



TATIARA DISTRICT COUNCIL

**FRAUD, CORRUPTION,  
MISCONDUCT &  
MALADMINISTRATION  
POLICY**

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## **1. INTRODUCTION**

- 1.1 Tatiara 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.
- 1.2 The Council recognises that Fraud, Corruption 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 and Maladministration should feature predominantly within the systems and procedures of a responsible Council.

## **2. POLICY STATEMENT**

- 2.1 This Policy is designed to protect public funds and assets and the integrity, security and reputation of the Council.
- 2.2 This Policy outlines the Council's approach to the prevention or minimisation, detection and control of fraudulent, corruption and/or maladministration activity and, summarises the associated responsibilities of Council Members and Council Employees.
- 2.3 The Council will not tolerate fraudulent, corrupt and maladministration 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;
  - 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 18 of the ICAC Act and where allegations are substantiated, in addition to applicable criminal sanctions, may take disciplinary action in accordance with the Council's Codes of Conduct 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.

### 3. SCOPE

- 3.1 This Policy is intended to complement and be implemented in conjunction with other Council policies, but not limited to:
- Whistleblower Protection Policy;
  - Risk Management and Internal Control Procedures;
  - Code of Conduct for Council Employees;
  - Code of Conduct for Council Members;
  - Council Members Allowances and Benefits Policy;
  - Council Members and Council Staff Gifts Policy;
  - Investigation Procedures;
  - Document and Data Security;
  - Social Media;
  - Compliments and Complaints; and
  - Records Management Policy.
- 3.2 This Policy applies to all disclosures that relate to the actual or suspected occurrence of fraud, corruption and maladministration within the Council.

### 4. DEFINITIONS

For the purposes of this Policy the following definitions apply:

- 4.1 An **Appropriate Authority** that receives disclosure of public interest information includes:
- a Minister of the Crown;
  - a member of the police force - where the information relates to an illegal activity;
  - the Auditor-General – where the information relates to the irregular or unauthorised use of public money;
  - the Ombudsman – where the information relates to a public officer;
  - a Responsible Officer, where the information relates to a matter falling within the sphere of responsibility of a local Government body; or
  - any other person<sup>1</sup> to whom, in the circumstances of the case, it is reasonable and appropriate to make the disclosure<sup>2</sup>.
- 4.2 A person makes an **appropriate disclosure** of public interest information if
- (a) the person-
- i. believes on reasonable grounds that the information is true: or
  - ii. is not in a position to form a belief on reasonable grounds about the truth of the information but believes on reasonable grounds that the

<sup>1</sup> Such a person may include an independent company that offers an anonymous whistleblower call service.

<sup>2</sup> Where the disclosure relates to fraud and corruption, the Appropriate Authority must pass the information as soon as practicable to the Anti-Corruption Branch of the SA Police.

information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated; and

(b) the disclosure is made to the Appropriate Authority.

4.3 **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; 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.

4.4 **Deception** means deceiving another to obtain a benefit or to cause detriment to a person.

4.5 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.

4.6 A **False Disclosure** is a disclosure of information involving actual or suspected 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.

4.7 **Fraud** is the use of misrepresentations, deception or dishonest conduct in order to obtain an unjust advantage over another or, to cause detriment to the Council. Examples of fraudulent conduct include:

- theft of assets;
- unauthorised and/or illegal use of assets, information or services for private purposes;

- misappropriation of funds; and/or
  - falsification of records.
- 4.8 **Independent Commissioner Against Corruption (Commissioner)** means the person holding or acting in the office of the Independent Commissioner Against Corruption.
- 4.9 **Maladministration** in public administration defined at section 4 of the *Independent Commissioner Against Corruption Act 2012*,
- (a) means:
- (i) 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
  - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
- (b) includes conduct resulting from impropriety, incompetence or negligence; and
- (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
- 4.10 **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.
- 4.11 **Misconduct** in public administration defined at Section 4 of the *ICAC Act 2012* means:
- (a) 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
  - (b) other misconduct of a public officer while acting in his or her capacity as a public officer.
- 4.12 **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;
- perform other functions assigned to the Office by the Commissioner
- 4.13 **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.

- 4.14 **Public Officer** defined under the *ICAC Act 2012* includes:
- a Council Member;
  - an Employee or Officer of the Council;
  - a person performing contract work for a public authority or Crown,
  - person who is, in accordance with an Act, assisting a public officer in the enforcement of the Act,
  - a person who is a member of the State Executive of the Local Government Association; and
  - an officer or employee of the Local Government Association.
- 4.15 A **Responsible Officer** is a person (or persons) authorised to receive and act upon public interest information provided by a Whistleblower<sup>3</sup>. Each Council must ensure that a member of the staff of the Council (with qualifications prescribed by the Regulations<sup>4</sup>) is designated as a Responsible Officer for the Council for the purposes of the *Whistleblowers Protection Act 1993*.
- 4.16 **SAPOL** means the Anti-Corruption Branch of the South Australian Police Force.
- 4.17 A **Whistleblower** is any person who makes an appropriate disclosure of public interest information.
- 4.18 **Waste** refers to the waste of public resources (including public money), which occurs as a result of the substantial mismanagement, irregular or, unauthorised use of public resources.

## 5. PREVENTION

- 5.1 The Council recognises that:
- the occurrence of fraud and corruption will prevail in an administrative environment where opportunities exist for waste, abuse and maladministration; and
  - 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.
- 5.2 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 the Councils procedures and adhering to them;

<sup>3</sup> It is recommended that the Responsible Officer is one or two Council Officers (with qualifications prescribed by the Regulations, as required under s.302B of the *Local Government Act 1999*) and is not the Chief Executive Officer, the Mayor or Council Member or a Council Committee. A Council Member should not be appointed as a Responsible Officer as Council Members are not equipped to properly deal with an appropriate disclosure in terms of the roles and responsibilities of office. Furthermore the Responsible Officer is an administrative role and the principles of good governance require division between the administrative and governing bodies of a Council.

<sup>4</sup> Regulation 21B of the *Local Government (General) Regulations 1999*, states that the prescribed qualifications are the qualifications determined by the Minister. The Minister has not yet made any determination.

- 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 the first instance, to the OPI in accordance with its reporting requirements or in the absence of any specific required reporting requirement, to either a Responsible Officer, or directly to SAPOL.

### 5.3 Specific Responsibilities

#### 5.3.1 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;
- ensures that, where appropriate, proper investigations are conducted into allegations that involve fraud or corruption;
- forwards information relating to the occurrence of fraud or corruption to SAPOL or OPI (as required) and facilitates cooperation with any investigation;
- 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.

#### 5.3.2 **Manager's** 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 any suspected or actual occurrences of fraud or corruption within the Council in accordance with any mandatory reporting obligations for such matters as established by the Commissioner or otherwise to the Chief Executive Officer, unless the disclosure falls within the ambit of the *Whistleblowers Protection Act* and, in which case, is to be made to the Responsible Officer;
- 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 the Code of Conduct for Council Officers and in this policy;
- identifying potential fraud and corruption risks; and
- leading by example to promote ethical behaviour.

5.3.3 **Employee's** 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; and
- reporting any occurrence of fraud and/or corruption within the Council in any manner required by any applicable mandatory reporting obligations established by the Commissioner or otherwise to a Manager or to the Chief Executive Officer, unless the disclosure falls within the ambit of the *Whistleblowers Protection Act* and, in which case, is to be made to the Responsible Officer

## **6. FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS**

6.1 The Council's main objective in the prevention and control of Fraud and Corruption is to minimise the occurrence of Fraud and Corruption within the Council. This objective is generally achieved by:

- identifying Fraud and Corruption Risks;
- determining strategies to control those risks; and
- 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 weary 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; and
- changes to risk management practices.

## 7. REPORTING AND INVESTIGATION

- 7.1 Managers and Employees who are aware of fraudulent or corrupt activity within the Council are required to report this information in a manner recognised by this Policy being in accordance with any mandatory reporting requirements established by the ICAC or otherwise to either a Manager or the Chief Executive Officer or otherwise in a manner consistent with the provisions of the *Whistleblowers Protection Act*. As necessary, the Chief Executive Officer will then ensure there is compliance with any reporting obligations as required by the OPI.
- 7.2 Any Council Member who is aware of fraudulent or corrupt activity within the Council is required to report this information in accordance with any mandatory reporting obligations established by the ICAC or otherwise to the Mayor and/or the Chief Executive Officer. If the report is made to the Mayor, the Mayor must immediately make known the report to the Chief Executive Officer.
- 7.3 The Chief Executive Officer must report any allegations involving fraud or corruption to the Anti-Corruption branch of SAPOL or the OPI in accordance with its reporting requirements.
- 7.4 Appropriate disclosure of public interest information that falls within the ambit of the *Whistleblowers Protection Act* should be reported to the Responsible Officer. The Responsible Officer will ensure that any allegations of fraud or corruption are, in the first instance, referred to the Anti-Corruption branch of SAPOL in accordance with the *Whistleblowers Protection Act*.
- 7.5 When the Anti-Corruption branch of SAPOL or the OPI refer a report of alleged fraudulent or corrupt activity to the Council because SAPOL or the OPI have formed the view that the activity does not amount to fraud or corruption, the Council will conduct a review of the report in accordance with its own internal investigation procedure and will report any findings of the review and provide recommendations (if any) to the Council.
- 7.6 Following any investigation undertaken by the Anti-Corruption branch of SAPOL or ICAC the Chief Executive Officer will ensure a review into the area of which the fraud or corruption occurred is undertaken 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.
- 7.7 Following consideration of a report provided to the Council in accordance with clause 7.5 or 7.6, the Council will determine the action that is required to be taken to prevent any recurrence of the alleged or actual fraud and/or corrupt activity.
- 7.8 In the event that allegations of fraudulent and/or corrupt activity are substantiated, the Council will take disciplinary action against any Employee who was involved.

## 8. FALSE DISCLOSURE

- 8.1 A person who knowingly makes a false or misleading statement in a complaint or report under the *ICAC Act 2012* or makes a false or misleading disclosure, under the *Whistleblowers Protection Act 1993*, is guilty of an offence

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

## **9. EDUCATING FOR AWARENESS**

- 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.
- 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 and corruption.
- 9.3 The 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;
  - make reference to the Council's fraud and corruption initiatives in the Council's Annual Report; and
  - facilitating public access to all of the documents that constitute the Council's fraud and corruption framework.

## **10. CONCLUSION**

- 10.1 The 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.

## **11. AVAILABILITY**

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

## **12. RECORD OF AMENDMENTS**

<b>DATE</b>	<b>REVISION NO</b>	<b>REASON FOR AMENDMENT</b>
7 <sup>th</sup> April 2009	Rev 00	Draft Policy Prepared
12 <sup>th</sup> May 2009	Rev 01	Adopted by Council
9 <sup>th</sup> July 2013	Rev 02	Reviewed & amended to cater for ICAC Act
13 <sup>th</sup> March 2018	Rev 03	Reviewed and adopted by Council (Res# 519)