# FRAUD AND CORRUPTION CONTROL POLICY

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| RELATED STRATEGIC DOCUMENTS, POLICIES OR PROCEDURES: | Community Asset Committee Policy<br>Councillor Code of Conduct<br>Councillor Gift Policy<br>Cyber Security Policy<br>DHHS Fraud and Corruption Framework (external)<br>Fraud and Corruption Control Plan<br>Fraud and Corruption Event Register<br>Loddon Shire Council Enterprise Agreement<br>Procurement Policy<br>Public Interest Disclosure Policy<br>Risk Management Policy<br>Staff Code of Conduct |
| RELATED LEGISLATION: | *Independent Broad-Based Anti-Corruption Commission Act 2011*<br>*Local Government Act 2020*<br>*Public Interest Disclosures Act 2012* |
| EVIDENCE OF APPROVAL: | Signed by Chief Executive Officer |
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**Policy documents are amended from time to time, therefore you should not rely on a printed copy being the current version. Please consult the policies on the Loddon Shire website (Council Policies) or Intranet (Organisational Policies) to ensure that the version you are using is up to date.**

**This document is available in alternative formats (e.g. larger font) if requested.**

# 1 PURPOSE

Council has a duty of care in the prevention and management of fraud and corruption. The purpose of this policy is to establish Loddon Shire Council's position in preventing fraud and corruption, and to demonstrate that Council is committed to the prevention, detection, and response of any such occurrences.

# 2 SCOPE

This policy applies to Councillors, staff, volunteers, suppliers, contractors, Audit and Risk Committee members and Community Asset Committee members.

# 3 POLICY

Council will not tolerate fraud or corruption in any form and will implement controls to prevent the likelihood of fraud and corruption events occurring.

To support this position Council will manage the prevention of fraud and corruption through the Council's *Fraud and Corruption Control Plan* (including fraud and corruption self-assessment) in accordance with:

- Australian Standard *AS 8001:2021 Fraud and Corruption Control* (AS 8001:2021)
- *Public Interest Disclosures Act 2012*
- industry best practice.

The plan will apply the Prevention, Detection and Response approach, as per AS8001:2021, to underpin prevention of fraud and corruption and to create an environment that supports best practice fraud and corruption management.

## 3.1 Prevention

Prevention includes the right culture and processes in place as the first line of defence in fraud and corruption control. Prevention is also the most efficient and cost-effective means of minimising the risk of fraud and corruption and can eliminate or reduce the harmful consequences to Council, including significant financial and reputational harm.

## 3.2 Detection

The ongoing implementation of fraud detection techniques is crucial in managing fraud and corruption. Council recognises the importance of promptly identifying instances of fraud and corruption after they have taken place. This approach seeks to minimise the impact of fraud and corruption events as well as mitigate potential losses.

## 3.3 Response

An effective fraud and corruption control system includes a range of appropriate response mechanisms. Effective responses provide assurance to Council, the authorities, and the general public that suspected incidents of fraud and corruption are being appropriately managed.

## 4 RISKS

Fraud and corruption risks are dependent on the individual characteristics of an organisation. However, Councils have particular exposures (outlined in the table below)[1]. Council will proactively manage these risks in the *Fraud and Corruption Control Plan*.

| Councillors | Staff & General |
|---|---|
| **Enduring**<br>• conflicts of interest<br>• improper influence over staff<br>• unauthorised disclosure of information<br>• bias<br>• electoral donations<br>• inadequate support and training | **Enduring**<br>• procurement<br>• misuse of council assets<br>• misuse of grant funding<br>• gifts, benefits, and hospitality<br>• licensing, permits, approvals and other delegated functions<br>• favouritism and nepotism<br>• organised crime groups cultivating relationships<br>• leadership capability<br>**Emerging**<br>• emergency preparedness (grants, emergency relief & response)<br>• information misuse<br>• work from home arrangements<br>• improper influence in and planning, rezoning and urban growth decisions (in particular for regional Councils)<br>• misuse of funding for personal gain<br>• high staff turnover (CEO & staff) |

## 5 CONFIDENTIALITY AND FAIR TREATMENT

The highest degree of confidentiality will be applied to reporting and investigating fraud and corruption.

Confidentiality of those who report fraud and corruption is guaranteed, and the reputation of those accused will be subject to the highest level of protection until a definite decision is reached. Employees who make complaints will not be victimised or disadvantaged. The person against whom the complaint is made will be treated with procedural fairness. There are significant penalties under the *Protected Disclosure Act 2012* for breach of confidentiality, to protect those who report fraudulent activity.

In order to avoid damaging the reputations of innocent persons initially suspected of wrongful conduct, and to protect the Council from potential civil liability, the results of the audits or investigations will be disclosed or discussed only with those persons who require knowledge of each such investigation in the proper performance of their office or function.

[1] https://ibac.vic.gov.au/corruption-and-misconduct-risks-local-government

Where appropriate, Council will seek legal advice to ensure that appropriate documentation of the facts has been achieved in order to permit:

- appropriate personnel action
- protection of innocent persons
- appropriate civil or criminal actions
- documentation of claims against Council's insurers
- preservation of the integrity of any criminal investigation and prosecution
- avoidance of any unnecessary litigation.

Any person who feels they have been victimised as part of this process has recourse to Council's dispute resolution processes and Public Interest Disclosure Procedure.

## 6 OBLIGATIONS OF REPORTING FRAUD AND/OR CORRUPTION BY FUNDED ORGANISATIONS OR PORTFOLIO AGENCIES

### 6.1 Independent Broad-based Anti-corruption Commission (IBAC)

Council CEOs and heads of departments (among other Relevant Principal Officers) must notify IBAC of any matter which they suspect on reasonable grounds that corrupt conduct has occurred or is occurring.

The obligation to report suspected corrupt conduct rests with the Relevant Principal Officer. This obligation cannot be delegated. Where another person is acting as the Relevant Principal Officer, the obligation applies to that person and vicariously the organisation.

The Relevant Principal Officer must notify IBAC of all instances of suspected corrupt conduct occurring in their own organisation, and suspected corrupt conduct occurring in other organisations where it is connected with the Relevant Principal Officer's duties, functions and exercise of powers.

There is no legislative obligation for Relevant Principal Officers to search out corrupt conduct, only to report it when suspected.

The Chief Executive Officer will use IBAC's directions for making mandatory notifications of suspected corruption to assess whether there is a requirement to report. If so, IBAC's Mandatory Notification Form for Relevant Principal Officers will be completed by the Chief Executive Officer and submitted to IBAC.[2]

### 6.2 Funded organisations or portfolio agencies

Some funding agencies, as a requirement of funding provided to organisations, require notification to the relevant Government department of any notification of suspected fraud or corruption within or concerning Council.

Any knowledge of suspected fraud or corruption related to funding will be notified as a priority to the relevant funding department.

[2] https://www.ibac.vic.gov.au/mandatory-notifications

## 7 DEFINITIONS OF TERMS AND ABBREVIATIONS USED

| Term | Definition |
|---|---|
| Bribery[3] | Offering, promising, giving, accepting or soliciting of an undue advantage of any value (which could be financial or non-financial), directly or indirectly, and irrespective of location(s), in violation of applicable law, as an inducement or reward for a person acting or refraining from acting in relation to the performance of that person's duties. |
| Corruption[4] | Employee (or contractor) acts contrary to the interests of Council and abuses their position of trust in order to achieve personal advantage or advantage for another person or organisation. This can also involve corrupt conduct by Council, or a person purporting to act on behalf of and in the interests of Council, in order to secure some form of improper advantage for Council either directly or indirectly.<br>Examples of corruption<br>Corruption (other than bribery) can include the following:<br>(a) Releasing confidential information for other than a proper business purpose.<br>(b) Collusive tendering (the act of multiple tenderers for a particular contract colluding in preparation of their bids).<br>(c) Serious conflict of interest involving a director or senior executive of an entity or other entity acting in his or her own self-interest rather than the interests of the entity to which he or she has been appointed (e.g. failing to declare to a governing body an interest in a transaction the entity is about to enter into or excessive payment of remuneration to directors and senior executives).<br>(d) Serious nepotism and cronyism where the appointee is inadequately qualified to perform the role to which he or she has been appointed.<br>(e) Manipulation of the procurement process by favouring one tenderer over others or selectively providing information to some tenderers but in circumstances where there is no payment of a bribe or other benefit. This frequently involves allowing tenderers to resubmit a previous 'non-complying' tender after being provided with the details of other bids.<br>(f) Gifts or entertainment intended to achieve a specific or generic commercial outcome in the short- or long-term. An essential element rendering conduct of this type corrupt would be that it is in breach of the entity's values, behavioural code or gifts policy (or that of any relevant external party's values or behavioural code) or that it was done without the appropriate transparency within one or more of the entities affected.<br>— |

[3] Council of Standards Australia – Australian Standard® – Fraud and corruption control (AS 8001:2021)
[4] Council of Standards Australia – Australian Standard® – Fraud and corruption control (AS 8001 :2021)

| Term | Definition |
|---|---|
| | Corruption control is within the intended scope of AS 8001:2021. Relevant to this is AS ISO 37001:2019, which provides requirements and guidance for organisations wishing to control bribery. Both AS ISO 37001:2019 and AS 8001:2021 consider —<br>(a) bribery to be a subset of corruption; and<br>(b) that all instances of bribery will constitute corruption; but<br>(c) that not all instances of corruption will constitute bribery.<br>Due to the distinction between the definitions of corruption and bribery, corrupt behaviours that do not constitute bribery are within the scope of AS 8001:2021 but are not within the scope of AS ISO 37001. |
| Fraud[5] | Dishonest activity causing actual or potential gain or loss to any person or organisation including theft of moneys or other property by persons internal and/or external to the organisation and/or where deception is used at the time, immediately before or immediately following the activity.<br><u>Examples of internal fraud</u><br>Internal fraud (at least one perpetrator connected to Council) can include the following:<br>(a) Theft of plant and equipment.<br>(b) Theft of inventory.<br>(c) False invoicing (creating a fictitious invoice where no goods or services are provided).<br>(d) Theft of funds held in a bank account operated by the target organisation by employees or others connected to the organisation through the use of privileged system access.<br>(e) Theft of cash (particularly in retail or other cash businesses) usually involving some form of concealment (e.g. lapping).<br>(f) Accounts receivable fraud (misappropriation or misdirection of remittances received by an organisation from a debtor which is then written-off as not recoverable or otherwise shown as no longer receivable).<br>(g) Unauthorized use of a target organisation issued credit card for personal purposes. organisation with the intention of using the information for some form of personal gain.<br>(h) Theft of intellectual property or other confidential information belonging to the target organisation with the intention of using the information for some form of personal gain.<br>(i) Financial reporting fraud. Falsification of the organisation's financial statements with a view to obtaining some form of improper financial benefit e.g. to support a falling share price or to support a finance application.<br>(j) Release or use of misleading or inaccurate information for the purposes of deceiving, misleading or to hide wrongdoing.<br>(k) Insider trading. Initiating a financial transaction on the basis of information coming into the possession of the perpetrator by reason of his or her position but which is not generally known to investors). |

[5] Council of Standards Australia – Australian Standard® – Fraud and corruption control (AS 8001 :2021)

| Term | Definition |
|---|---|
| | (l) Crypto-jacking. Use of computer equipment of the target organisation to mine crypto- currency for personal benefit.<br>(m) Misuse of position by senior executives or directors in order to gain some form of financial advantage<br><u>External fraud</u><br>External fraud (perpetrator has no connection with Council) can include the following:<br>(a) False invoicing, involving a person with no connection to the target organisation creating a fictitious invoice claiming payment for goods or services not delivered or exaggerating the value of goods delivered or services actually provided.<br>(b) Unauthorised access to the bank account of the target organisation and transfer to a fictitious bank account. often initiated by way of a “phishing” or “spear-phishing” malware distribution.<br>(c) Unauthorised payment redirection, often by creating a fictitious email address or assuming control of a genuine email address to give false instructions for the payment of funds to a bogus bank account.<br>(d) Initial Coin Offering fraud, selling worthless crypto-currency to the pubic in exchange for “Fiat” currency.<br>(e) Crypto-jacking. Use of computer equipment of the target organisation to mine crypto-currency.<br>(f) Theft of crypto-currency by unauthorised access and miscues of the public and private keys of a crypto-currency account.<br>(g) Grant funding fraud. Falsely applying for grant funding from a government agency and then failing to apply the funds to the purposes for which the funds were granted.<br>(h) Fraudulent investment schemes (including "Ponzi" schemes).<br>(i) Tax fraud. Under-reporting income, over-claiming GST refund.<br>(j) Welfare fraud. Claiming for government welfare when not entitled.<br>(k) Breach of trust. Misuse of funds held on trust for another person or organisation.<br>(l) Credit card fraud involving the unauthorized use of a stolen credit card or credit card number.<br>(m) Fraudulent insurance claims.<br>(n) “Ransomware”. Extortionate demand for funds based on a claim that malware has been delivered to a computer system.<br>(o) Finance fraud (loan application made in a false name and supported by false documentation).<br>(p) Finance fraud (genuine loan application that is supported by exaggerated information about the financial position of the borrower).<br>(q) Cyber-intrusion. Theft of intellectual property or other confidential information through unauthorised system access (frequently by "phishing" or "spear-fishing").<br>(r) Release or use of misleading or inaccurate information for the purposes of deceiving, misleading or to hide wrongdoing.<br>*(s)* Insider trading (buying and selling shares on the basis of information coming into the possession of the perpetrator by reason of his or her position but which is not known to investors generally). |

| Term | Definition |
|---|---|
| Corrupt conduct | For the purposes of the *Independent Broad-based Anti-corruption Commission Act 2011* corrupt conduct means conduct—<br>(a) of any person that adversely affects the honest performance by a public officer or public body of their, or its functions as a public officer or public body; or<br>(b) of a public officer or public body that constitutes or involves the dishonest performance of their, or its functions as a public officer or public body; or<br>(c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or<br>(d) of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of their, or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or<br>(da) of a person (the first person) intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and result in the first person or an associate of the first person obtaining—<br>(i) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or<br>(ii) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or<br>(iii) a financial benefit or real or personal property; or<br>(iv) any other direct or indirect monetary or proprietary gain— that they would not have otherwise obtained; or<br>(e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c), (d) or (da)— being conduct that would constitute a relevant offence. |
| Procedural fairness | Natural justice (procedural fairness) is a legal requirement that applies to administrative decision-making. It imposes a code of procedure to ensure that decision-making is fair and reasonable.<br>Whether a decision complies with natural justice depends not on whether the decision itself was fair and reasonable, but on whether a fair and proper procedure was followed in making the decision.[6] |
| Suspects on reasonable grounds | Means there is a real possibility of corrupt conduct. 'Suspicion' is something less than belief, but requires more than idle speculation. It must be based on facts and circumstances that would be sufficient to make a reasonable person suspect corrupt conduct had occurred or was occurring. However, proof is not necessary, nor is it required that an individual or individuals be identified. |

[6] https://www.ombudsman.vic.gov.au/About/Our-accountability/Code-of-Conduct, Accessed 01/11/2019

| Term | Definition |
|---|---|
| Technology enabled fraud[7] | Fraud against or by an organisation which relies heavily on information technologies and which would not be possible without information technologies. |

## 8 STATEMENTS

It is considered that this policy does not impact negatively on any rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

Loddon Shire Council is committed to consultation and cooperation between management and employees. The Council will formally involve employee Health and Safety Representatives in any workplace change that may affect the health and safety of any of its employees.

A Gender Impact Assessment of this policy has been undertaken with no negative gendered impacts identified.

## 9 REVIEW

The Director Corporate will review this policy for any necessary amendments no later than 3 years after adoption of this current version.

[7] Council of Standards Australia – Australian Standard® – Fraud and corruption control (AS 8001 :2021)