

FILE NO: PSC2009-02488

TITLE: FRAUD AND CORRUPTION CONTROL

OWNER: GOVERNANCE SECTION MANAGER

1. PURPOSE:

- 1.1 Port Stephens Council (Council) is committed to the prevention of fraud and corruption.
- 1.2 The purpose of Fraud and Corruption Control policy (the policy) is to outline the:
 - a) Framework for controlling fraud and corruption risks, and
 - b) Expectations and channels for reporting suspected fraud or corruption related to Council.

2. CONTEXT / BACKGROUND:

- 2.1 This policy reflects the core elements and principles of:
 - a) Australian Standard AS 8001:2021 Fraud and Corruption Control, and
 - b) NSW Audit Office Better Practice Guide: Fraud Control Improvement Kit.
- 2.2 Control of fraud and corruption risks helps protect the financial, regulatory and reputational wellbeing of Council and its key stakeholders, including Councillors, workers and the community.
- 2.3 As a sub-set of risk, fraud and corruption risk management operates within Council's risk management framework.

3. SCOPE:

- 3.1 This policy applies to all elected officials, Council officers, employees, volunteers and contractors.
- 3.2 Mayor and Councillors are also obliged to maintain standards as mandated by the Local Government Act 1993 (the Act).
- 3.3 Council will maintain a framework to control fraud and corruption against Council, or committed by or in the name of Council. This framework will be documented to direct and guide management practices and processes.

4. DEFINITIONS:

4.1 An outline of the key definitions of terms included in the policy.

Council	Means Port Stephens Council
Council officials	Means Port Stephens Council employees, consultants and contractors.
Corruption	<p>(Per Australian Standard AS 8001:2021)</p> <p>Dishonest activity in which a person associated with Council 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.</p> <p>This can also involve corrupt conduct by the organisation, or a person purporting to act on behalf of and in the interests of the organisation, in order to secure some form of improper advantage for the organisation either directly or indirectly.</p> <p>Whilst the conduct must be dishonest for it to meet the definition of corruption, the conduct does not necessarily represent a breach of the law.</p>
Corrupt Conduct	<p>(Per Independent Commission Against Corruption Act 1988)</p> <p>Deliberate or intentional wrongdoing, not negligence or a mistake. It has to involve or affect a NSW public official or public sector organisation.</p> <p>See Appendix 1 for more detail.</p>
Fraud	<p>(Per Australian Standard AS 8001:2021)</p> <p>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.</p> <p>Property in this context also includes intellectual property and other intangible such as information.</p> <p>Fraud also 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.</p>

While conduct must be dishonest for it to meet the definition of “fraud” the conduct need not necessarily represent a breach of the criminal law.

Fraud can involve fraudulent conduct by internal and/or external parties targeting the organisation or fraudulent or corrupt conduct by the organisation itself targeting external parties.

ICAC Independent Commission Against Corruption.

5. STATEMENT:

- 5.1 The Council has **zero tolerance** for fraud or corruption against Council, or committed by or in the name of Council.
- 5.2 This expectation is aligned to Council’s core values and is demonstrated in policies and codes that establish standards and expectations for ethical behaviour for elected representatives, workers, contractors and other third parties.
- 5.3 This commitment is delivered through the implementation of a Fraud and Corruption Control (FCC) Framework, comprised of four pillars:
 - a) Leadership and Commitment
 - b) Prevention
 - c) Detection
 - d) Response.

5.4 Leadership and Commitment

- 5.4.1 The Council is committed to promoting a culture of trust, integrity and honesty in the services it provides to the Port Stephens community, and in the administration of those services. It is important that Council delivers its Community Strategic Plan without fraud or corruption reducing the ability or resources to achieve this goal.
- 5.4.2 The General Manager and senior management are committed to this culture and providing the leadership and resourcing for the implementation of an effective FCC Framework.

5.5 Prevention

5.5.1 Council will endeavour to prevent fraud and corruption through the implementation of effective prevention systems, including:

- a) Proactive and integrated risk assessments
- b) Ethical workforce programs, including pre-employment screening
- c) Physical security and asset management systems
- d) Information Security Management System (ISMS)
- e) Education and awareness programs (internal and external)
- f) Third party management systems (including conflict management).

5.6 Detection

5.6.1 Council will implement and maintain effective systems designed to detect fraud or corruption, including:

- a) Post-transactional monitoring and review (including payroll, access control, procurement and financial transactions)
- b) Analysis of management accounting reports
- c) Identification of early warning indicators
- d) Data analytics
- e) Fraud and corruption reporting channels
- f) Whistleblower management (Public Interest Disclosures (PID) Act)
- g) Complaint management
- h) Internal and external audit functions.

5.6.2 Council will maintain an environment enabling timely notification of suspected fraud and corruption, including:

- a) Promoting and fostering a culture that supports staff reporting fraud and management acting on those reports,
- b) Policies, systems and procedures that support reporting,
- c) Processes to support upward reporting, and
- d) Mechanisms to enable external reporting.

5.6.3 **Appendix 2** details the expectations for **reporting suspected fraud and corruption**, and the reporting channels available (internally and externally).

5.7 Response

5.7.1 Council will respond to a notification of a suspected fraud or corruption event in a professional manner.

5.7.2 The investigation process must be clearly documented.

5.7.3 Council will maintain effective record keeping systems to demonstrate due process has been followed for all actions and decisions arising out of the implementation of this policy. All investigative documentation will comply with relevant legislative provisions, will remain strictly confidential and will be retained in accordance with the State Records Act 1998 and Council's Access to Information policy.

5.7.4 The General Manager (or their delegate) shall:

- a) Approve the person(s) and/or third parties to be advised of the notification and/or investigation, and the nature of such disclosures.
- b) Determine the resources to be engaged for the purpose of conducting the investigation.
- c) Approve all external notifications, including to those to agencies that may have an interest in further investigation and/or prosecution.

5.7.5 Investigations must be conducted by appropriate, qualified and experienced staff or third party.

5.7.6 Any unauthorised communications or disclosures will be considered a breach of this policy, to be dealt with under the provisions of the Enterprise Agreement and/or the terms of contract; and/or the Code of Conduct.

Disciplinary systems:

5.7.7 Mayor and Councillors:

- a) Council's Code of Conduct notes the Local Government Act 1993 has specific provisions that prohibit the Mayor and Councillors from certain conduct. This conduct relates to:
 - Misuse of Position
 - Improper Direction and Improper Influence
 - Confidential Information
 - Conflict of Interest
 - Electoral Conduct.
- b) Any allegation of a breach of the requirements of the Code of Conduct shall be handled in accordance with the process set out in the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW.

5.7.8 Workers, Volunteers, Contractors:

- a) Where any matter is investigated and an incident of fraud or corrupt conduct is affirmed, employment ramifications (including termination) will be considered on a case by case basis in accordance with provisions of the Enterprise Agreement and/or the terms of contract; and/or the Code of Conduct.

6. RESPONSIBILITIES:

6.1 The elected representatives are responsible for:

- Maintaining compliance with the Conflict of Interest obligations pursuant to the Code of Conduct
- Facilitating accountability at all levels within the Council for fraud and corruption control
- Maintain awareness of this policy and its applicability to the Mayor and Councillors.

6.2 The General Manager is responsible for:

- Setting the tone at the top, by demonstrating commitment to and compliance with, this policy
- Promoting an ethical working culture
- Understanding the fraud and corruption risks facing Council and ensuring appropriate resources to control those risks
- Complying with mandatory reporting requirements on instances of fraud and corruption.

6.3 The Audit, Risk and Improvement Committee is responsible for:

- Overseeing the risk management framework, including risks and controls as they relate to fraud and corruption control.

6.4 Group Managers are responsible for:

- Setting the tone at Group level, by demonstrating commitment to and compliance with this policy
- Promoting an ethical working culture
- Understanding the fraud and corruption risks facing the Group's area of responsibility and applying appropriate preventative and detective controls
- Implementing this policy.

6.5 The Governance Section Manager is responsible for:

- Training and awareness of fraud and corruption control policies and practices
- Risk and control programs and assessments that target fraud and corruption
- Facilitating review of the Fraud and Corruption Control management directive in accordance with review schedule, or following significant structural change
- Leading investigations into alleged fraud or corrupt conduct within Council, engaging only with authorised persons and authorities, and reporting findings to the General Manager (or Mayor, if the allegation involves General Manager).

6.6 All employees, contractors and volunteers are responsible for:

- Understanding and following this policy
- Acting lawfully, ethically and honestly and in accordance with Council's Code of Conduct
- Acting within their delegated authority
- Complying with all Council policies, management directives, procedures and processes
- Promptly reporting instances of suspected fraud and corruption
- Providing assistance in investigations.

7. RELATED DOCUMENTS:

- 7.1 Local Government Act 1993 and Local Government (General) Regulations 2021
- 7.2 Environmental Planning and Assessment Act 1979
- 7.3 Independent Commission Against Corruption Act 1988
- 7.4 Public Interest Disclosures Act 1994
- 7.5 Public Interest Disclosures Act 2022
- 7.5 Crimes Act 1990
- 7.6 State Records Act 1998
- 7.7 Australian Standard AS8001:2021
- 7.8 Port Stephens Council Code of Conduct
- 7.9 Internal Reporting policy
- 7.10 Grievance and dispute resolution process
- 7.11 Access to Information policy.

Appendix 1 – Definition of Corrupt Conduct from Independent Commission against Corruption Act 1988

Corrupt conduct is defined in the Independent Commission against Corruption Act 1988 (ICAC Act 1988) as:

7 Corrupt conduct

1. For the purposes of this Act, corrupt conduct is any conduct which falls within the description of corrupt conduct in either or both of subsections (1) and (2) of section 8, but which is not excluded by section 9;
2. Conduct comprising a conspiracy or attempt to commit or engage in conduct that would be corrupt conduct under section 8 (1) or (2) shall itself be regarded as corrupt conduct under section 8 (1) or (2); and
3. Conduct comprising such a conspiracy or attempt is not excluded by section 9 if, had the conspiracy or attempt been brought to fruition in further conduct, the further conduct could constitute or involve an offence or grounds referred to in that section.

8 GENERAL NATURE OF CORRUPT CONDUCT

1. Corrupt conduct is:
 - a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority; or
 - b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions; or
 - c) any conduct of a public official or former public official that constitutes or involves a breach of public trust; or
 - d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.
2. Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:
 - a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition);

- b) bribery;
 - c) blackmail;
 - d) obtaining or offering secret commissions;
 - e) fraud;
 - f) theft;
 - g) perverting the course of justice;
 - h) embezzlement;
 - i) election bribery;
 - j) election funding offences;
 - k) election fraud;
 - l) treating;
 - m) tax evasion;
 - n) revenue evasion;
 - o) currency violations;
 - p) illegal drug dealings;
 - q) illegal gambling;
 - r) obtaining financial benefit by vice engaged in by others;
 - s) bankruptcy and company violations;
 - t) harbouring criminals;
 - u) forgery;
 - v) treason or other offences against the Sovereign;
 - w) homicide or violence;
 - x) matters of the same or a similar nature to any listing above; and
 - y) any conspiracy or attempt in relation to any of the above.
3. Conduct may amount to corrupt conduct under this section even though it occurred before the commencement of this subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.
4. Conduct committed by or in relation to a person who was not or is not a public official may amount to corrupt conduct under this section with respect to the exercise of his or her official functions after becoming a public official.
5. Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) refer to:
- a) Matters arising in the state or matters arising under the law of the State; or
 - b) Matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.

6. The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting the scope of any other provision of this section.

9. LIMITATION ON NATURE OF CORRUPT CONDUCT

1. Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:
 - a) A criminal offence; or
 - b) A disciplinary offence; or
 - c) Reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official; or
 - d) In the case of conduct of a Minister of the Crown or a member of a House of Parliament – a substantial breach of an applicable code of conduct.
2. It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken;
3. For the purpose of this section:
applicable code of conduct means, in relation to:
 - a. a Minister of the Crown – a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations; or
 - b. a member of the Legislative Council or of the Legislative Assembly (including a Minister of the crown) – a code of conduct adopted for the purposes of this section by resolution of the House concerned.

Criminal offence means a criminal offence under the law of the State or under any other law relevant to the conduct in question.

Disciplinary offence includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.

4. Subject to subsection (5), conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.
5. Without otherwise limiting the matters that it can under section 74A (1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is

satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commission identifies that law in the report.

A reference to a disciplinary offence in this section and sections 74A and 74B includes reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the Local Government Act 1993, but does not include a reference to any other breach of such a requirement.

Appendix 2 – Reporting Suspected Fraud or Corruption

Council's Code of Conduct requires Council officials to report any improper conduct, which includes suspected fraudulent or corrupt behaviour. Any individual (internal or external to Council) can report suspected fraud or corruption involving Council. The report must:

- a) Have reasonable grounds for suspicion and not be vexatious in nature,
- b) Be disclosed only to the appropriate internal and/or external authority,
- c) Be disclosed as soon as practically possible.

Internally

Mayor, Councillors, Council officials, delegates of Council and auditors must report as soon as possible any suspected fraudulent or corrupt behaviour to:

- a) General Manager,
- b) Governance Section Manager; or
- c) Mayor.

Where the General Manager is suspected of conduct relating to fraud or corruption, the matter should be reported to the:

- a) Mayor;
- b) Governance Section Manager; or
- c) Relevant external agency (see below).

Council's Internal Reporting Policy provides protection to Council officials who report suspected fraudulent or corrupt behaviour, where certain conditions are met.

External Agencies

Matters relating to suspected fraudulent or corrupt activities should also be reported to the following external agencies:

- a) Independent Commission Against Corruption (ICAC) – telephone 1800 463 909 (for allegations of fraud or corruption);
- b) Office of Local Government – telephone 02 4428 4100 (for allegations relating to pecuniary interests);
- c) NSW Police – telephone 02 4983 7599 (for allegations relating to fraud); &
- d) NSW Electoral Commission – telephone 1300 135 736 (for allegations relating to election fraud).

CONTROLLED DOCUMENT INFORMATION:

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