

# Fraud, Corruption, Misconduct and Maladministration Prevention

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Policy Name:	Fraud, Corruption, Misconduct and Maladministration Prevention
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Responsible Officer:	Chief Executive Officer
Relevant Legislation:	<i>Independent Commissioner Against Corruption Act 2012</i> <i>Local Government Act 1999</i> <i>Public Interest Disclosure Act 2018</i> <i>Public Interest Disclosure Regulations 2019</i>
Related Policies:	Caretaker Complaint Handling Council Member Complaint Handling Elected Members' Allowances and Benefits Employee Conduct Protocol Internal Financial Controls Framework Procurement Policy Risk Management

## 1. Introduction

- 1.1. The City of Burnside 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.
- 1.2. The Council recognises that fraud, corruption, misconduct and maladministration in public administration have the potential to cause significant financial and non-financial harm and that; therefore, the prevention and control of fraud, corruption, misconduct and maladministration should feature predominantly within the systems and procedures of a responsible Council.
- 1.3. The provisions of the *Independent Commissioner Against Corruption Act 2012 (ICAC Act)* applies to Council stakeholders, council members and employees, in its operations and interactions with the community.
- 1.4. This Policy is designed to protect public funds and assets and the integrity, security, and reputation of the Council; outlines the Council's approach to the prevention or minimisation, identification, and control of fraudulent and/or corrupt activity.

## 2. Strategic Plan Desired Outcomes

*PRINCIPLE: Service Sustainability*

*Governing with Integrity*

*THEME: COMMUNITY, ENVIRONMENT and PLACE*

*PRIORITY: Spans across all priorities*

## 3. Our Approach

- 3.1. Council is committed to acting in the best interest of the community and to uphold the principles of honesty, integrity, and transparency, which are all key components of good governance.
- 3.2. Council will not tolerate fraudulent or corrupt activity, misconduct or maladministration and is committed to its control and prevention by:
  - 3.2.1. fulfilling its responsibilities under the *Independent Commissioner Against Corruption Act 2012 (ICAC Act)*;
  - 3.2.2. establishing and maintaining an effective system of internal controls and enforcing compliance with those controls;
  - 3.2.3. protecting Council assets, interests and reputation from the risks associated with fraudulent conduct, misconduct and/or maladministration;
  - 3.2.4. providing a clear statement to all employees through practices, policies, and procedures that fraudulent conduct, misconduct and/or maladministration is not acceptable and will not be tolerated
  - 3.2.5. regularly undertaking risk assessments to identify circumstances in which fraud, corruption, misconduct, and maladministration could potentially occur;
  - 3.2.6. outlining the Council's approach to the prevention, detection and response to Fraud, Corruption, Misconduct and Maladministration
  - 3.2.7. fostering an ethical environment and culture which is conscious of, actively discourages, does not tolerate, and appropriately deals with Fraud, Corruption, Misconduct and Maladministration;
  - 3.2.8. developing a consistent approach to the management of relevant conduct across the organisation through the establishment and maintenance of effective systems and internal controls to guard against Fraud, Corruption, Misconduct and Maladministration.
  - 3.2.9. ensuring all Council Employees and Council Members are aware of their obligations regarding the prevention of fraud, corruption, misconduct, and maladministration within the Council; and the inclusion of preliminary education in any induction process;
  - 3.2.10. educating employees and council members about their obligations to report conduct reasonably suspected of being Fraud, Corruption, Misconduct and/or Maladministration;
  - 3.2.11. fostering an ethical environment in which dishonest and fraudulent behaviour is actively discouraged; and

- 3.2.12. generating community awareness of the Council's commitment to the prevention of fraud, corruption, misconduct, and maladministration.

#### 4. Legislative Requirements and Corporate Policy Context

- 4.1. The ICAC Act establishes the Independent Commissioner Against Corruption (the Commissioner) and the Office of Public Integrity (OPI). The role of the Commissioner is to:
  - 4.1.1. identify, investigate, and refer to prosecution Corruption in Public Administration;
  - 4.1.2. assist in identifying and dealing with misconduct and maladministration in Public Administration; and
  - 4.1.3. facilitate educational programs to prevent Corruption, Misconduct and Maladministration.
- 4.2. 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 and inquiry agency or to a public authority.
- 4.3. This Policy is intended to complement and be implemented in conjunction with other Council policies, including:
  - 4.3.1. Internal Financial Controls Framework Policy and Risk Management Policy;
  - 4.3.2. Code of Conduct for Council Employees and Employee Conduct Protocol;
  - 4.3.3. Code of Conduct for Council Members;
  - 4.3.4. Elected Members, Allowances and Benefits Policy;
  - 4.3.5. Procurement Policy; and
  - 4.3.6. Code of Conduct for Volunteers.
- 4.4. This Policy applies to all disclosures that relate to the actual or suspected occurrence of Fraud, Corruption, Misconduct and Maladministration within the Council.

#### 5. Interpretation

For the purposes of this Policy the following definitions apply:

- 5.1. **Corruption** in public administration means as provided for in section 5(1) of the *ICAC Act*, means conduct that constitutes:
  - 5.1.1. an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:
    - 5.1.1.1. bribery or corruption of public officers;
    - 5.1.1.2. threats or reprisals against public officers;

- 5.1.1.3. abuse of public office;
- 5.1.1.4. demanding or requiring benefit on basis of public office;
- 5.1.1.5. offences relating to appointment to public office;
- 5.1.1.6. an offence against the Public Sector (Honesty and Accountability) Act 1995 or the Public Corporations Act 1993, or an attempt to commit such an offence; or
- 5.1.1.7. an offence against the Lobbyist Act 2015, or an attempt to commit such an offence; or
- 5.1.2. any other offence (including an offence against Part 5 (Offences of dishonesty) of the *Criminal Law Consolidation Act 1935*, committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or
- 5.1.3. any of the following in relation to an offence referred to in a preceding paragraph;
  - 5.1.3.1. aiding, abetting, counselling, or procuring the commission of the offence;
  - 5.1.3.2. inducing, whether by threats or promises or otherwise, the commission of the offence;
  - 5.1.3.3. being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence; and
  - 5.1.3.4. conspiring with others to affect the commission of the offence.
- 5.2. **Directions and Guidelines** means the Directions and Guidelines issued by the Commissioner and as in force from time to time pursuant to section 20 of the *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](http://www.icac.sa.gov.au)).
- 5.3. **Employee** refers to all the Council's employees whether they are working in a full-time, part-time, or casual capacity.
- 5.4. **False Disclosure** is a disclosure of information relating to Fraud or Corruption, Maladministration or Misconduct that is made by a person who knows the information to be false.
- 5.5. **Fraud** is 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.
- 5.6. **Independent Commissioner Against Corruption (Commissioner)** means the person holding or acting in the office of the Independent Commissioner Against Corruption.
- 5.7. **Maladministration in public administration** is defined in section 5(4) of the *ICAC Act* and means:

- 5.7.1. 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
  - 5.7.2. conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
  - 5.7.3. includes conduct resulting from impropriety, incompetence, or negligence; and
  - 5.7.4. is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
- 5.8. **Misconduct in public administration** is defined in section 5(3) of the *ICAC Act* and means:
- 5.8.1. 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
  - 5.8.2. other misconduct of a public officer while acting in his or her capacity as a public officer.
- 5.9. **Office for Public Integrity (OPI)** is the office established under the *ICAC Act* that has the function to:
- 5.9.1. receive and assess complaints about public administration from members of the public;
  - 5.9.2. receive and assess reports about corruption, misconduct, and maladministration in public administration from inquiry agencies (including the Ombudsman), public authorities (including the Council) and public officers;
  - 5.9.3. 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;
  - 5.9.4. give directions or guidance to public authorities in circumstances approved by the Commissioner; and
  - 5.9.5. perform other functions assigned to the Office by the Commissioner.
- 5.10. **PID Act** means the *Public Interest Disclosure Act 2018*.
- 5.11. **Public administration** is defined at section 4 of the *ICAC Act* and, without limiting the acts that may comprise public administration, an administrative act within the meaning of the *Ombudsman Act 1972* will be taken to be carried out in the course of public administration. For the purposes of this Policy, references to Corruption, Misconduct and Maladministration are taken to mean references to such conduct in public administration.
- 5.12. **Public 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*.
- 5.13. **Public Officer** has the meaning given by section 4 and Schedule 1 of the *ICAC Act*, and includes:
- 5.13.1. a Council Member; and

- 5.13.2. an Employee or Officer of the Council.
- 5.14. **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.
- 5.15. **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*.
- 5.16. **Serious or Systemic** 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:
- 5.16.1. is of such a significant nature that it would undermine public confidence in the relevant public authority, or in public administration generally; and
- 5.16.2. 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>

## 6. Policy

- 6.1. The Council recognises that:
- 6.1.1. the occurrence of fraud, corruption, misconduct, and maladministration will prevail in an administrative environment where opportunities exist for waste, abuse, and maladministration;
- 6.1.2. the most effective way to prevent the occurrence of fraud, corruption, misconduct, or maladministration is to promote an ethical environment in which internal control mechanisms have been implemented; and
- 6.1.3. the provisions of the South Australian ICAC Act are directly applicable to all Council operations.
- 6.2. The Council expects that employees and public officers will assist in preventing fraud, corruption, misconduct, and maladministration within the Council by:
- 6.2.1. understanding the responsibilities of their positions;
- 6.2.2. familiarising themselves with the Councils procedures and adhering to them;
- 6.2.3. understanding what behaviour constitutes fraudulent or corrupt conduct, misconduct and/or maladministration;
- 6.2.4. maintaining an awareness of the strategies that have been implemented by the Council to minimise fraud, corruption, misconduct, or maladministration;
- 6.2.5. being continuously vigilant to the potential for fraud, corruption, misconduct, or maladministration to occur; and

- 6.2.6. reporting suspected or actual occurrences of fraud, corruption, misconduct, or maladministration in accordance with Part 6.5 of this Policy.

### **6.3. Roles and Responsibilities**

- 6.3.1. 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.

### **6.4. Reporting Corruption or Systemic or Serious Misconduct and Maladministration**

- 6.4.1. Any Public Officer who has or acquires knowledge of actual or suspected Corruption, or Systematic or Serious Misconduct or Maladministration in the Council or in other public administration must report this information to the OPI as soon as practicable
- 6.4.2. All reasonable suspicions of Corruption or Systematic or Serious Misconduct or Maladministration must be reported to the OPI in accordance with the Commissioner's reporting requirements as identified in the Commissioner's Directions and Guidelines. A report to the OPI must be made using the online report form available at: <https://icac.sa.gov.au/opi>
- 6.4.3. 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 at clause 4.4 of this Policy) should also, to the extent possible, be adhered to.
- 6.4.4. 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.
- 6.4.5. Further information about reporting requirements is available at the ICAC website: <https://icac.sa.gov.au/>

### **6.5. Reporting Fraud, Misconduct or Maladministration**

- 6.5.1. 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.

### **6.6. Confidentiality and Publication Prohibitions**

- 6.6.1. 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.
- 6.6.2. A person must not, other than as authorised by the Commissioner or a court, publish or cause to be published any of the following:
  - 6.6.2.1. information tending to suggest that a person is, has been, may be, or may have been, the subject of a complaint, report, assessment, investigation, or referral under the ICAC Act;
  - 6.6.2.2. information that might enable a person who has made a complaint or report under the ICAC Act to be identified or located;
  - 6.6.2.3. the fact that a person has made or may be about to make a complaint or report under the ICAC Act;
  - 6.6.2.4. 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;
  - 6.6.2.5. the fact that a person has given or may be about to give information or other evidence under this Act; or
  - 6.6.2.6. any other information or evidence which the Commissioner has prohibited from publication.
- 6.6.3. 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.
- 6.6.4. 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.

## **6.7. Action by the Chief Executive Officer**

- 6.7.1. 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 investigation should:
  - 6.7.1.1. occur as soon as practicable after the alleged incident;
  - 6.7.1.2. not impose on or detract from any investigation being undertaken by the OPI or SAPOL; and
  - 6.7.1.3. have regard to any recommendations in any report received from the Commissioner or SAPOL on the incident.
- 6.7.2. 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.



- 6.7.3. 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.

## **6.8. False Disclosure**

- 6.8.1. 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*. An Employee who makes a false disclosure, in addition to being guilty of an offence, will face disciplinary action that may include dismissal from employment.

## **6.9. Educating for Awareness**

- 6.9.1. The Council recognises that the success and credibility of this Policy will largely depend upon how effectively it is communicated throughout the organisation and beyond.
- 6.9.2. The Council will, therefore, from time to time take proactive steps towards ensuring that the wider community is aware of the Council's zero-tolerance stance towards fraud, corruption, misconduct, and maladministration.
- 6.9.3. The Council will increase community awareness by:
  - 6.9.3.1. promoting the Council's initiatives and policies regarding the control and prevention of fraud, corruption, misconduct, and maladministration on the Council's website and at the Council's offices;
  - 6.9.3.2. make reference to the Council's fraud and corruption initiatives in the Council's Annual Report; and
  - 6.9.3.3. facilitating public access to all the documents that constitute the Council's fraud and corruption framework.

## **7. Availability**

- 7.1. The Policy is available to be downloaded, free of charge, from Council's website [www.burnside.sa.gov.au](http://www.burnside.sa.gov.au).
- 7.2. The Policy will be available for inspection without charge at the Civic Centre during ordinary business hours and a copy may be purchased at a fee as set annually by Council.

City of Burnside Civic Centre  
401 Greenhill Road, Tusmore SA 5065

Telephone; 8366 4200  
Fax; 8366 4299  
Email; [burnside@burnside.sa.gov.au](mailto:burnside@burnside.sa.gov.au)

Office hours: Monday to Friday, 8.30am to 5.00pm (except public holidays)

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

Responsibility		Council Members	CEO	Managers	Employees	Audit and Risk Committees	Other (contractors & volunteers)
<b>Governance and ethics</b>							
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	✓	✓	✓	✓	✓	✓
<b>Awareness and training</b>							
1	Promote community awareness of the Council's commitment to the prevention of Fraud, Corruption, Misconduct and Maladministration.	✓	✓		✓ (as appropriate)		
2	Executive employees and managers 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	CEO	Managers	Employees	Audit and Risk Committees	Other (contractors & volunteers)
6	Adopt and models constructive behaviours and approaches to work which promote ethical behaviours in Council employees	✓	✓	✓		✓	
<b>Fraud prevention</b>							
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 to minimise the risk of Fraud, Corruption, Misconduct or Maladministration	✓	✓	✓			
<b>Detection and investigation</b>							
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		✓			✓	

Responsibility		Council Members	CEO	Managers	Employees	Audit and Risk Committees	Other (contractors & volunteers)
4	Provides mechanisms for receiving allegations of Fraud, Corruption, Misconduct and Maladministration		✓				
5	Investigates matters of Fraud, Corruption, Misconduct and Maladministration		✓				
6	Cooperate as required with any investigations undertaken whether internally or by an external authority	✓	✓	✓	✓		✓
<b>Monitoring and reporting</b>							
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	✓	✓			✓	