

|                          |                                       |
|--------------------------|---------------------------------------|
| Classification:          | Statutory Policy.                     |
| Trim Container           | B2037                                 |
| Trim Document Number:    | 13/72510                              |
| First Issued / Approved: | 24/09/2013                            |
| Last Reviewed:           | 24/09/2013                            |
|                          | 240913/1042                           |
| Next Review:             | 24/09/2015                            |
| Responsible Officer:     | Manager Organisational Sustainability |
| Date Placed on Web:      | 1/11/2013                             |

**1. PREAMBLE**

The City of Holdfast Bay is committed to maintaining an organisational culture which is free from fraud and corruption consistent with the Codes of Conduct for elected members and staff and relevant legislation.

This policy and associated procedures create the City of Holdfast Bay’s Fraud Protection Plan framework.

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

**1.1 Background**

The City of Holdfast Bay (the Council) is committed to good governance and ethical behaviour as a key ingredient of responsible, effective and accountable local government

**1.2 Purpose**

The Council policy on fraud, corruption and maladministration control is based on the following principles and objectives:

- The Council operates in an environment in which ethical conduct is expected, encouraged and supported with no tolerance for corrupt conduct, fraudulent activities or maladministration.
- Elected Members and Employees of Council are placed in a position of trust and are required to maintain and enhance public confidence in the integrity of Council and to be active in protecting public money and property.
- Council will ensure that it has in place effective operational controls and procedures for the prevention and detection of corrupt and fraudulent activities and maladministration.
- Council will investigate and manage all reported cases of alleged fraud, corruption and maladministration in accordance with relevant policies and procedures.

# Fraud, Corruption, Misconduct and Maladministration

## 1.3 Scope

This Policy is intended to complement and be implemented in conjunction with other Council policies, including but not limited to:

- Whistleblower Protection Policy;
- Risk Management and Internal Control Procedures;
- Code of Conduct for Council Employees;
- Code of Conduct for Council Members;
- Council Members Allowances and Benefits Policy;
- Council Members and Council Employees Gifts Policy
- Investigation Procedures
- Document and Data Security
- Social Media
- Compliments and Complaints
- Electronic Communication Policy

This Policy applies to all disclosures that relate to the actual or suspected occurrence of fraud, corruption and/or maladministration within the Council.

## 1.4 Definitions

**Appropriate Authority** -that receives disclosure of public interest information includes, a Minister of the Crown; a member of the police force; the Auditor-General; the Ombudsman – where the information relates to a public officer; a Responsible Officer, where the information relates to a matter falling within the sphere of responsibility of a local Government body; or any other person<sup>1</sup> to whom, in the circumstances of the case, it is reasonable and appropriate to make the disclosure<sup>2</sup>.

**Corruption** in public administration means:

- (a) 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 and offences relating to appointment to public office.
- (b) 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; or
- (c) any of the following in relation to an offence referred to in a preceding paragraph:
  - (i) aiding, abetting, counselling or procuring the commission of the offence;

---

<sup>1</sup> Such a person may include an independent company that offers an anonymous whistleblower call service.

<sup>2</sup> Where the disclosure relates to fraud and corruption, the Appropriate Authority must pass the information as soon as practicable to the Anti-Corruption Branch of the SA Police.

## Fraud, Corruption, Misconduct and Maladministration

- (ii) inducing, whether by threats or promises or otherwise, the commission of the offence;
- (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- (iv) conspiring with others to effect the commission of the offence.

**Employee** is any person who is employed by the Council, but also includes any contractors, volunteers, independent committee members and consultants undertaking work for, or on behalf of the Council.

**False Disclosure** is a disclosure of information involving actual or suspected fraud or corruption that is made by a person who knows the information to be false or, who is reckless as to whether it is false.

**Fraud** is the use of misrepresentations, deception or dishonest conduct in order to obtain an unjust advantage over another or, to cause detriment to the Council. Examples of fraudulent conduct include, theft of assets; unauthorised and/or illegal use of assets, information or services for private purposes; misappropriation of funds; and/or falsification of records.

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

**Maladministration** in public administration defined at section 4 of the *Independent Commissioner Against Corruption Act 2012*, means:

- (a) 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
- (b) 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.

**Misconduct** in public administration means:

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

**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; to:

- (a) receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;
- (b) make recommendations as to whether and by whom complaints and reports should be investigated;

## Fraud, Corruption, Misconduct and Maladministration

- (c) perform other functions assigned to the Office by the Commissioner.

**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.

**Public Officer** - Defined under the *ICAC Act 2012* and *ICAC Directions and Guidelines* includes;

- a Council Member,
- an Employee or Officer of the Council,
- a person performing contract work for a public authority or Crown,
- a person who is, in accordance with an Act, assisting a public officer in the enforcement of the Act,
- a person who is a member of the State Executive of the Local Government Association,
- and an officer or employee of the Local Government Association.

### 1.5 **Strategic Reference**

A Place that provides Value for Money.

## 2. **POLICY STATEMENT**

- 2.1 The City of Holdfast Bay (Council) is committed to developing and maintaining an organisational culture supported by appropriate controls, procedures and strategies which prevent fraud, corruption and maladministration.
- 2.2 Council promotes a culture and environment in which fraud, corruption and maladministration is actively discouraged and is readily reported to the appropriate authority should it occur.
- 2.3 Council will not tolerate fraudulent conduct, including from its own employees, contractors, volunteers, elected members or others working for Council, and will not tolerate others using fraudulent practices against Council, its employees or the functions and services it provides.
- 2.4 All elected members and employees will at all times act with integrity and must not engage in fraudulent activity or any kind, this includes fraudulent activities which may benefit council.
- 2.5 All suspected instances of fraud, corruption and maladministration will be reported and investigated in accordance with the mandatory reporting procedures, and internal procedures.
- 2.6 In the event that a preliminary investigation indicates that a criminal offence or other offence in relation to anti-corruption legislation, may have been committed, the information will be forwarded to an appropriate authority depending on the nature of the offence.

## **Fraud, Corruption, Misconduct and Maladministration**

- 2.7 False allegations of suspected fraud, corruption and maladministration with the wilful intent to disrupt or cause harm to another may be subject to disciplinary action.
- 2.8 Employees, contractors, volunteers, elected members or others working for Council induction procedures will ensure that there is an awareness of the policy and how it applies to them. Council will ensure that all employees, contractors, volunteers and elected members are aware of their responsibilities in relation to fraud and corruption through the provision of appropriate training.
- 2.9 Council will consider Fraud and Corruption as part of its Risk Assessment procedures.

### **3. REFERENCES**

#### **3.1 Legislation**

- *Local Government Act 1999*
- *Independent Commissioner Against Corruption Act 2012*
- *Freedom of Information Act 1991*
- *Ombudsman Act 1972*
- *Whistleblowers Protection Act 1993*
- *Public Finance and Audit Act 1987*

#### **3.2 Other References**

To be updated as required.