in which the Fraud or Corruption occurred to determine the cause for the breakdown in controls and, will report the findings of the review and provide recommendations (if any) to the Council. In undertaking any review, the Chief Executive Officer will have regard to any recommendations received from the Commissioner or the Ombudsman.
- 8.2** In the event that allegations of Fraud and/or Corruption are substantiated, the Council may take disciplinary action against any Employee who was involved.



## 9. False disclosure

A person who knowingly makes a false or misleading statement in a complaint or report under the ICAC Act or makes a false or misleading disclosure under the *Whistleblowers Protection Act 1993*, is guilty of an offence.

An Employee who makes a false disclosure, in addition to being guilty of an offence, may face disciplinary action that may include instant dismissal.

## 10. Educating for awareness

Council recognises that the success and credibility of this Policy will largely depend upon how effectively it is communicated throughout the organisation and beyond.

Council will, therefore, from time to time take proactive steps towards ensuring that the wider community is aware of Council's zero-tolerance stance towards fraud and corruption.

Council will increase community awareness by:

- 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.
- making reference to the Council's fraud and corruption initiatives in the Council's Annual Report.
- facilitating public access to all of the documents that constitute the Council's fraud and corruption framework.
- making all Council Members and Council Employees aware of this Policy during their induction and in refresher training upon request.

## 11. Conclusion

Council has established a number of procedures to assist with the prevention and control of fraud and corruption. The effectiveness of these procedures will be continuously reviewed and assessed and will remain up to date with any future developments in fraud and corruption prevention and control techniques.

## 12. Policy review

The effectiveness of this policy will be reviewed every three years or as necessary.

## 13. Further Information

This document is available on Council's website [www.southernmallee.sa.gov.au](http://www.southernmallee.sa.gov.au) and at the principal Office of the Southern Mallee District Council at Day Street, Pinnaroo SA 5304.

A copy of this document may be purchased from Council.

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