

SOUTH GIPPSLAND SHIRE COUNCIL
COUNCIL POLICY



South Gippsland
 Shire Council

FRAUD AND CORRUPT CONDUCT POLICY

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 Department Governance [PID]

Policy No.
 C19

1. POLICY OBJECTIVE

The purpose of the Fraud and Corrupt Conduct Policy (the Policy) is to formalise Council's commitment to ensuring that fraudulent and corrupt behavior within or against Council is not tolerated.

This Policy has been developed to support Council to comply with its good governance and conduct obligations in line with various legislation, principally the *Local Government Act 2020*.

This policy sets out Council's plans to prevent, detect and respond to incidents of fraud and corruption by establishing robust internal controls and embedding a strong culture of ethical conduct throughout the organization in accordance with the principles and guidelines set out in the Australian Standard for fraud and corruption control AS 8001:2008.

2. POLICY STATEMENT

- 2.1. Council is committed to conducting its business with the highest standards of personal and organisational integrity, responsibility, transparency and accountability;
- 2.2. Council is committed to maintaining a culture of honesty and integrity within the organisation and does not tolerate any type of fraudulent or corrupt activity, whether for the purpose of benefiting an individual, an organisation or Council itself;
- 2.3. Where fraud or corrupt conduct is suspected, that suspicion must be reasonably held. Suspicion is a state of mind that is distinct from a belief. It is not necessary for the person making the report to believe the relevant conduct amounts to fraud or corrupt conduct. All that is required to make a report is a reasonable suspicion based upon proper consideration of available facts (there must be a factual basis for the suspicion). Equally, there are consequences for frivolous and vexatious complaints.
- 2.4. Prevention and detection of fraud and corruption is the responsibility of all employees. Council:

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- Maintains a “zero tolerance” attitude towards fraud and corruption
 - Requires that any suspected or detected incident of fraud or corruption be reported immediately, in accordance with roles and responsibilities as set out in Section 5.3 and Response in Section 5.6.1 below;
 - Provides assurance that all cases of fraud or corruption will be handled and investigated in a confidential, prompt and professional manner, and where relevant in accordance with Council’s Public Interest Disclosures Guidelines.
- 2.5. While it is acknowledged that facilitation payments are customary in some foreign locations, these payments are difficult to distinguish from bribery and are questionable from an ethical point of view. Therefore, Council does not allow payment or acceptance of facilitation payments on behalf of Council;
- 2.6. Council adopts an integrated approach to managing fraud that includes prevention, detection and investigation as part of the organisation’s overall business risk and resource management;
- 2.7. Council is committed to protecting Council against any attempt to dishonestly obtain a benefit by deception or other means, whether by members of the public, contractors, agents, intermediaries or its own employees.
- 2.8. Council maintains Public Interest Disclosure Guidelines (published on its website) which protect ‘whistleblowers’ from unjust recrimination where they have an honest and reasonable suspicion of malpractice and they act on it.

3. POLICY SCOPE

- 3.1. This policy applies to all Councillors, employees and volunteers engaged directly by Council as well as all agents and contractors either engaged by Council or by an authorised contractor of Council.
- 3.2. Fraudulent or corrupt conduct will not be tolerated under any circumstance. Any behaviour that is suspected to be fraudulent or corrupt in relation to South Gippsland Shire Council will follow the response process as detailed below, including reporting to the relevant law enforcement agency and/or IBAC when sufficient evidence is available.

4. RISK ASSESSMENT

In order to comply with its obligations under the *Local Government Act 2020* and maintain the trust and confidence of the community, it is critical that Council and Councillors maintain the highest possible standards of good governance, integrity,

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ethical behaviour and conduct. This Policy and the associated procedures mitigate Council's risks as described below.

4.1. Financial management and legislative compliance

The effective management of financial resources and legislative compliance are strategic risks for Council. The establishment and adherence to a Fraud and Corrupt Conduct Policy combined with effective control of aspects of the broader financial management assist to mitigate this risk.

4.2. Reputational

A comprehensive Fraud and Corrupt Conduct Policy minimises risk of activity that causes financial and reputational loss to Council and the consequent negative impact on the community.

4.3. Openness and Transparency

This policy provides guidance in ensuring a consistent approach is taken for instances of or suspicions of fraudulent and corrupt conduct.

5. ROLES AND RESPONSIBILITIES

The Responsibility for fraud and corrupt conduct prevention rests with all levels of management, Councillors, employees, volunteers and agency or contract staff who represent the Council and who, collectively, must accept ownership of fraud and corrupt conduct prevention, detection and reporting. **All employees** are expected to support the development of an ethical and honest culture within Council.

Role	Responsibility
Councillors	<ul style="list-style-type: none"> • Overall ownership of the Fraud and Corrupt Conduct Policy. • Promote community awareness of Council's commitment to the prevention of fraud and corruption. • Notify the Mayor, who in turn will notify the Chief Executive Officer (CEO), of any incidences of suspected fraud or corrupt behaviour. If there is an allegation made against the CEO this should be notified to the Mayor who will seek advice from IBAC. • Demonstrate and promote an ethical and honest culture at South Gippsland Shire Council in all elements of their role as a Councillor.
Audit and Risk Committee	<ul style="list-style-type: none"> • Oversight of fraud prevention systems and controls. • Review of Council's fraud prevention policies and controls at least every two years. • Receive reports from management about actual or suspected

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	<p>instances of fraud or corruption, including analysis of the underlying control failures and action taken to address each event.</p> <ul style="list-style-type: none"> • Review reports by management about the actions taken by Council to report such matters to the appropriate integrity bodies. • Demonstrate and promote an ethical and honest culture at South Gippsland Shire Council in all elements of their role as a Committee member.
CEO	<ul style="list-style-type: none"> • Principal responsibility for the management of fraud and corrupt conduct controls to ensure compliance with relevant legislation, regulations and guidelines and that appropriate governance structures and processes are implemented. • Notification to IBAC under the <i>Independent Broad-based Anti-Corruption Act 2011</i> of any matter they suspect on reasonable grounds involves corrupt conduct. • Ownership of Council's Fraud Risk Register including identification, analysis, evaluation and treatment of risks. • Demonstrate and promote an ethical and honest culture at South Gippsland Shire Council in all elements of their role.
Executive Leadership Team	<ul style="list-style-type: none"> • Ownership of fraud and corruption risk management within their portfolio, in accordance with Council's Risk Management Policy and Framework, including: <ul style="list-style-type: none"> - Identification, analysis and evaluation of fraud and corruption risks - Implementation and performance of appropriate controls - Develop and implement Risk Treatment Plans where required. • Ensure employees are aware of fraud and corruption control responsibilities. • Escalate any identified instances of fraud or corruption to the CEO or Governance Manager. • Demonstrate and promote an ethical and honest culture at South Gippsland Shire Council in all elements of their role. • Monitor and actively manage excessive outstanding leave of staff to ensure leave balances are at acceptable levels and within Enterprise Agreement requirements.
All employees, volunteers and contractors	<ul style="list-style-type: none"> • Understand the Fraud and Corrupt Conduct Policy • Comply with internal control measures, policies and procedures • Be alert to instances of fraud and corruption • Report suspected acts of fraud or corruption to their supervisor or manager, or if that is not appropriate to a Public Interest

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	<p>Disclosure Officer pursuant to the Public Interest Disclosures Guidelines</p> <ul style="list-style-type: none"> • Assist with any authorised inquiries or investigations into alleged fraud • Demonstrate and promote an ethical and honest culture at South Gippsland Shire Council in all elements of their role
Governance Manager	<ul style="list-style-type: none"> • Ownership of Fraud and Corrupt Conduct framework across Council, including: <ul style="list-style-type: none"> - Development and maintenance of Council Fraud and Corrupt Conduct Policy - Respond to questions and/or provide training in relation to Fraud and Corruption Control - Management and monitoring of the Fraud risks included within the Strategic and Operational Risk Registers • Provide reporting on fraud and corruption control to Council, CEO, Audit and Risk Committee, Executive Leadership Team and employees.

6. IMPLEMENTATION | AUDIT | REVIEW

6.1. Human Rights Charter

This Policy is a key mechanism for providing assurance that the Council meets its obligations to provide good governance as required by the *Local Government Act 2020 (or other relevant Act that is applicable)* and the *Charter of Human Rights and Responsibilities Act 2006* and associated obligations, including ensuring that actions are taken in accordance with the relevant law.

6.2. Publication of Policy

This policy will be published on Council's website.

6.3. Prevention

Fraud risk assessment - When undertaking business risk assessments, managers will specifically consider the risk of fraud and include such risks in Council's Risk Registers. Fraud risk assessments must be conducted at least annually. Each new or revised control improvement must be assigned to a specific person with a date by which implementation must be achieved.

- 6.3.1. *Communication and awareness* - As part of the staff induction process, all new employees are required to familiarise themselves with relevant

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Council policies. The Fraud and Corrupt Conduct Policy is included in the induction process for all new employees. Regular refresher training will be provided.

6.3.2. *Employment Screening* - Council conducts pre-employment screening for all new employees. Screening checks undertaken prior to employment must include:

- at least two reference checks
- verification of formal qualifications
- police record check (for all positions).

6.3.3. *Supplier vetting* - It is important that Council understands the third parties it deals with and any risks they may present to the organisation. Council undertakes supplier vetting which includes credit checks and the following further inquiries are also to be undertaken:

- ABN confirmation for Australian registered companies
- telephone listing verification, and
- trading address verification.
- Bank detail change requests

In some circumstances where the risk is deemed to be higher. i.e. high value contracts, additional inquiries such as directorship searches and searches for relevant legal proceedings or judgements are also undertaken.

6.4. Detection

6.4.1. *Detection program (data analysis)* - Council undertakes periodic proactive sampling analysis of its electronic data. The testing program will be ongoing and managed by the Finance department. The analysis will focus on the detection of potential indicators of fraud, anomalies or error.

6.4.2. *Internal audit* - Internal audit should not be relied upon to detect or prevent fraud. However, internal audit activity should be planned and conducted in accordance with fraud and corruption detection, prevention and response provisions. Where internal audit processes detect weaknesses in internal controls that may potentially increase the risk of fraud being committed or not detected, specific reference to those findings and any recommendations should be made in the

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internal audit report. Council conducts periodic internal audits involving data analysis.

- 6.4.3. *External audit* – An auditor conducting an audit in accordance with Australian Auditing Standards is responsible for obtaining reasonable assurance that the financial report taken as a whole is free from material misstatement, whether caused by fraud or error.

6.5. Response

- 6.5.1. *Internal reporting and escalation* - Council employees play a key role in reporting and detecting fraud. Our internal staff reporting systems aim to provide an open and receptive process that encourages employees to be proactive and confident in reporting suspicions when they are first formed.

Suspected fraud must be reported to the employee's immediate supervisor or manager. In the event that it is not appropriate to report suspicions to an immediate supervisor or manager, the matter is to be reported to the Governance Manager and/or CEO or in accordance with Council's Public Interest Disclosures Guidelines.

If there is an allegation made against the CEO this should be notified to the Mayor who will seek advice from IBAC.

On receiving a report of suspected fraud or corrupt conduct, the Director, Manager, Coordinator or Supervisor receiving the report, must record details of the notification, including the time and date the notification is made and details of matters raised.

Except where it is has been reported as a Protected Disclosure (which is a specifically legislated protected action), all reported incidents of suspected fraud or corrupt conduct must be notified to the CEO or Governance Manager by the Director, Manager, Coordinator or Supervisor receiving the report immediately and prior to any preliminary inquiries being undertaken.

The Governance Manager in consultation with the CEO, will ensure all disclosures of fraud are assessed and an appropriate response plan is initiated. The response plan will include initiating investigative steps and reporting the matter to appropriate internal management. Only employees who need to know will be made aware of the matter under investigation. An external party may be engaged to assist with the conduct of the investigation.

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All significant or systemic instances of fraud or corruption will be reported to the Audit and Risk Committee Chair and Mayor immediately.

The Governance Manager will maintain a confidential register of incidents of fraud. A report will be made at each Audit and Risk Committee regarding any known instances or suspicions of fraud and corrupt conduct.

In line with Council's 'zero tolerance' to fraud and corruption, and where sufficient evidence is identified during an investigation to believe that a criminal offence has occurred, such findings and any associated evidence will be referred to the relevant law enforcement agency. Any such report must be approved by the CEO. Except where exceptional circumstances require an immediate police response or IBAC report, no external reporting of unfounded/not yet investigated suspicions will occur.

Nothing in this policy limits any rights or obligations under the Corporations Act 2001 (Cth), particularly Part 9.4AAA – Protection for Whistle-blowers.

- 6.5.2. *Civil action* - In the event that fraud results in a financial loss for Council, the CEO (or delegate) will assess whether civil proceedings should be initiated in order to recover those losses, or to assist the undertaking of any investigation. These proceedings may occur at any time after the matter is reported.

Where a prosecution is instigated by police, the CEO (or delegate) will liaise with the relevant police officer to ensure that an application for restitution is made in the event of conviction.

- 6.5.3. *Post-incident review* - Following any confirmed incident of fraud, the Governance Manager will ensure that a review of the adequacy of controls is conducted by appropriate Council staff. This review will focus on identifying any control breakdowns and reporting on improvements to mitigate the risk of a similar incident occurring in the future. Where relevant, the results of the review will be communicated to other areas within Council that may benefit from control improvements. Post-incident reporting will be provided to the Audit and Risk Committee.

6.6. Notifications

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- 6.6.1. The CEO has responsibility for managing the preliminary assessment and any notifications required, including requirements under Council's Public Interest Disclosure Guidelines (CE21).

The CEO must notify IBAC of any matter he/she has reasonable grounds to suspect may involve corrupt conduct (including suspected fraud) occurring or having occurred, in accordance with IBAC's Directions for Relevant Principal Officers which provides guidance on the matters that must be notified to IBAC and the form, content and method of notification. The CEO must notify IBAC of all potential incidences of suspected corrupt conduct, not just that involving Council.

What constitutes corrupt conduct or at what point certain conduct gives rise to a reasonable suspicion of corrupt conduct can be difficult to discern. The CEO will exercise her/his judgement, and sometimes seek independent advice on these issues before notifying IBAC, consistent with the IBAC Act's confidentiality provision.

Notifications of suspected corrupt conduct must be made as soon as practicable after the CEO has formed a reasonable suspicion that corrupt conduct may have occurred or may be occurring. No action should be taken by the CEO until IBAC has assessed the matter and notified the CEO of its decision. This includes investigatory, disciplinary or other actions. Notifications to IBAC must be made without advising the person(s) to whom the notification relates and without publicity. All notifications of suspected corrupt conduct to IBAC are to be treated in the strictest confidence.

- 6.6.2. *IBAC assessment, notification and further actions required.*

IBAC has an obligation to assess all notifications of suspected corrupt conduct and then either dismiss, investigate or refer notifications of suspected corrupt conduct. In considering a notification, IBAC may choose to make preliminary inquiries, prior to a decision to either refer or investigate a matter.

Many notifications will result in referral back to the CEO for further action. IBAC may then choose to further consider and/or review the response of Council. IBAC may decide to investigate a matter directly.

Should the notification be referred back to the CEO for further action, the CEO (or delegate) is to carry out any required actions in accordance with instructions from IBAC and provide relevant reports as required to IBAC and Council's Audit and Risk Committee.

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6.7. Training

- 6.7.1. This policy shall be included in the Induction program for new Councillors and employees. Formal awareness raising sessions/communications for all staff will be conducted periodically.

6.8. Non-compliance with this Policy

- 6.8.1. Council acknowledges that it is possible that some incidents of fraud or corruption may occur impacting on its operations. However, Council has a zero-tolerance attitude to fraud and corruption and is committed to ensuring that any fraudulent or corrupt behaviour will be detected reported and investigated. If sufficient evidence is discovered to support an allegation of fraudulent or corrupt behavior a referral will be made to the relevant law enforcement agency.

7. MONITORING, EVALUATION AND REVIEW

- 7.1. Monitoring, evaluation and review of the policy rests with the Governance department of the Performance & Innovation Directorate.
- 7.2. This policy will be reviewed and adopted by Council at minimum on a 4 year cycle. The Audit & Risk Committee review Council's fraud prevention policies and controls at least every two years.
- 7.3. This policy will be published on Council's website.

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8. DEFINITIONS

Corrupt Conduct

“Corrupt conduct” the IBAC Act (s4) describes and defines corrupt conduct, summarised here as conduct, or an attempt or conspiracy to engage in conduct (whether it takes place inside or outside of Victoria) that:

- Adversely affects the honest performance of the functions of a **Public Officer** or **Public Body**;
- Constitutes or involves the dishonest performance of the functions of a **Public Officer** or **Public Body**;
- Constitutes or involves knowingly or recklessly breaching public trust;
- Involves the misuse of information or material acquired in the course of the performance of the functions of a **Public Officer** or **Public Body**;
- Adversely affects the effective performance of the functions of a **Public Officer** or **Public Body** that results in a person obtaining a specified benefit.

The IBAC Act provides that **corrupt conduct** be conduct that would constitute a **relevant offence**

Facilitation Payments

Customary, unofficial minor payments to secure or speed a routine government action. They are known colloquially as “speed money”, “grease payments” or “oiling the wheels”

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Fraud

Dishonest activity causing actual or potential financial loss to any person or entity including theft of moneys or other property by employees or persons external to the entity and where deception is used at the time, immediately before or immediately following the activity. This includes the deliberate falsification, concealment, destruction or use of falsified documentation used or intended for use for a normal business purpose or the improper use of information or position for personal financial benefit.

Theft of property belonging to Council or persons internal to Council but where deception is not used is also considered fraud for the purpose of this policy.

IBAC

Independent Broad-based Anti-corruption Commission

Significant or Systemic

Means an incident, or a pattern or recurrence of incidences, which a reasonable person would consider has a significant impact on the Agency or the State's reputation, financial position or financial management. An incident is considered significant for the purpose of this policy if the value is greater than \$5,000 in money or \$10,000 in other property. An item can also be classified as significant at the discretion of the CEO (i.e. if it poses major potential damage to the organisation).

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SUPPORTING INFORMATION

Legislative Provisions	<p>Local Government Act 2020 Freedom of Information Act 1982 Financial Management Act 1994 Public Interest Disclosure Act 2012 Charter of Human Rights and Responsibilities Act 2006 Crimes Act 1958 Information Privacy Act 2000 (Vic) and Commonwealth Privacy Act 1998 Public Administration Act 2004 Independent Broad-based Anti-corruption Commission (IBAC) Act 2011</p>
Council Supporting Documents	<p>Acceptance of Gifts and Donations Policy (C01) Audit & Risk Committee Charter (C08) Audit Policy (C55) Councillor Code of Conduct (C14) Councillor Support and Expenditure Policy (C51) Governance Rules 2020 (C82) Human Rights Policy (C52) Information Technology Policies. Intellectual Property Policy (C23) Meals, Alcohol and Gifts Policy (CE81) Procurement Policy (C32) and Manual Public Interest Disclosures Guidelines (CE21) Risk Management Policy and Framework (C35) Staff Code of Conduct (CE20)</p>
Related Documents	<p>Audit Committees – A Guide to Good Practice for Local Government – January 2011. Australian Standard: Fraud and Corruption Control AS 8001 – 2008. Australian / New Zealand Standard: Risk management – Principles and guidelines AS/NZS 31000:2018</p>
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REVISION HISTORY

Version	Approved By	Approval Date	Sections Modified
1.0	Council	19 May 2021	Refreshed Policy
