



## FRAUD AND CORRUPT CONDUCT POLICY

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### POLICY OBJECTIVE

The purpose of this policy is to:

1. Protect public funds and assets and the integrity, security and reputation of South Gippsland Shire Council (the 'Council');
2. Outline Council's approach to the prevention / minimisation, identification and control of fraud and corrupt conduct;
3. Promote and guide the conduct of all Councillors, employees, volunteers, contractors, other service providers and external parties, with a view to the avoidance of fraud and corrupt conduct and management of situations, which may be regarded as fraud or corrupt conduct;
4. Demonstrate Council is committed to the detection and management of any such occurrences;
5. Encourage and facilitate the notification of matters that will assist in the avoidance of fraud or corrupt conduct;
6. Ensure that notifications are treated in strict confidence; and
7. Protect those people making notifications from retribution.

### LEGISLATION, POLICY, STANDARDS AND GUIDELINES

#### Legislation

- Charter of Human Rights and Responsibilities Act 2006.
- Crimes Act 1958.
- Independent Broad-based Anti-corruption Commission (IBAC) Act 2011.
- Information Privacy Act 2000 (Vic) and Commonwealth Privacy Act 1998.
- Local Government Act 1989.
- Protected Disclosures Act and Regulations 2012.
- Public Administration Act 2004.

#### South Gippsland Shire Council Policy and Guidelines

- Acceptance of Gifts and Donations Policy.
- Asset Disposal Policy.
- Audit Committee Terms of Reference.
- Audit Policy.
- Councillor Code of Conduct.
- Councillor Support and Expenditure Policy.
- Information Technology Policies.
- Intellectual Property Policy.
- Procurement Policy and Manual.
- Protected Disclosures Guidelines.
- Risk Management Policy.
- Staff Code of Conduct.



## Standards and Guidelines

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- 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 31000:2009.

### DEFINITIONS

“**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**.

“**Fraud**” is defined in Australian Standard AS8001 – 2008 Fraud and Corruption control as:

“Dishonest activity causing actual or potential financial loss to any person or entity including the 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 also includes the deliberate falsification, concealment, destruction or use of falsified documentation used or intended for use for normal business purpose or the improper use of information or position for financial benefit. The theft of property belonging to an entity by a person or persons internal to the entity but where deception is not used is also considered ‘Fraud’ for the purpose of this Standard.”

Fraud is a crime that is an offence under the Crimes Act 1958 (Vic) which may result in loss of reputation, impairment of business relations, decline in working morale, increased oversight by regulators, negative media and external investigation for Council.

“**Internal Fraud**” refers to fraudulent acts undertaken by Councillors or employees. Examples of such Fraud would include but are not limited to:

- Theft and/or misappropriation of cash and alteration of records to conceal any deficiency;
- Unauthorised use and/or removal of equipment, parts, software, and office supplies from Council premises;
- Deliberate over-ordering of materials or services to allow a proportion to be used for personal purposes;
- Submission of sham taxation arrangements for an employee or contractor to circumvent Council’s procedures for engagement of employees and contractors;
- Falsified applications for reimbursement;
- Falsification of invoices for payment;



- Falsification of time records;
- Damage, destruction or falsification of documents;
- Misrepresentation of qualifications;
- Theft;
- Obtaining property or a financial advantage by deception;
- False accounting;
- Unauthorised use of assets and equipment for the benefit of third parties; and
- The unauthorised sale, disposal or destruction of council property including tools, supplies, waste or reclaimed products, materials, mulch, or equipment.

“**External Fraud**” refers to fraud committed against the Council by persons outside of the organisation. Examples include false invoices or statements in application for Council programs and applications for grants.

“**Misconduct in public office**” is a broad offence. The elements of misconduct in public office are established if a **Public Officer** in the course of, or connected to, their public office:

- Wilfully misconducts themselves whether by act or omission, without any reasonable excuse or justification; and
- The misconduct is serious and meriting criminal punishment having regard to the responsibilities of the public office, the importance of the public objects they serve and the nature and extent of the departure from those responsibilities and objects.

Examples might include:

- Deliberately falsifying accounts to conceal or obtain a benefit;
- Entering into a secret commission or profit sharing arrangement with another person while acting in an official capacity;
- Colluding with other public officers to share profits with tender recipients and concealing the overvaluation of tenders;
- Using public office to deceive a member of the public to gain a financial advantage;
- Misusing power to harm, oppress or disadvantage a person.

“**Public Body**” is a public sector body within the meaning of the *Public Administration Act (2004)*, a body established under an Act for a public purpose (such as a University), a council, or a public body performing a public function on behalf of the state, a public body or a public officer. This includes bodies under contract performing public functions.

“**Public Officer**” is any person working in the service of the Crown or a **Public Body**, or a person who is performing a public function on behalf of a public officer or public body. This includes a person under contract. Public officers include public servants, teachers, police personnel, council employees and elected officials such as Councillors.

“**Relevant Offence**” as defined in the IBAC Act (s3(1)) to mean an indictable offence against any Act or the common law offences of attempt to pervert the course of justice, bribery of a public official, perverting the course of justice and misconduct in public office.



## 1. POLICY STATEMENT

Council is committed to protecting its revenue, expenditure, assets and reputation from any attempt by members of the public, contractors, agents, intermediaries, volunteers, Councillors or its own employees to gain financial or other benefits by deceit, bias or dishonest conduct.

Council's commitment to fraud and corrupt conduct control will be managed by ensuring that fraudulent or corrupt activity is unacceptable, conflicts of interest are avoided, and auditing and internal controls systems are in place to deter and identify corrupt activities.

In accepting its responsibility for good governance Council will set the example for honesty and integrity in the provision of services to the community and the management of the organisation.

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.

All reports received relating to fraud or corrupt conduct will be fully managed in accordance with Section 3 of this policy.

Councillors, employees, contractors and volunteers must be aware of Council's intention to report internal and external Fraud or Corrupt Conduct to IBAC, suspend or dismiss employees and support the prosecution of Councillors, employees and any other parties to the matter, found to be involved in fraud or corrupt conduct. Council will recover financial losses through civil or criminal proceedings.

## 2. RESPONSIBILITIES

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.

### Councillors

Collectively, as the decision making body of Council, Councillors are responsible for ensuring that Council:

- Promotes community awareness of Council's commitment to the prevention of fraud and corruption;
- Provides an adequate security environment and framework for the prevention of fraud and corruption. This includes amongst other things the provision of secure facilities for storage of assets, and the preventative and detective procedures to deter fraud or corrupt conduct from occurring;
- Provides mechanisms for receiving and managing allegations of fraud or corrupt conduct through this policy; and
- Notifies the Chief Executive Officer (CEO) or Mayor of any incidences of suspected fraud or corrupt conduct in accordance with Section 3 of this policy.



The CEO has principal responsibility for the management of fraud and corrupt conduct control to ensure compliance with relevant legislation, regulations and guidelines and that appropriate governance structures and processes are in place. The CEO ensures reports of fraud or corrupt conduct are managed in accordance with Section 3 of this Policy.

### **Directors, Managers, Coordinators and Supervisors:**

Have a duty within their areas of responsibility to:

- Identify risk exposures to fraud and corrupt conduct;
- Establish controls and procedures for prevention and detection of such activities;
- Arrange, through the Risk and Procurement Team, guidance and instruction to staff regarding fraud or corrupt conduct reporting requirements;
- Maintain effective auditing and internal control reporting on key financial systems;
- Participate in fraud and corrupt conduct risk assessments periodically;
- Implement action plans identified in risk assessments to eliminate or reduce the fraud or corrupt conduct risk and report on the outcome of these action plans;
- Monitor and actively manage excessive outstanding leave of staff to ensure leave balances are at acceptable levels and within Enterprise Agreement requirements;
- Receive and refer reports of suspected fraud or corrupt conduct from relevant staff / contractors / volunteers / community members in accordance with Section 3 of this Policy; and
- Participate as required in any investigations.

Directors, Managers, Coordinators and Supervisors will ensure that all contractors working for their areas of responsibility are aware of this Policy and that it is incorporated into contracts and to ensure the Contractors' staff are made aware of their responsibilities and acceptable behaviours.

### **All Employees / Special Committees (Section 86) / Volunteers**

Are responsible for:

- Performing their functions and duties with care, diligence, honesty and integrity;
- Adhering to this Policy and other Council policies and procedures that have been established to prevent fraud or corrupt conduct;
- Taking care of Council's property which includes avoiding the waste or misuse of Council's resources;
- Maintaining and enhancing the reputation of Council;
- Remaining scrupulous in the use of Council information, assets, funds, property, goods and services; and
- Reporting any suspected incidences of fraud or corrupt conduct in accordance with Section 3 of this Policy.

### **Contractors**

Contractors or other people involved in the contracting processes may become aware of or have information indicating fraud or corrupt conduct in relation to the tender processes, service provision or any other matter. Contractors should report such activity to the CEO or Coordinator Risk and Procurement.



The Coordinator Risk and Procurement will:

- Provide advice and assistance to Directors, Managers and Coordinators on how to implement this policy or related procedures;
- Develop and maintain a fraud and corrupt conduct internal control framework and action plan to ensure compliance with relevant Australian Standards;
- Coordinate the development and review of business units' fraud and corrupt conduct risk assessments;
- Coordinate any reports to Council's Audit Committee; and
- Act as Council's appointed Fraud and Corruption Control Officer.

### **Audit Committee and Internal Audit**

The Audit Committee will provide regular oversight and advice about Council's Audit program as is required in Council's Audit Policy.

The CEO will inform the Audit Committee of all instances of notifications or investigations into suspected Fraud or Corrupt Conduct.

Where appropriate each Internal Audit / Review Scope will include a review of fraud or corrupt conduct controls and awareness in respect of the area or function that is to be reviewed.

As the third line of defence, Internal Audit has an important role in assisting management in the prevention and detection of fraud or corrupt conduct by:

- Independently reviewing systems, procedures and controls to ensure that there are adequate safeguards to prevent, deter and detect fraud or corrupt conduct, with attention being paid to areas where there is potentially a high risk;
- Through specific audits and testing of systems, identifying areas of concern;
- Responding to requests for advice on implementing controls; and
- Independently investigating suspected fraud or corrupt conduct and irregularities as requested by the CEO and reporting conclusions to the Audit Committee and management.

### **3. REPORTING AND MANAGING REPORTS OF SUSPECTED FRAUD OR CORRUPT CONDUCT**

#### **Identification and reporting**

Allegations or concerns about Fraud or Corrupt Conduct may come from different sources, including:

- Members of the public, sometimes anonymously;
- Other local authorities;
- Councillors;
- Council managers, staff, contractors or volunteers; and
- Internal or external audit reviews.

Any Councillor, employee, contractor or volunteer who has or acquires knowledge of actual or suspected fraud or corrupt conduct in relation to the operations of Council or any other Public Body, must report this to Council management. 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 a proper



consideration of available facts (i.e. there must be a factual basis for the suspicion).  
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Councillors should notify the CEO or Mayor of any incidences of suspected Fraud or Corrupt Conduct.

Adequate supporting information to enable an affective assessment of the report must be provided.

Anonymous reports must be directed to the CEO.

The Council has Protected 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.

In the interests of probity and good local government, Council encourages Councillors, employees, contractors, volunteers and community members to raise matters so that they can be properly investigated.

### **Receipt and referral of reports of suspected fraud or corrupt conduct**

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 by the Director, Manager, Coordinator or Supervisor receiving the report immediately and prior to any preliminary inquiries being undertaken.

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

### **Preliminary assessment and notifications**

The CEO has responsibility for managing the preliminary assessment and any notifications required.

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 his/her 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.

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## **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 the Council. IBAC may decide to investigate a matter directly.

Should the notification be referred back to the CEO for further action, the CEO 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 Committee.

### **Training**

Councillors and employees will be informed by the Risk and Procurement Team of this Policy and the consequences arising from fraud and / or corrupt conduct, and who to speak to if they suspect fraud or corrupt conduct is occurring. Training on the conduct of risk assessments will also be provided by the Risk and Procurement team. This policy shall be included in the Induction program for new Councillors and employees. Formal awareness raising sessions for all staff will be conducted periodically.

### **RISK ASSESSMENT**

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.

### **IMPLEMENTATION STATEMENT**

Council will implement this policy by:

- Developing and maintaining a Fraud and Corrupt Conduct Internal Control Framework and Action Plan to insure compliance with relevant Australian Standards;
- Developing and reviewing departmental fraud and corrupt conduct risk assessments;
- Receiving, notifying and managing reports of suspected fraud and corrupt conduct in accordance with Section 3 of this policy; and
- Reporting as required to Council's Audit Committee.