



# COUNCIL POLICY

## Fraud, Corruption, Misconduct and Maladministration Prevention

<b>Policy Number:</b>	PO148		
<b>Strategic Plan Objective:</b>	5. Responsible Governance and Leadership		
<b>Policy Owner:</b>	Chief Executive Officer	<b>Record Number:</b>	16/14858[v5]
<b>Responsible Officer:</b>	Governance Officer	<b>Minute Reference:</b>	026/2022(09/03/2022)
<b>Date Adopted:</b>	9 March 2022	<b>Next Review Date:</b>	March 2026

### 1. POLICY OBJECTIVES

Council recognises that Fraud, Corruption, Misconduct and Maladministration in Public Administration have the potential to cause significant financial and non-financial harm and is committed to acting in the best interests of the community to uphold the principles of honesty, integrity and transparency; all key components of good governance.

This policy aims to protect public funds and assets and the integrity, security and reputation of the Council. It outlines the Council's approach to preventing, minimising, identifying and controlling Fraudulent and Corrupt behaviour, Misconduct and Maladministration.

### 2. SCOPE

2.1 This policy applies to all:

- i) Elected Members when exercising/performing official functions and duties in all situations, including those outside of normal business hours;
- ii) Employees (includes contractors, volunteers and labour hire – refer to definition) when exercising/performing official functions and duties in all situations, including those outside of normal business hours.

### 3. DEFINITIONS

Refer to Attachment 1.

### 4. POLICY STATEMENT

Council will not tolerate Fraud, Corruption, Misconduct or Maladministration and is committed to its control and prevention by:

- Complying with the requirements of the Independent Commission Against Corruption Act 2012 (ICAC Act)
- Complying with the requirements of the Ombudsman Act 1972 (Ombudsman Act);

- Complying with the requirements of the Public Interest Disclosure Act 2018 (PID Act);
- Establishing and maintaining an effective system of internal controls and enforcing compliance with those controls;
- Identifying circumstances in which Fraud, Corruption, Misconduct and Maladministration could potentially occur through risk assessment;
- Implementing Fraud, Corruption, Misconduct and Maladministration prevention and mitigation strategies in its day to day operations;
- Taking appropriate action in response to allegations of Fraud, Corruption, Misconduct and/or Maladministration, including reporting allegations in accordance with this policy, the ICAC Act, the Ombudsman Act the PID Act and the reporting systems established by the OPI, ICAC and Ombudsman;
- Ensuring all Employees and Elected Members are aware of and understand their responsibilities and obligations in regards to the prevention of Fraud, Corruption; Misconduct and Maladministration;
- Fostering an ethical environment in which dishonest and Fraudulent behaviour is actively discouraged along with Misconduct and Maladministration;
- Being continually vigilant about the potential for Fraud, Corruption, Misconduct and Maladministration to occur;
- Ensuring that the community are made aware of this policy and its requirements.

#### **4.1. Responsibilities**

##### **Elected Members and Employees**

Elected Members and Employees are responsible for:

- Performing functions and duties with care, diligence, honesty and integrity;
- Reporting any suspected or actual occurrences of Fraud, Corruption, Misconduct and/or Maladministration in accordance with this policy, Council's Public Interest Disclosure Policy PO171 (Policy PO171) and Public Interest Disclosure Procedure PR152 (Procedure PR152) and the reporting systems established by the OPI, ICAC and Ombudsman;
- Behaving in a professional manner at all times;
- Adhering to this policy and other supporting documentation;
- Taking care of Council property;
- Avoiding waste or misuse of Council's resources;
- Maintaining and enhancing the reputation of the Council;
- Leading by example to promote ethical behaviour;
- Identifying potential Fraud, Corruption, Misconduct and Maladministration risks;
- Ensuring that they are aware of their responsibilities in relation to Fraud, Corruption, Misconduct and Maladministration and the standard of conduct expected of them;
- The appropriate use of Council information, assets, funds, property, goods or services.

### **Elected Members**

Elected Members are responsible for ensuring that:

- The community is aware of the Council's commitment to the prevention of Fraud, Corruption, Misconduct and Maladministration;
- There are adequate security measures in place for the prevention of Fraud, Corruption, Misconduct and Maladministration, including secure facilities for storage of assets;
- Adequate processes are in place to deter Fraud, Corruption, Misconduct and Maladministration;
- Appropriate processes are in place for receiving allegations of Fraud, Corruption, Misconduct and/or Maladministration;
- There are adequate systems/processes in place to ensure proper investigations are conducted into allegations that involve Fraud, Corruption, Misconduct and/or Maladministration;
- Providing information as required in the event that Fraud, Corruption, Misconduct and/or Maladministration has occurred and that there is cooperation with any investigation;
- All Elected Members and Employees are aware of their responsibilities and obligations in relation to Fraud, Corruption, Misconduct and Maladministration through appropriate and regular training;
- They create and foster an environment where Fraud, Corruption, Misconduct and Maladministration is discouraged and readily reported;
- Fraud, Corruption, Misconduct and Maladministration risks are assessed on a regular basis.

### **Corporate Management Team (CMT), Managers and Supervisors**

CMT, Managers and Supervisors are responsible for:

- The conduct of Employees they supervise;
- Property under their control;
- Creating and fostering an environment where Fraud, Corruption, Misconduct and Maladministration is discouraged and readily reported;
- Ensuring that the Employees they supervise, including new Employees, are aware of their responsibilities and obligations in relation to Fraud, Corruption, Misconduct and Maladministration and the standard of conduct expected of them;
- Fraud, Corruption, Misconduct and Maladministration risks are assessed on a regular basis, relevant to their area of responsibility.

## **4.2. Reporting and Investigation**

### **4.2.1. Confidentiality**

The PID Act provides certain protections for Informants. The identity of an Informant will be maintained as confidential in accordance with the ICAC Act, the PID Act and the Ombudsman Act. Policy PO171 and Procedure PR152 set out the limited circumstances where an Informant's details can be disclosed.

Allegations that involve Fraud, Corruption, Misconduct and/or Maladministration will be kept confidential and investigated in private, to the extent possible except where required otherwise by law.

**4.2.2. Corruption**

Any Elected Member or Employee who has or acquires knowledge of actual or suspected Corruption in Public Administration must report this information in accordance with Policy PO171, Procedure PR152 and the reporting systems established by the OPI and/or ICAC as soon as practicable.

Where the Elected Body (i.e. Elected 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 it becomes aware of the matter.

The Chief Executive Officer (CEO) is responsible for preparing a report to the OPI on behalf of the Elected Body for these purposes. The CEO must prepare the report as soon as practicable upon receiving direction from the Elected Body to do so. If the CEO is the subject of the report, the Mayor will then be responsible for preparing the report to the OPI on behalf of the Elected Body as soon as practicable upon receiving direction from the Elected Body to do so.

**4.2.3. Fraud**

Any Elected Member or Employee that has or acquires knowledge of actual or suspected Fraud that:

- Does not constitute Corruption in Public Administration; and
- Impacts or causes detriment (or has the potential to impact or cause detriment) to the Council;

Must report this information in accordance with Policy PO171, Procedure PR152 and the reporting systems established by the Ombudsman.

**4.2.4. Misconduct and Maladministration**

Any Elected Member or Employee that has or acquires knowledge of actual or suspected Misconduct or Maladministration must report this information in accordance with Policy PO171, Procedure PR152 and the reporting systems established by the Ombudsman.

**4.2.5. Disciplinary Action**

In the event that allegations of Fraud, Corruption, Misconduct and/or Maladministration are substantiated against an Employee, the Council may take disciplinary action in accordance with Council's Support, Disciplinary and Performance Management Policy PO146.

In the event that allegations of Fraud and/or Misconduct and Maladministration (not constituting Corruption) are substantiated against an Elected Member, then the Elected Body may determine to take disciplinary action in accordance with the requirements of Local Government Act 1999 (LG Act) and Council's Code of Conduct for Council Members Complaints Procedure PR148.

A breach of this policy will also mean that there has been a breach of the respective code of conduct.

**4.2.6. False Disclosure**

A person, who knowingly makes a false or misleading statement in a complaint or report under the ICAC Act, PID Act and Ombudsman Act is guilty of an offence and may be prosecuted. Disciplinary action may also be taken by the Council.

**4.2.7. Statutory Reporting**

Statutory reporting will be undertaken as required in accordance with the ICAC Act, PID Act and/or Ombudsman Act.

As part of Council's commitment towards ensuring that the wider community is aware of the Council's zero-tolerance stance towards Fraud, Corruption, Misconduct and Maladministration, prevention initiatives will be referenced in the Annual Report (in keeping with the findings set out in the Ombudsman SA Valuing Complaints – An Audit of Complaint Handling in South Australia – 2011).

**5. COMPLAINTS**

Complaints about this policy can be made in writing to the Governance Officer. Complaints will be managed in accordance with Council's Complaints Policy (PO147).

**6. REVIEW**

This policy will be reviewed every four (4) years and as deemed necessary in consideration of any changes to legislation and relevant standards, codes and guidelines, audit findings, any corrective actions/controls arising from risk assessment and/or incidents, stakeholder feedback or changes to Councils requirements. Elected Members and Employees will actively participate in the evaluation processes.

**7. TRAINING**

Council is committed to supporting Elected Members and Employees in complying with this policy.

This policy will be provided to Elected Members and Employees during induction. Training needs will be reviewed annually, during individual performance reviews and as necessary in consideration of any changes to legislation and relevant standards, codes and guidelines, audit findings, any corrective actions/controls arising from risk assessment and/or incidents, stakeholder feedback or changes to Councils requirements.

Elected Members and employees will actively participate in training.

**8. RECORDS**

Records shall be maintained as required by Council's Records Management Policy PO063.

**9. RELATED COUNCIL POLICIES/PROCEDURES AND DOCUMENTS**

PO014 Employee Code of Conduct Policy

PO026 Fair Treatment Policy

PO037 Internal Review of Council Decisions Policy

PO063 Records Management Policy

PO088 Elected Members Use of Council Supplied Electronic Equipment

PO089 Elected Member Allowances and Benefits Policy

- PO091 Risk Management Policy
- PO123 Code of Conduct for Council Members Policy
- PO146 Support, Disciplinary and Performance Management Policy
- PO147 Complaints Policy
- PO150 Gifts and Benefits Policy
- PO156 Internal Financial Control Policy
- PO171 Public Interest Disclosure Policy
- PR148 Code of Conduct for Council Members Complaints Procedure
- PR150 Internal Control Audit Procedure
- PR152 Public Interest Disclosure Procedure

**10. REFERENCES AND LEGISLATION**

- Local Government Act 1999
- Statutes Amendment (Local Government Review) Act 2021
- Independent Commission Against Corruption Act 2012
- Criminal Law Consolidation Act 1935
- Public Interest Disclosure Act 2018
- Ombudsman Act 1972
- Ombudsman SA VALUING COMPLAINTS – An audit of complaint handling in South Australia – November 2011
- LGA Model Fraud, Corruption, Misconduct and Maladministration Prevention Policy

**11. COUNCIL DELEGATION**

<b>Details of Delegation:</b>	Chief Executive Officer
<b>Delegate:</b>	

**12. VERSION HISTORY**

<b>Version No</b>	<b>Issue Date</b>	<b>Description of Change</b>
1	10/07/2013	New Policy
2	14/05/2014	Minor Revision.
3	11/10/2017	Minor Revision
4	09/03/2022	Legislative Updates and other minor updates.

**ATTACHMENT 1: DEFINITIONS**

Term/Reference	Definition
Council	Yorke Peninsula Council
Corruption in Public Administration	<p>An offence against Part 7 Division 4 (Offences relating to Public Officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:</p> <ul style="list-style-type: none"> <li>• Bribery or corruption of Public Officers;</li> <li>• Threats or reprisals against Public Officers;</li> <li>• Abuse of public office;</li> <li>• Demanding or requiring benefit on basis of public office;</li> <li>• Offences relating to appointment to public office.</li> </ul> <p>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 an offence or any of the following in relation to an offence referred to in a preceding paragraph:</p> <ul style="list-style-type: none"> <li>• Aiding, abetting, counselling or obtaining a benefit from the offence;</li> <li>• Encouraging, whether by threats or promises or otherwise, the offence;</li> <li>• Being in any way, directly or indirectly, knowingly involved in, or party to, the offence;</li> <li>• Conspiring with others to commit the offence.</li> </ul>
Employee(s)	For the purposes of this policy, all personnel undertaking tasks/duties for and/or on behalf of the Council, including persons employed directly by the Council in a full time, part-time or casual basis under an employment contract, volunteers, contractors, labour hire and work experience placements.
False Disclosure	Is a disclosure of information relating to Fraud, Corruption, Misconduct and/or Maladministration, that is made by a person who knows the information to be false.
Fraud	<p>Is an intentional dishonest act or omission done with the purpose of deceiving.</p> <p>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.</p>
Independent Commission Against Corruption (ICAC)	<p>The ICAC is a law enforcement body. The functions of the office are set out in section 7(1) of the ICAC Act, and include:</p> <ul style="list-style-type: none"> <li>• Identifying Corruption in Public Administration and to—</li> </ul>

## PO148 – Fraud, Corruption, Misconduct and Maladministration Prevention Policy

Term/Reference	Definition
	<ul style="list-style-type: none"> <li>○ investigate and refer it to a law enforcement agency for any further investigation and prosecution; or</li> <li>○ refer it to a law enforcement agency for investigation and prosecution.</li> <li>● Evaluating practices, policies and procedures for the purpose of preventing or minimising of Corruption in Public Administration;</li> <li>● Conducting or facilitating education programs designed to prevent or minimise Corruption in Public Administration.</li> </ul>
Informant	A person who makes an appropriate disclosure of Public Interest Information to a Relevant Authority.
Maladministration in Public Administration (Maladministration)	<p>As defined in the Ombudsman Act:</p> <ul style="list-style-type: none"> <li>● 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;</li> <li>● Conduct of a Public Officer involving substantial mismanagement in or in relation to the performance of official functions;</li> <li>● Conduct resulting from impropriety, incompetence or negligence;</li> </ul> <p>to be assessed having regard to relevant statutory provisions and administrative instructions and directions.</p>
Misconduct in Public Administration (Misconduct)	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 Public Officer.
Office for Public Integrity (OPI)	<p>The OPI is an independent body established under Part 3 of the ICAC Act that has the function to:</p> <ul style="list-style-type: none"> <li>● To receive and assess complaints about Public Administration from members of the public;</li> <li>● To receive and assess reports about Corruption, Misconduct and Maladministration in Public Administration from inquiry agencies, Public Authorities and Public Officers;</li> <li>● To refer complaints and reports to inquiry agencies, Public Authorities and Public Officers or to determine to take no action;</li> <li>● Perform other functions assigned by the ICAC.</li> </ul>
Ombudsman SA (Ombudsman)	<p>The South Australian Ombudsman is an independent officer who deals with:</p> <ul style="list-style-type: none"> <li>● Complaints about South Australian Government agencies and councils;</li> <li>● Complaints and reports regarding Misconduct and Maladministration in Public Administration;</li> </ul>



**PO148 – Fraud, Corruption, Misconduct and Maladministration Prevention Policy**

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	<ul style="list-style-type: none"> <li>• Confidential reports of public interest information about South Australian Government agencies and councils;</li> <li>• Complaints about prescribed child protection matters;</li> <li>• Complaints under the Return To Work Act;</li> <li>• Requests to review Freedom of Information decisions;</li> <li>• Audits of South Australian public agencies.</li> </ul> <p>The Ombudsman’s powers come from various Acts of Parliament:</p> <ul style="list-style-type: none"> <li>• Ombudsman Act 1972</li> <li>• Children and Young People (Oversight and Advocacy Bodies) Act 2016</li> <li>• Freedom of Information Act 1991</li> <li>• Royal Commissions Act 1917</li> <li>• Local Government Act 1999</li> <li>• Public Interest Disclosure Act 2018</li> <li>• Return to Work Act 2014</li> <li>• Independent Commission Against Corruption Act 2012</li> <li>• Ageing and Adult Safeguarding Act 1995</li> <li>• Health and Community Services Complaints Act 2004.</li> </ul>
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.
Public Authority	As defined in Schedule 1 of the ICAC Act.
Public Interest Information	<p>As defined in the PID Act:</p> <ul style="list-style-type: none"> <li>• Environmental and health information;</li> <li>• Public Administration information.</li> </ul>
Public Officer	<p>Defined under Schedule 1 of the ICAC Act includes:</p> <ul style="list-style-type: none"> <li>• An Elected Member;</li> <li>• A member of a Local Government body (including a subsidiary of a Council established under the Local Government Act 1999);</li> <li>• An Employee or officer of the Council;</li> <li>• A person performing contract work for/on behalf of the Council.</li> </ul>
Relevant Authority	The person or entity that receives an appropriate disclosure of Public Interest Information in accordance with the PID Act, as set out in Policy PO171.
Responsible Officer	Is a person who has completed any training courses approved by the ICAC for the purposes of the Public Interest Disclosure Regulations

**PO148 – Fraud, Corruption, Misconduct and Maladministration Prevention Policy**

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Term/Reference	Definition
	2019 and has been designated by the Council as a responsible officer under section 12 of the PID Act.