

## FRAUD, CORRUPTION, MISCONDUCT AND MALADMINISTRATION PREVENTION POLICY

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Category	Corporate & Community
Responsible Officer	Director Corporate & Community
First Issued / Adopted	26 May 2010
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Applicable Legislation	Independent Commissioner Against Corruption Act 2012 (ICAC Act) Local Government Act 1999 Public Interest Disclosure Act 2018
Related Documents	Code of Conduct for Council Employees Code of Conduct for Council Members Elected Members Allowances & Support Policy Internal Control Policy Internal Control Procedure Public Interest and Disclosure Policy Public Interest Disclosure Procedure Risk Management Policy and Procedure
Public Consultation Required	Yes
File Reference	9.63.1.4

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 1 of 21

## 1. PURPOSE

This policy is designed to protect public funds and assets and the integrity, security and reputation of the Council.

**It outlines the Council's approach to the protection or minimisation, identification and control of fraudulent and/or corrupt activity and, summarises the associated responsibilities of Elected Members and Council Employees.**

## 2. SCOPE

2.1 This Policy is intended to complement and be implemented in conjunction with other Council policies, including:

- Public Interest Disclosure Policy;
- Risk Management and Internal Control Policy and Procedures;
- Code of Conduct for Council Employees;
- Code of Conduct for Council Members;
- Elected Members Allowances & Support Policy.

2.2 This Policy applies to all disclosures that relate to the actual or suspected occurrence of Fraud and/or Corruption within the Council.

## 3. DEFINITIONS

For the purposes of this Policy the following definitions apply:

**3.1 *Commissioner*** means the person holding or acting in the office of the Independent Commissioner Against Corruption per section 4 of the *ICAC Act*, who has the powers and functions described at section 7 of the *ICAC Act*.

**3.2 *Corruption*** in public administration, as provided for in section 5(1) of the *ICAC Act*, means conduct that constitutes:

- an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:
  - bribery or Corruption of public officers;
  - threats or reprisals against public officers;
  - abuse of public office;
  - demanding or requiring benefit on basis of public office;
  - offences relating to appointment to public office; or

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 2 of 21

### 3. DEFINITIONS (cont'd)

**3.2** **Corruption** in public administration, as provided for in section 5(1) of the ICAC Act, means conduct that constitutes: (cont'd)

- 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 (see Appendix 1 for examples of offences under the *Local Government Act 1999*, *Local Government (Elections) Act 1999* and *Development Act 1993*); or
- 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
- an offence against the Lobbyist Act 2015, or an attempt to commit such an offence; or
- any of the following in relation to an offence referred to in a preceding paragraph:
  - aiding, abetting, counselling or procuring the commission of the offence;
  - inducing, whether by threats or promises or otherwise, the commission of the offence;
  - being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
  - conspiring with others to effect the commission of the offence.

**3.3** **Council** means Port Pirie Regional Council

**3.4** **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)).

**3.5** 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.

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 3 of 21

**3. DEFINITIONS (cont'd)**

**3.6** A **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 or, who is reckless as to whether it is false.

**3.7** **Fraud** is an 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.

**3.8** **Independent Commissioner Against Corruption (Commissioner)** means the person holding or acting in the office of the Independent Commissioner Against Corruption.

**3.9** **Maladministration in public administration** is defined in section 5(4) of the *ICAC Act* and 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
- includes conduct resulting from impropriety, incompetence or negligence; and
- is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

**3.10** **Misconduct in public administration** is defined in section 5(3) of the *ICAC Act* and means:

- 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
- other misconduct of a public officer while acting in his or her capacity as a public officer.

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 4 of 21

**3. DEFINITIONS (cont'd)**

**3.11** ***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.

**3.12** ***Office for Public Integrity (OPI)*** is the office established under the *ICAC Act* that has the function to:

- receive and assess complaints about public administration from members of the public;
- receive and assess reports about Corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;

**3.13** ***PID Act*** means the *Public Interest Disclosure Act 2018*.

- make recommendations as to whether and by whom complaints and reports should be investigated;
- perform other functions assigned to the Office by the Commissioner.

**3.14** ***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.

**3.15** ***Public Officer*** defined under the *ICAC Act 2012* includes:

- an Elected Member; and
- an Employee or Officer of the Council
- a Contractor working for Council.

**3.16** ***Publish*** is defined in section 4 of the *ICAC Act*, and means publish by:

- newspaper, radio or television;
- internet or other electronic means of creating and sharing content with the public or participating social networking with the public; or
- any similar means of communication with the public.

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 5 of 21

### 3. DEFINITIONS (cont'd)

**3.17** *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*.

**3.18** A *Responsible Officer* is a person who has completed any training courses approved by the Commissioner for the purposes of the Public Interest Disclosures Regulations 2019 and has been designated by the Council as a responsible officer under section 12 of the *PID Act*.

**Responsible Officer under the PID Act** – Peter Arnold, Manager Governance  
[parnold@pirie.sa.gov.au](mailto:parnold@pirie.sa.gov.au) or 8633 8725.

**3.19** 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 —

- is of such a significant nature that it would undermine public confidence in the relevant public authority, or in public administration generally; and
- 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>

### 4. POLICY STATEMENT

Port Pirie Regional 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.

The Council recognises that Fraud and Corruption in Public Administration have the potential to cause significant financial and non-financial harm and that; therefore, the prevention and control of Fraud and Corruption should feature predominantly within the systems and procedures of a responsible Council.

**4.1** This Policy is designed to protect public funds and assets and the integrity, security and reputation of the Council.

**4.2** This Policy outlines the Council's approach to the prevention or minimisation, identification and control of fraudulent and/or corrupt activity and, summarises the associated responsibilities of Elected Members and Council Employees.

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 6 of 21

**4. POLICY STATEMENT (Cont'd)**

**4.3** The Council will not tolerate fraudulent or corrupt activity and is committed to its control and will ensure that it:

- properly fulfils its responsibilities under the Independent Commissioner Against Corruption Act 2012 (ICAC Act);
- takes appropriate steps towards compliance with relevant legislation, policies and instruments;
- provides 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;
- protects Council assets, interests and reputation from the risks associated with fraudulent conduct, misconduct and/or maladministration;
- outlines the Council's approach to the prevention, detection and response to Fraud, Corruption, Misconduct and Maladministration;
- fosters an ethical environment and culture which is conscious of, actively discourages, does not tolerate and appropriately deals with Fraud, Corruption, Misconduct and Maladministration;
- identifies the relevant responsibilities of council members, employees, the Chief Executive Officer, managers and the Audit and Risk Committee;
- educates employees and council members about their obligations to report conduct reasonably suspected of being Fraud, Corruption, Misconduct and/or Maladministration;
- evaluates practices, policies and procedures it has in place in order to further advance Council systems for preventing or minimising Fraud, Corruption, Misconduct and Maladministration; and
- develops 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.

**4.4** Council has established a number of policies and procedures to assist with the prevention and control of Fraud, Corruption, Misconduct and Maladministration, and this Policy forms part of that suite of internal controls. The effectiveness of these procedures will be continuously reviewed and assessed and will remain up to date with any future developments in Fraud, Corruption, Maladministration and Misconduct prevention control techniques.

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 7 of 21

## **5. PREVENTION**

### **5.1** The Council recognises that:

- the occurrence of Fraud, Corruption, Misconduct and Maladministration will be more likely to prevail in an administrative environment where opportunities exist for waste and abuse;
- the most effective way to prevent the occurrence of Fraud, Corruption, Misconduct and Maladministration is to promote an ethical environment in which internal control mechanisms have been implemented.
- in general, the Council expects that Public Officers will assist in preventing Fraud, Corruption, Misconduct and Maladministration within the Council by:
  - understanding the responsibilities of their position;
  - familiarising themselves with the Council's policies and procedures and adhering to them;
  - understanding what behaviour constitutes fraudulent and/or corrupt conduct, Misconduct and/or Maladministration;
  - maintaining an awareness of the strategies that have been implemented by the Council to minimise Fraud, Corruption, Misconduct and Maladministration;
  - being continuously vigilant to the potential for Fraud, Corruption, Misconduct and Maladministration to occur; and
  - reporting suspected or actual occurrences of Fraud, Corruption, Misconduct and Maladministration in accordance with Part 7 of this Policy.

### **5.2 Specific Responsibilities**

- 5.2.1** The table in Appendix 2 to this Policy outlines the roles and responsibilities of key individuals and groups with respect to Fraud, Corruption, Misconduct and Maladministration prevention within Council.

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 8 of 21



**6. FRAUD, CORRUPTION, MISCONDUCT AND MALADMINISTRATION RISK ASSESSMENT PROCESS**

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

- identifying Fraud, Corruption, Misconduct and Maladministration 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, Corruption, Misconduct and Maladministration to occur and remain wary of factors which may leave the Council vulnerable to Fraud, Corruption, Misconduct and Maladministration, 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 CORRUPTION, OR SYSTEMIC OR SERIOUS MISCONDUCT AND MALADMINISTRATION**

**7.1** 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.

**7.2** Where an Employee or Elected Member suspects Corruption, or Systematic or Serious Misconduct or Maladministration in public administration, that suspicion must be reasonably held. Section 6 of the Directions and Guidelines address what is required to form a reasonable suspicion. In this regard it is to be noted that suspicion is a state of mind that is distinct from a belief. It is not necessary for the Employee or Elected Member to *believe* the relevant conduct amounts to Corruption in public administration. All that is required to make a report to the OPI is a reasonable suspicion based upon a proper consideration of the available facts (i.e. there must be a factual basis for the suspicion).

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 9 of 21

**7. REPORTING CORRUPTION, OR SYSTEMIC OR SERIOUS MISCONDUCT AND MALADMINISTRATION (Cont'd)**

**7.3** Reports to the OPI by an Employee or Elected Member must be made in accordance with the reporting obligations contained in section 11 of the Directions and Guidelines. In particular, the following information must be included in the report:

**7.3.1** the Employee or Elected Member identity; and

**7.3.2** the identity of the Council;

**7.3.3** the Employee's or Elected Member's Council address, telephone number and email.

**7.4** In addition, the report must:

**7.4.1** identify the matter by reference to the conduct that the Employee or Elected Member suspects is Corruption in public administration; and

**7.4.2** expressly identify that the Employee or Elected Member suspects the conduct to be Corruption; and

**7.4.3** identify any public officer or other person suspected of having engaged in the conduct; and

**7.4.4** be accompanied by:

**7.4.4.1** a statement as to how the Employee or Elected Member became aware of the conduct; and

**7.4.4.2** the evidence known to the Employee or Elected Member including any documentation relevant to the conduct; and

**7.4.4.3** a list of those persons who the Employee or Elected Member believes can give evidence relevant to the conduct.

**7.5** A report to the OPI by an Employee or Elected Member must be made on the online report form available at [www.icac.sa.gov.au](http://www.icac.sa.gov.au).

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 10 of 21

**7. REPORTING CORRUPTION, OR SYSTEMIC OR SERIOUS MISCONDUCT AND MALADMINISTRATION (Cont'd)**

**7.6** Where the Employee's or Elected Member's knowledge of Corruption has arisen due to a complaint/report he/she has received from another person (the informant), the Employee or Elected Member should not include the informant's details in the report to the OPI if:

**7.6.1** the report/complaint was made under the *Public Interest Disclosures Act*; and

**7.6.2** the informant has not consented to the informant's identity being divulged; and

**7.6.3** it is not necessary to divulge the identity of the informant to ensure that the matters to which the report to the OPI relates are properly investigated.

**7.7** Nothing in this section is intended to prevent an Employee or Elected Member from reporting Corruption in public administration internally to a Responsible Officer in accordance with the Council's Public Interest Disclosure Policy. Where an internal report relating to Corruption in public administration is received by another under the Public Interest Disclosures Policy the Responsible Officer must report the matter to the OPI in accordance with this Policy.

**7.8** Where the Council (i.e. Elected Members collectively) has or acquires knowledge of actual or suspected Corruption in public administration it must report this information to the OPI as soon as practicable after the Council becomes aware of the matter. The Chief Executive Officer is responsible for preparing a report to the OPI on behalf of the Council for these purposes. The Chief Executive Officer must prepare the report immediately upon receiving direction from the Council (such as via the Mayor) to do so.

**7.9** Any suspicion the Council has regarding conduct that constitutes Corruption in public administration must be reasonably held. Section 6 of the Directions and Guidelines address what is required to form a reasonable suspicion. In this regard it is to be noted that suspicion is a state of mind that is distinct from a belief. It is not necessary for the Council to *believe* the relevant conduct amounts to Corruption in public administration. All that is required to make a report to the OPI is a reasonable suspicion based upon a proper consideration of the available facts (i.e. there must be a factual basis for the suspicion).

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 11 of 21

**7. REPORTING CORRUPTION, OR SYSTEMIC OR SERIOUS MISCONDUCT AND MALADMINISTRATION (Cont'd)**

**7.10** The report must:

**7.10.1** identify the matter by reference to the conduct that the Council suspects is Corruption; and

**7.10.2** expressly identify that the Council suspects the conduct to be Corruption in public administration; and

**7.10.3** identify any public officer or other person suspected of having engaged in the conduct; and

**7.10.4** be accompanied by:

**7.10.4.1** a statement as to how the Council became aware of the conduct; and

**7.10.4.2** the evidence known to the Council including any documentation relevant to the conduct; and

**7.10.4.3** a list of those persons who the Council believes can give evidence relevant to the conduct.

**7.11** A report to the OPI by the Chief Executive Officer on behalf of the Council must be made on the online report form available at [www.icac.sa.gov.au](http://www.icac.sa.gov.au).

**7.12** Where the Council's knowledge of Corruption has arisen due to a complaint/report it received from another person (the informant), the Chief Executive Officer should not include the informant's details in the report to the OPI if:

**7.12.1** the report/complaint was made under the *Public Interest Disclosure Act*; and

**7.12.2** the informant has not consented to the informant's identity being divulged; and

**7.12.3** it is not necessary to divulge the identity of the informant to ensure that the matters to which the report to the OPI relates are properly investigated.

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 12 of 21

**7. REPORTING CORRUPTION, OR SYSTEMIC OR SERIOUS MISCONDUCT AND MALADMINISTRATION (Cont'd)**

**7.13** Any consideration by the Council of information relating to Corruption in public administration or a Council report to the OPI during a Council meeting must be considered in confidence. The grounds under section 90(3)(f) and (g) of the *Local Government Act 1999* may be relied upon to move into confidence for these purposes.

**7.14 Reporting Fraud, Misconduct or Maladministration**

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

**7.14.1** does not constitute Corruption in public administration<sup>1</sup>; and

**7.14.2** impacts or causes detriment (or has the potential to impact or cause detriment) to the Council -

must report such information to the Responsible Officer or the Anti-Corruption branch of SAPOL.

**7.15** 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.

**8. ACTION BY THE CHIEF EXECUTIVE OFFICER FOLLOWING REPORT AND/OR INVESTIGATION INTO FRAUD OR CORRUPTION**

**8.1** Following any report to the OPI or SAPOL under this Policy or the Public Interest Disclosures Policy of which the Chief Executive Officer has knowledge and, subject to the finalisation of any investigation undertaken by the Commissioner or SAPOL, the Chief Executive Officer will undertake a review into the area in which the Fraud, Corruption, Misconduct or Maladministration occurred 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. In undertaking any review, the Chief Executive Officer will have regard to any recommendations received from the Commissioner or the Ombudsman.

**8.2** In the event that allegations of Fraud and/or Corruption are substantiated, the Council may take disciplinary action against any Employee who was involved.

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 13 of 21

## **9. FALSE DISCLOSURE**

- 9.1** A person who knowingly makes a false or misleading statement in a complaint or report will be guilty of an offence under the *ICAC Act and the PID Act*.
- 9.2** An Employee who makes a false disclosure, in addition to being guilty of an offence, may face disciplinary action that may include dismissal from employment.

## **10. EDUCATING FOR AWARENESS**

- 10.1** 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.
- 10.2** 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.
- 10.3** The Council will increase community awareness by:
- 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;
  - make reference to the Council's Fraud, Corruption, Misconduct and Maladministration initiatives in the Council's Annual Report; and
  - facilitating public access to all of the documents that constitute the Council's Fraud, Corruption, Misconduct and Maladministration framework, including those documents identified at clause 3.1 of this Policy.

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<sup>1</sup> Such conduct may, for example, relate to persons who are not a public officer such as a non-elected member of a Council Committee and/or a member of a Development Assessment Panel.

## **11. CONCLUSION**

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.

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 14 of 21

## 12. FURTHER INFORMATION

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's internet site: [www.pirie.sa.gov.au](http://www.pirie.sa.gov.au)

- Port Pirie Council Administration Centre, 115 Ellen Street, Port Pirie
- Crystal Brook Rural Office, Bowman Street, Crystal Brook.

Copies will be provided to interested parties upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 15 of 21

## OFFENCES

### **Local Government Act 1999**

#### **(a) Elected Members**

##### Member Duties (Sections 62(3) & (4))

A member of a Council must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council.

*Maximum Penalty: \$10,000.00 or imprisonment for two years.*

A member of a Council must not, whether within or outside the State, make improper use of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council.

*Maximum Penalty: \$10,000.00 or imprisonment for two years.*

##### Provision of False Information (Section 69)

A member of a Council who submits a return under Chapter 5 Part 4 (Register of Interest) and Schedule 3 of the *Local Government Act 1999*, that is to the knowledge of the member, false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence.

*Maximum Penalty: \$10,000.00.*

##### Restrictions on Publication of Information from Register of Interests (Section 71)

An Elected Member must not publish information, or authorise publication of information, derived from a Register unless the information constitutes a fair and accurate summary of the information contained in the Register, and is published in the public interest, or comment on the facts set forth in a Register, unless the comment is fair and published in the public interest and without malice.

*Maximum Penalty: \$10,000.00.*

#### **(b) Council Employees**

##### Provision of False Information (Section 117)

A Council employee who submits a return under Chapter 7 Part 4 Division 2 (Register of Interest) and that is to the knowledge of the employee false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence.

*Maximum Penalty: \$10,000.00.*

##### Restrictions on Disclosure (Section 119(1))

A Council employee must not disclose to any other person any information furnished pursuant to Chapter 7 Part 4 Division 2 (Register of Interests) unless the disclosure is necessary for the purposes of the preparation or use of the Register by the Chief Executive Officer or is made at a meeting of the Council, a Council Committee or a Subsidiary of the council.

*Maximum Penalty: \$10,000.00.*

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 16 of 21



## OFFENCES

### **Local Government Act 1999**

#### **(b) Council Employees (Cont'd)**

##### Conflict of Interest (Section 120(1), (2) & (4))

The Chief Executive of a Council who has an interest in a matter in relation to which he or she is required or authorised to act in the course of official duties must disclose the interest to the Council and must not, unless the Council otherwise determines during a Council meeting that is open to the public, act in relation to the matter.

*Maximum Penalty: \$5,000.00.*

An employee of the Council (other than the Chief Executive Officer) who has an interest in a matter in relation to which he or she is required or authorised to act in the course of official duties must disclose the interest to the council and must not, unless the council otherwise determines during a council meeting that is open to the public, act in relation to the matter.

*Maximum Penalty: \$5,000.00.*

If an employee is entitled to act in relation to a matter and the employee is providing advice or making recommendations to the Council or a Council Committee on the matter, the employee must also disclose the relevant interest to the Council or Council Committee.

*Maximum Penalty: \$5,000.00.*

##### CEO to Assist Auditor (Section 130)

The Chief Executive Officer must, at the request of the auditor of the Council, produce to the auditor for inspection the accounts, accounting records and other documents relating to the financial affairs or internal controls of the Council, or to any other matter that is being examined or considered by the auditor. The Chief Executive Officer must, at the request of the auditor of the Council, provide to the auditor explanations or information required by the auditor. A Chief Executive Officer must not, without reasonable excuse, fail to comply with subsection (1) or (2).

*Maximum Penalty: \$10,000.00.*

##### Other Investigations (Section 130A(4))

The Chief Executive Officer must, at the request of a person conducting an examination under section 130A(1) produce to the person for inspection any documents relevant to the examination, and provide to the person explanations or information required by the person.

*Maximum Penalty: \$10,000.00.*

##### Powers under this Act (Section 261(10))

An authorised person, or a person assisting an authorised person, who addresses offensive language to any other person; or without lawful authority hinders or obstructs or uses or threatens to use force in relation to any other person, is guilty of an offence.

*Maximum Penalty: \$5,000.00.*

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 17 of 21

## **OFFENCES (Cont'd)**

### ***Local Government (Elections) Act 1999***

#### Conduct of Officers (Section 65)

An electoral officer must not fail, without proper excuse, to carry out his or her official duties in connection with the conduct of an election or poll.

*Maximum Penalty: \$2,500.00 or imprisonment for six months*

#### Offences (Section 85)

A person who fails to furnish a return that the person is required to furnish under Part 14 Division 1 within the time required is guilty of an offence.

*Maximum Penalty: \$10,000.00*

A person who furnishes a return or other information that the person is required to furnish under Division 1; and that contains a statement that is, to the knowledge of the person, false or misleading in a material particular, is guilty of an offence.

*Maximum Penalty: \$10,000.00*

#### Elected Person Refusing to Act (Section 91)

A duly qualified person who, having been duly appointed or elected as a member of a council refuses to assume office and to act in it; or neglects to assume the office and to act in it for the first three ordinary meetings of the council (without leave of the council), is guilty of an offence.

*Maximum Penalty: \$750.00*

### ***Development Act 1993***

#### Powers of Authorised Officers to Inspect and Obtain Information (Section 19(11))

An authorised officer, or a person assisting an authorised officer, who addresses offensive language to any other person; or without lawful authority hinders or obstructs or uses or threatens to use force in relation to any other person, is guilty of an offence.

*Maximum Penalty: \$4,000.00*

#### Delegations (Section 20(4))

Subject to section 20(7), a delegate must not act in any matter pursuant to the delegation in which the delegate has a direct or indirect private interest.

*Maximum Penalty: \$8,000.00 or imprisonment for two years*

#### Investigations (Section 31A(4))

An investigator may, for the purposes of an investigation require a member or employee of the council to answer, orally or in writing, questions put by the investigator to the best of his or her knowledge, information and belief; require a person to whom questions are put under paragraph (a) to verify the answers to those questions by declaration; require a person to produce for examination by the investigator books, papers or other records relevant to the subject matter of the investigation; retain books, papers or other records produced under paragraph (c) for such reasonable period as the investigator thinks fit and make copies of any of them or of any of their contents.

Subject to subsection (8), a person who refuses or fails to comply with a requirement under section 31A(4) is guilty of an offence.

*Maximum Penalty: \$20,000.00*

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 18 of 21

## **OFFENCES (Cont'd)**

### ***Development Act 1993 (Cont'd)***

#### Conflict of Interest (Regional Development Assessment Panel) (Section 34(7))

A member of a regional development assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the regional development assessment panel (other than an indirect interest that exists in common with a substantial class of persons) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel; and must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.

*Maximum Penalty: \$15,000.00*

#### Investigation of Development Assessment Performance (Section 45A(3))

An investigator may, for the purposes of an investigation require a member or employee of the relevant authority, or a public sector employee or council employee assigned or engaged to assist the relevant authority, to answer, orally or in writing, questions put by the investigator to the best of his or her knowledge, information and belief; require a person to whom questions are put under paragraph (a) to verify the answers to those questions by declaration; require a person to produce for examination by the investigator books, papers or other records relevant to the subject matter of the investigation; retain books, papers or other records produced under paragraph (c) for such reasonable period as the investigator thinks fit and make copies of any of them or of any of their contents.

Subject to section 45A(7), a person who refuses or fails to comply with a requirement under section 45A(3) is guilty of an offence.

*Maximum Penalty: \$20,000.00*

#### Conflict of Interest (Council Development Assessment Panel) (Section 56A(7))

A member of a council development assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the council development assessment panel (other than an indirect interest that exists in common with a substantial class of persons) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel; and must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.

*Maximum Penalty: \$15,000.00*

#### Declaration of Interest (Section 88B)

If a person commences any relevant proceedings; or becomes a party to any relevant proceedings; and the person has a commercial competitive interest in the proceedings, then the person must disclose the commercial competitive interest.

If a person commences any relevant proceedings; or becomes a party to any relevant proceedings; and the person receives, in connection with those proceedings, direct or indirect financial assistance from a person who has a commercial competitive interest in the proceedings, then both the person referred to in section 88B and the person who provided the financial assistance referred to in paragraph (b) must disclose the commercial competitive interest.

A disclosure must be made to the Registrar of the relevant court and to the other parties to the relevant proceedings in accordance with any requirements prescribed by the regulations.

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 19 of 21

## OFFENCES (Cont'd)

### ***Development Act 1993*** (Cont'd)

#### Declaration of Interest (Section 88B) (Cont'd)

A person who fails to make a disclosure in accordance with the requirements of this section is guilty of an offence.

*Maximum Penalty: \$30,000.00*

#### Interactions with a Private Certifier (Section 97)

A person who improperly gives, offers or agrees to give a benefit to a private certifier or to a third person as a reward or inducement for an act done or to be done, or an omission made or to be made, by the private certifier in the performance of a function under this Act is guilty of an offence.

*Maximum Penalty: \$30,000.00*

In this section - benefit does not include a benefit that consists of remuneration or any condition of appointment or employment properly attaching or incidental to the work of a private certifier under this Act.

#### Confidential Information (Section 102)

A person performing any function under this Act must not use confidential information gained by virtue of his or her official position for the purpose of securing a private benefit for himself or herself personally or for some other person.

*Maximum Penalty: \$8,000.00 or imprisonment for two years*

A person performing any function under this Act must not intentionally disclose confidential information gained by virtue of his or her official position unless the disclosure is necessary for the proper performance of that function; or the disclosure is made to another who is also performing a function under this Act; or the disclosure is made with the consent of the person who furnished the information or to whom the information relates; or the disclosure is authorised or required under any other Act or law; or the disclosure is authorised or required by a court or tribunal constituted by law; or the disclosure is authorised by the regulations.

*Maximum Penalty: \$8,000.00 or imprisonment for two years*

#### Disclosure of Financial Interests – Compliance with Schedule (Schedule 2 (4))

A prescribed member of an assessment panel who fails to comply with a requirement under Schedule 2 is guilty of an offence.

*Maximum Penalty: \$10,000.00*

A prescribed member of an assessment panel who submits a return under this Schedule that is to the knowledge of the member false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence.

*Maximum Penalty: \$10,000.00*

#### Restrictions on Publication (Schedule 2 (5))

A person must not publish information derived from a register under Schedule 2 unless the information constitutes a fair and accurate summary of the information contained in the register and is published in the public interest; or comment on the facts set forth in a register under Schedule 2 unless the comment is fair and published in the public interest and without malice.

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 20 of 21

## OFFENCES (Cont'd)

### ***Development Act 1993*** (Cont'd)

#### Restrictions on Publication (Schedule 2 (5)) (Cont'd)

If information or comment is published by a person in contravention of Schedule 2 clause 5(1), the person, and any person who authorised the publication of the information or comment, is guilty of an offence.

*Maximum Penalty: \$10,000.00*

NOTE: *This is not an exhaustive list of offences that may be committed by a public officer and fall within the definition of 'corruption' in accordance with Section 5(1)(c) of the ICAC Act.*

Document No	Version No	Last review	Next review	Page
POL-0076	1.0	24 March 2021	30 November 2023	Page 21 of 21

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