

Fraud, Corruption, Misconduct & Maladministration Prevention Policy

Reference Number:	CR19/29580
Type:	Council Policy
Responsibility:	Director City Corporate
Responsible Officer:	Team Leader Governance and Risk
Last Review Date:	May 2023
Next Review Date:	May 2026
Legislation:	<i>Public Interest Disclosure Act 2019 (SA)</i> <i>Local Government Act 1999</i> <i>Independent Commissioner Against Corruption Act 2012 (SA)</i> <i>Criminal Law Consolidation Act 1935</i>
Related Documents:	Public Interest Disclosure Policy Public Interest Disclosure Procedure Code of Conduct for Council Employees Behavioural Management Policy for Council Members Council Member Allowances and Benefits Policy Audit and Risk Committee Terms of Reference

1 Purpose

- 1.1 The Fraud, Corruption, Misconduct & Maladministration Prevention Policy (the Policy) outlines Council's approach to the prevention or minimisation, identification and control of fraudulent and/or corrupt activity, and summarises the associated responsibilities of Public Officers.
- 1.2 The Policy is designed to protect public funds and assets and the integrity, security and reputation of the Council.

2 Scope

- 2.1 The Policy applies to all Public Officers of the Council

3 Definitions

- 3.1 **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; or
 - (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.
- 3.2 **Directions and Guidelines** is a reference to the Directions and Guidelines document issued pursuant to section 20 of the *Independent Commissioner Against Corruption Act 2012* (ICAC Act) and/or section 14 of the *Public Interest Disclosure Act 2018* which are available on the Commissioner's website (www.icac.sa.gov.au).
- 3.3 An **Employee** is any person who is employed by the Council, but also includes any contractors, volunteers and consultants undertaking work for, or on behalf of, the Council.
- 3.4 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.
- 3.5 **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.)
- 3.6 **Independent Commissioner Against Corruption (Commissioner)** means the person holding or acting in the office of the Independent Commissioner Against Corruption.
- 3.7 **Maladministration in Public Administration** is defined in section 5(4) of the *ICAC Act*; and
- 3.7.1 means:

- (a) 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
 - (b) conduct of a Public Officer involving substantial mismanagement in or in relation to the performance of official functions;
- 3.7.2 includes conduct resulting from impropriety, incompetence or negligence;
- 3.7.3 is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
- 3.8 **Misconduct in Public Administration** is defined in section 5(3) of the *ICAC Act* and means:
 - 3.8.1 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
 - 3.8.2 other misconduct of a Public Officer while acting in his or her capacity as a Public Officer.
- 3.9 **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.
- 3.10 **PID Act** means the *Public Interest Disclosure Act 2019*.
- 3.11 **Public Administration** defined at section 4 of the *ICAC Act* 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. For the purposes of this Policy, references to Corruption, Misconduct and Maladministration are taken to mean references to such conduct in Public Administration.
- 3.12 **Public Officer** defined under the *ICAC Act* includes:
 - a Council Member;
 - a member of a Local Government body (including a subsidiary of a Council established under the *Local Government Act 1999*);
 - an Employee or Officer of Council.
- 3.13 **Publish** is defined in section 4 of the *ICAC Act*, and means publish by:
 - 3.13.1 newspaper, radio or television;

- 3.13.2 internet or other electronic means of creating and sharing content with the public or participating in social networking with the public; or
 - 3.13.3 any similar means of communication with the public.
- 3.14 **Reasonable suspicion** is defined at page 5 of the [Commissioner's Directions and Guidelines](#).
- 3.15 **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.
- 3.16 **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*.
- 3.17 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:
 - 3.17.1 is of such a significant nature that it would undermine public confidence in the relevant public authority or in Public Administration generally; and
 - 3.17.2 has significant implications for the relevant public authority or for Public Administration generally (rather than just for the individual Public Officer concerned).

Note: further information about serious or systemic misconduct or maladministration is available at the ICAC website: <https://icac.sa.gov.au/glossary>

4 Policy Statement

- 4.1 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.
- 4.2 Council recognises that fraud, corruption, misconduct and maladministration in Public Administration have the potential to cause significant financial and non-financial harm, and therefore that prevention and control should feature predominantly within the systems and procedures of a responsible Council.
- 4.3 Council will not tolerate fraud, corruption, misconduct or maladministration activity and is committed to its control and prevention by:
 - 4.3.1 complying with the requirements of the ICAC Act;
 - 4.3.2 establishing and maintaining an effective system of internal controls and enforcing compliance with those controls;
 - 4.3.3 regularly undertaking risk assessments to identify circumstances in which fraud, corruption, misconduct & maladministration could potentially occur;

- 4.3.4 implementing prevention and mitigation strategies in its day to day operations;
- 4.3.5 taking appropriate action in response to allegations of fraud, corruption, misconduct & maladministration, including reporting allegations in accordance with the ICAC Act and associated Directions and Guidelines.
- 4.3.6 ensuring all Council Employees and Council Members are aware of their obligations in regards to prevention strategies within Council, and the inclusion of preliminary education in any induction process;
- 4.3.7 fostering an ethical environment in which dishonest and fraudulent behaviour is actively discouraged; and
- 4.3.8 generating community awareness of Council's commitment to the prevention of fraud, corruption, misconduct and maladministration.

5 Prevention

- 5.1 Council recognises that the occurrence of fraud, corruption, misconduct and maladministration will prevail in an administrative environment where opportunities exist for waste and abuse of resources and controls.
- 5.2 Council also recognises that the most effective prevention 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.
 - 5.2.1 In general, Council expects Public Officers will assist in facilitating a sound ethical culture and preventing fraud, corruption, misconduct and maladministration by:
 - (a) understanding the responsibilities of their position;
 - (b) familiarising themselves with Council's policies and procedures and adhering to them;
 - (c) understanding what behaviour constitutes fraudulent and/or corrupt conduct, misconduct and maladministration;
 - (d) maintaining an awareness of the strategies that have been implemented by the Council to minimise fraud, corruption, misconduct and maladministration
 - (e) being continuously vigilant to the potential for fraud, corruption, misconduct and maladministration to occur; and
 - (f) reporting suspected or actual occurrences of fraud, corruption, misconduct and maladministration in accordance with Part 8 and 9 of this Policy.

6 Roles and Responsibilities

- 6.1 The Table in Appendix 1 to this Policy outlines the roles and responsibilities of key individuals and groups with respect to fraud, corruption, misconduct and maladministration prevention within council.

7 Reporting Corruption, or Systemic or Serious Misconduct and Maladministration in Public Administration

- 7.1 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.
- 7.2 All Reasonable suspicions of Corruption or Systematic or Serious Misconduct or Maladministration must be reported to the OPI in accordance with the reporting requirements as identified in the [Commissioner's Directions and Guidelines](#).

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

Note: Particulars of what a report should include are available in the ICAC Directions and Guidelines.

- 7.3 When reporting actual or suspected Corruption, or Systematic or Serious Misconduct or Maladministration, 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 as related to this Policy) should also, to the extent possible, be adhered to.
- 7.4 Nothing in this section is intended to prevent a Public Officer from reporting suspected Corruption or Systematic or Serious Misconduct or Maladministration 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.
- 7.5 Further information about reporting requirements is available at the ICAC website: <https://icac.sa.gov.au/>

8 Reporting Fraud, Misconduct, or Maladministration

- 8.1 Where an employee, council member, contractor or volunteer has or acquires knowledge of actual or suspected Fraud or other similar conduct that does not constitute Corruption or Systematic or Serious Misconduct or Maladministration (and is therefore not required to be reported to OPI), that knowledge should be reported to the Council's Responsible Officer. 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.
- 8.2 A report to the OPI by the Chief Executive Officer on behalf of Council must be made on the online report form available at www.icac.sa.gov.au.

9 Confidentiality and Publication Prohibitions

- 9.1 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*.
- 9.2 A person must not, other than as authorised by the Commissioner or a court, publish or cause to be published any of the following:
- 9.2.1 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;
 - 9.2.2 information that might enable a person who has made a complaint or report under the ICAC Act to be identified or located;
 - 9.2.3 the fact that a person has made or may be about to make a complaint or report under the ICAC Act;

- 9.2.4 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;
- 9.2.5 the fact that a person has given or may be about to give information or other evidence under this Act; or
- 9.2.6 any other information or evidence which the Commissioner has prohibited from publication.

- 9.3 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.
- 9.4 In addition to the requirements in this part, council members and employees should also be mindful of the confidentiality provisions in the Council's Public Interest Disclosure Policy.

10 Action by the Chief Executive Officer Following Report and/or Investigation into Fraud or Corruption

- 10.1 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 investigations should:
- 10.1.1 Occur as soon as practicable after the alleged incident;
 - 10.1.2 not impose on or detract from any investigation being undertaken by the OPI or SAPOL; and
 - 10.1.3 have regard to any recommendations in any report received from the Commissioner or SAPOL on the incident.
- 10.2 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/or ICAC Act.
- 10.3 In the event that allegations of fraud, corruption, misconduct or maladministration are substantiated, Council may take disciplinary action against any Employee who was involved.

11 False Disclosure

- 11.1 A person who knowingly makes a false or misleading statement in a complaint or report will be guilty of an offence under the ICAC Act and the PID Act.
- 11.2 A Council Employee who makes a false disclosure, in addition to being guilty of an offence, may face disciplinary action that may include dismissal.

12 Educating for Awareness

- 12.1 Council recognises the success and credibility of the Policy will largely depend upon how effectively it is communicated throughout the organisation and beyond.
- 12.2 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, misconduct and/or maladministration and corruption.

Council will increase community awareness by:

- 12.2.1 promoting Councils initiatives and policies regarding the control and prevention of fraud and corruption on Councils website and ;
- 12.2.2 facilitating public access to the documents that constitute Council's fraud and corruption framework.

13 Access to the Policy

The Policy is available to the public:

www.prospect.sa.gov.au

Customer Services, Payinthe, 128 Prospect Road, Prospect SA 5082

14 Further Information

For further information please contact:

Team Leader Governance and Risk
City of Prospect
128 Prospect Road
Prospect SA 5082

8269 5355

admin@prospect.sa.gov.au

**Appendix 1—
Responsibilities and accountability for Fraud, Corruption, Misconduct and Maladministration prevention actions**

Responsibility		Council Members	Chief Executive Officer	Senior Officers	Employees	Audit Committees	Other
Governance and ethics							
1	Comply with this policy and any related legislation, policy, protocol or procedure.	✓	✓	✓	✓	✓	✓
2	At all times in the performance of duties or in association with their role with Council, act in an ethical manner.	✓	✓	✓	✓	✓	✓
3	Promote a culture and environment in which Fraud, Corruption, Misconduct and Maladministration is discouraged and not tolerated	✓	✓	✓	✓		✓
4	Remain scrupulous in the use of Council information, assets, funds, property, goods or services	✓	✓	✓	✓	✓	✓
Awareness and training							
1	Promote community awareness of the Council's commitment to the prevention of Fraud, Corruption, Misconduct and Maladministration.	✓	✓		✓ (as appropriate)		
2	Senior Officers ensure all employees under their supervision have been educated regarding Fraud, Corruption, Maladministration and Misconduct.		✓	✓	✓		
3	Undertake awareness training or education regarding Fraud, Corruption, Maladministration and Misconduct.	✓	✓	✓	✓	✓	✓ (as appropriate)
4	Develop and deliver training to employees and other Public Officers to promote ethical conduct and an ethical culture.		✓	✓			
5	Act in an ethical manner at all times in the performance of duties, and comply with ethical obligations in accordance with any relevant code or policy regarding conduct and behaviour	✓	✓	✓	✓	✓	✓

Responsibility		Council Members	Chief Executive Officer	Senior Officers	Employees	Audit Committees	Other
6	Adopt and models constructive behaviours and approaches to work which promote ethical behaviours in Council employees	✓	✓	✓		✓	
Fraud prevention							
1	Provide adequate security, including the provision of secure facilities for storage of assets, to assist in the prevention of Fraud, Corruption, Misconduct and Maladministration		✓	✓			
2	Develop procedures to deter fraudulent or corrupt activity from occurring	✓	✓	✓	✓		
3	Where relevant, comply with the <i>Public Interest Disclosure Act 2019</i>	✓	✓	✓	✓	✓	✓
4	Ensure appropriate internal controls are in place and operating effectively to minimise the risks of incidents	✓	✓	✓		✓	
5	Ensure effective screening (e.g. criminal history) of employees, prospective employees, volunteers (as relevant) and contractors is undertaken, including by use of appropriate and effective contractual arrangements		✓	✓			
6	Ensure all powers and authorities are appropriately delegated in order to minimise the risk of Fraud, Corruption, Misconduct or Maladministration	✓	✓	✓			
Detection and investigation							
1	Ensure that where appropriate, proper investigations are conducted into allegations of Fraud, Corruption, Misconduct or Maladministration.	✓	✓				
2	Facilitate cooperation with any investigations undertaken by an external authority		✓				
3	Undertakes risk assessments on a regular basis	✓	✓			✓	
4	Provides mechanisms for receiving allegations of Fraud, Corruption, Misconduct and Maladministration	✓	✓				

Responsibility		Council Members	Chief Executive Officer	Senior Officers	Employees	Audit Committees	Other
5	Investigates matters of Fraud, Corruption, Misconduct and Maladministration	✓	✓				
6	Cooperate as required with any investigations undertaken whether internally or by an external authority	✓	✓	✓	✓		✓
Monitoring and reporting							
1	Report all instances of conduct known or reasonably suspected to be Fraud, Corruption, Maladministration or Misconduct in accordance with Council's policies	✓	✓	✓	✓	✓	✓ (report to Responsible Officer)
2	Develop mechanisms for receiving allegations of Fraud, Corruption, Misconduct or Maladministration including appointing a responsible officer	✓	✓				
3	Work jointly with other areas of Council to co-ordinate activities relating to the control, prevention, detection and management of Fraud, Corruption, Misconduct or Maladministration	✓	✓	✓		✓	
4	Review the effectiveness of the implemented policies that ensure risks are identified and that controls implemented by management are adequate	✓	✓			✓	