

## Fraud and Corruption Prevention Policy

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<b>Relevant Policies:</b>	<i>Internal Financial Control Policy, Privacy Policy / Code of Conduct Policies &amp; Procedure for Managing Breach of Code of Conduct</i>
<b>Related Procedures:</b>	<i>(In accordance with above Acts/Legislation)</i>
<b>Delegations:</b>	<i>As per Delegations Register</i>

### PURPOSE

The purpose of this Policy is to:

- Document Council's approach to the prevention, detection, control and response to Fraud, Corruption, Misconduct and Maladministration in connection with Council's activities and by Public Officers.
- Provide a statement to the community and Public Officers that Fraudulent Conduct, Misconduct and Maladministration is unacceptable and will not be tolerated.
- Protect Council's assets and the integrity, security and reputation of Council from the risk of incidents of Fraudulent Conduct, Misconduct and Maladministration.
- Ensure Public Officers are aware of their individual legislative reporting obligations to report conduct reasonably suspected of being Fraud, Corruption, Misconduct and/or Maladministration, and the manner in which such reports must be made.
- Adopt risk management strategies for the identification, mitigation and monitoring of Fraud, Corruption, Misconduct and Maladministration.
- Identify relevant responsibilities.

## **Policy Statement**

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

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 Council Members and Council Employees.

The Council will not tolerate fraudulent or corrupt activity and is committed to its control and prevention by:

- Complying with the requirements of the Independent Commissioner Against Corruption Act 2012 (ICAC Act);
- establishing and maintaining an effective system of internal controls and enforcing compliance with those controls;
- regularly undertaking risk assessments to identify circumstances in which Fraud and Corruption could potentially occur;
- implementing Fraud and Corruption prevention and mitigation strategies in its day to day operations;
- taking appropriate action in response to allegations of fraudulent and/or corrupt activity including, reporting allegations in accordance with the ICAC Act and the reporting system established by the Independent Commissioner Against Corruption (ICAC) under section 20 of the ICAC Act and where allegations are substantiated, in addition to applicable criminal sanctions, may take disciplinary action in accordance with the Codes of Conduct for Council Members and Council Employees or, if relevant, a Council Employee's contract of employment with the Council;
- ensuring all Council Employees and Council Members are aware of their obligations in regards to the prevention of Fraud and Corruption within the Council and the inclusion of preliminary education in any induction process;
- active participation in education and evaluation of practices relevant to Fraud and Corruption;
- fostering an ethical environment in which dishonest and fraudulent behaviour is actively discouraged; and generating community awareness of the Council's commitment to the prevention of Fraud and Corruption

## **Prevention**

Council recognises that:

- The occurrence of Fraud, Corruption, Misconduct and Maladministration may prevail in an administrative environment where opportunities exist for waste, abuse and maladministration of public resources, and
- The most effective preventative action Council can take is to promote an ethical environment in which internal controls have been implemented. Council expects that all Public Officers will assist in preventing Fraud, Corruption, Misconduct and Maladministration by:
  - Understanding their responsibilities
  - Familiarising themselves with Council's procedures and adhering to them
  - Understanding what behaviour constitutes Fraudulent Conduct, Misconduct and Maladministration
- Maintaining an awareness of the strategies that have been implemented to minimise Fraud, Corruption, Misconduct and Maladministration, and being vigilant to the potential for their occurrence

- Reporting reasonably suspected or actual occurrences of Fraud, Corruption, Misconduct and Maladministration as envisaged by this Policy.

## **Specific Responsibilities**

### **Elected Members**

Elected Members as a decision making body are responsible for:

- Promoting Council's commitment to the prevention of Fraud, Corruption, Misconduct and Maladministration to employees, volunteers and the community
- Reporting any suspected or actual occurrences of Fraud, Corruption, Misconduct and Maladministration as envisaged by this Policy, and
- Complying with the Code of Conduct for Council Members.

### **CEO**

The CEO, as the officer who is responsible for the efficient and effective operation of the organisation, will:

- Promote Council's commitment to the prevention of Fraud, Corruption, Misconduct and Maladministration to Council's employees, volunteers and the community
- Establish and implement processes and systems to assist with the prevention and control of Fraud, Corruption, Misconduct and Maladministration
- Regularly review the effectiveness of Council's processes and systems to ensure they are adequate, current and legislatively compliant, and
- Report any suspected or actual occurrences of Fraud, Corruption, Misconduct and Maladministration as envisaged by this Policy.

### **Corporate Leaders**

Corporate Leaders are responsible for:

- Leading by example to promote and foster a culture of ethical behaviour both generally and in their respective departments
- Creating an environment in which Fraud, Corruption, Misconduct and Maladministration is discouraged and readily reported
- Ensuring compliance with this Policy and promoting it
- Reporting any suspected or actual occurrences of Fraud, Corruption, Misconduct and Maladministration as envisaged by this Policy
- Ensuring all employees and volunteers for whom they are responsible have received Fraud, Corruption, Misconduct and Maladministration awareness training/education, including in relation to the standard of conduct expected as outlined in the Employee Conduct Policy
- Identifying, assessing and documenting in departmental risk registers Fraud, Corruption, Misconduct and Maladministration risks in their area of responsibility and identifying and implementing appropriate risk management strategies, and
- Ongoing monitoring, reviewing and reporting of risks.

### **Employees and Volunteers**

Employees and volunteers are responsible for:

- Demonstrating their commitment to the prevention, detection and reporting of any actual or suspected Fraud, Corruption, Misconduct and Maladministration by behaving in a manner consistent with the Employee Conduct Policy, Volunteer Code of Conduct (in the Volunteer Handbook) and Council's Values and the Directions and Guidelines
- Adhering to this Policy and other Council procedures that have been established to prevent Fraud, Corruption, Misconduct and Maladministration
- Taking care of Council's property

- Maintaining and enhancing Council's reputation
- Remaining scrupulous in their use of Council's information, assets, funds, property, goods and/or services
- Understanding their delegations and ensuring decisions are made strictly in accordance with such delegations, and
- Participating in any required awareness and education training.

### **Audit Committee**

Council's Audit Committee is an advisory body that plays a pivotal role in Council's governance framework. It provides independent oversight in the areas of risk, control, compliance and financial reporting.

The Audit Committee will:

- Review this Policy and make recommendations for amendments as appropriate
- Review the approach to maintaining an effective internal control framework to seek to ensure it is sound and internal controls are being consistently applied
- Evaluate associated controls in relation to the risk of Fraud, Corruption, Misconduct and Maladministration as part of the risk management process.

### **Risk Assessment Process**

Council's main objective in the prevention and control of Fraud, Corruption, Misconduct and Maladministration is to minimise the likelihood of such occurrences. This objective will be achieved by:

- Identifying risks and documenting them (where appropriate) on departmental risk registers
- Determining and observing risk management strategies to control risks
- Defining responsibility for and the timeframe within which the strategies will be implemented
- Regularly reviewing, monitoring and reporting of risks. Corporate Leaders must uphold and monitor control strategies, initiatives and systems within their area of responsibility. They must be alert to the possibilities of Fraud, Corruption, Misconduct and Maladministration occurring within their business areas, assess risks associated with their particular activities and actively manage those risks within Council's Enterprise Risk Management Framework and in accordance with Council's Risk Management Policy.

### **Reporting and Investigation Office of Public Integrity (OPI)**

The OPI manages complaints about Public Administration with a view to identifying Fraud, Corruption, Misconduct and Maladministration in Public Administration. The OPI's role is to ensure that complaints are dealt with by the most appropriate person or body and to achieve an appropriate balance between the public interest in exposing Fraud, Corruption, Misconduct and Maladministration in Public Administration, and the public interest in avoiding undue prejudice to a person's reputation.

### **Reporting Corruption or Serious or Systemic Misconduct and Maladministration**

Any Public Officer who has or acquires knowledge of actual or suspected Corruption, or Serious or Systemic Misconduct or Maladministration in the Council or in other Public Administration, must report this information to the OPI as soon as practicable. All reasonable suspicions of Corruption or Serious or Systemic Misconduct or Maladministration must be reported to the OPI in accordance with the Commissioner's reporting requirements as identified in the Directions and Guidelines. A report to the OPI must be made using the online report form available at: <https://icac.sa.gov.au/opi>. When reporting actual or suspected Corruption, or Serious or Systemic Misconduct or Maladministration in the Council to the OPI under the ICAC Act, any requirements of other documents that form part of Council's Fraud, Corruption, Misconduct and Maladministration framework should also, to the extent possible,

be adhered to. Nothing in this section is intended to prevent a Public Officer from reporting suspected Corruption or Serious or Systemic Misconduct or Maladministration in the Council or in other Public Administration to a Relevant Authority, for the purposes of the PID Act. Such a disclosure may be protected under the PID Act and, if made to the Council's Responsible Officer, will be managed in accordance with the Council's Public Interest Disclosure Policy and Procedure. Public Officers are encouraged to have regard to the Council's Public Interest Disclosure Procedure when determining where to direct a disclosure.

### **Reporting Fraud, Misconduct and Maladministration**

Where a Public Officer or volunteer has or acquires knowledge of actual or suspected Fraud or other similar conduct that does not constitute Corruption or Systemic or Serious Misconduct or Maladministration (and is therefore not required to be reported to OPI), that knowledge should be reported to Council's Responsible Officer. Such a disclosure may be protected under the PID Act and will be managed in accordance with Council's Public Interest Disclosure Policy and Procedure.

### **Confidentiality and Public Prohibitions**

A person who receives information knowing that it is connected with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under the ICAC Act must not disclose that information, other than in the limited circumstances set out in section 54(3) of the ICAC Act. A person must not, other than as authorised by the Commissioner or a court, publish or cause to be published any of the following:

- information tending to suggest that a particular person is, has been, may be, or may have been, the subject of a complaint, report, assessment, investigation or referral under the ICAC Act
- information that might enable a person who has made a complaint or report under the ICAC Act to be identified or located
- the fact that a person has made or may be about to make a complaint or report under the ICAC Act
- information that might enable a person who has given or may be about to give information or other evidence under the ICAC Act to be identified or located
- the fact that a person has given or may be about to give information or other evidence under this Act; or
- any other information or evidence which the Commissioner has prohibited from publication.

A failure to comply with the requirements in this part can constitute an offence. A Council employee who fails to comply with these requirements may also face disciplinary action which may include termination of employment. In addition to the requirements in this part, Public Officers should also be mindful of the confidentiality provisions in Council's Public Interest Disclosure Policy.

### **Action by the CEO following a report and investigation into Fraud, Corruption, Misconduct and/or Maladministration**

Unless otherwise directed by OPI or SAPOL, the CEO will investigate how the alleged Corruption, Fraud, Misconduct or Maladministration occurred to determine the cause for the breakdown in controls and identify if any recommendations as to changes in policies, procedures or internal controls should be made to the Council. The investigation should:

- occur as soon as practicable after the alleged incident; and
- not impose on or detract from any investigation being undertaken by the OPI or SAPOL
- have regard to any recommendations in any report received from the Commissioner or SAPOL on the incident.

The CEO will, in conducting the investigation and deciding whether and how to report on the investigation to Council, have regard to the provisions of the Public Interest Disclosure Policy, and any confidentiality requirements under the PID Act and ICAC Act. Action taken by the CEO following an investigation into alleged Corruption, Fraud, Misconduct or Maladministration may include disciplinary action against any employee involved in the incident.

### **False Disclosure**

A person who knowingly makes a false disclosure or a false or misleading statement in a complaint or report will be guilty of an offence under the ICAC Act and the PID Act. A Council employee who makes a false disclosure may also face disciplinary action which may include dismissal from employment.

### **Increasing Awareness**

Council recognises that the success of this Policy will largely depend upon how effectively it is communicated throughout the organisation and beyond. Council will take proactive steps towards ensuring that the wider community is aware of Council's zero-tolerance stance towards Fraud, Corruption, Misconduct and Maladministration.

Council will increase community awareness by:

- Promoting Council's initiatives and policies regarding the control and prevention of Fraud, Corruption, Misconduct and Maladministration on Council's website and at Council's Civic Centre
- Educating new employees and volunteers as part of its induction and re-induction process
- Making reference to Council's prevention initiatives in its Annual Report, and
- Facilitating public access to this policy and related documents.

### **LEGISLATIVE FRAMEWORK**

There is no legislative requirement for Council to have a policy relating to this area; however, it is considered best practice and consistent with principles of good governance. The following legislation applies to this Policy:

#### *Independent Commissioner against Corruption Act 2012*

The ICAC Act establishes the Office of the Independent Commission against Corruption (the Commissioner) and the Office of Public Integrity (OPI). The role of the Commissioner is to:

- identify, investigate, and refer to prosecution, Corruption in Public Administration
- assist in identifying and dealing with Misconduct and Maladministration in Public Administration; and
- Facilitate educational programs to prevent Corruption, Misconduct and Maladministration.

The Commissioner may perform functions under the ICAC Act to address any issue of Corruption, Misconduct or Maladministration in Public Administration. However, the primary function of the Commissioner is to investigate allegations of Corruption in Public Administration and to refer Serious or Systemic Misconduct or Maladministration in Public Administration to an Inquiry Agency or to a Public Authority.

*Local Government Act 1999 Section 125* of the Local Government Act requires Council to implement and maintain appropriate internal control policies, practices and procedures to safeguard Council's assets.

#### *Public Interest Disclosure Act 2018*

The Public Interest Disclosure Act encourages and facilitates disclosures of certain information in the public interest by ensuring that proper procedures are in place for making and dealing with such disclosures and by providing protection for persons making such disclosures; and for other purposes. The Council's Public Interest Disclosure Policy applies in respect of such disclosures.

## OTHER REFERENCES

Council's documents include:

- Elected Member Allowances and Benefits Policy
- Employee Conduct Policy
- Gift registers
- Enterprise Risk Management Framework
- Fees and Charges Register
- Risk Management Policy
- Public Interest Disclosure Policy
- Public Interest Disclosure Procedure
- Volunteer Handbook External document including:
- Code of Conduct for Council Members
- Guide: Gifts and Benefits under the Code of Conducts (Local Government Association)
- ICAC Directions and Guidelines
- Australian Standard AS8001:2008

Fraud and Corruption Control - This Standard provides guidance regarding the control of Fraud and Corruption that is applicable to all entities (including local government) that engage in business or business-like activities.

## STRATEGIC PLAN/POLICY

Strategic Plan Council's Strategic Plan is supported by an Organisation Plan which focuses on five key themes of organisational excellence. The relevant themes are People and Leadership, Governance and Finance and Systems. They deal with how Council defines roles, powers and responsibilities within the organisation with the aim of modelling best practice in local government.

### Organisation Plan

Council's Strategic Plan is supported by an Organisation Plan which focuses on five key themes of organisational excellence. The themes most relevant to this report are: People and Leadership; Customers and community relations; Governance; Finance and systems, Continuous improvement

## DEFINITIONS

For the purposes of this policy the following definitions apply:

### *CEO*

Refers to the Chief Executive Officer (including their delegate) of the Berri Barmera Council.

### *Commissioner*

The person appointed under the ICAC Act as the Independent Commissioner against Corruption.

### *Corporate Leader*

Refers to any employee who directly supervises other employees or volunteers, and is responsible for the management of a Council Department.

### *Corruption (in Public Administration)*

Is as defined in section 5(1) of the ICAC Act and 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:
  - o Bribery or Corruption of Public Officers
  - o Threats or reprisals against Public Officers

- o Abuse of public office
- o Demanding or requiring benefit on the basis of public office, and
- o Offences relating to appointment to public office.
- 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; and
- Any of the following in relation to an offence referred to in a preceding paragraph:
  - o Aiding, abetting, counselling or procuring the commission of the offence
  - o 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.

#### *Council*

Is the Berri Barmera Council.

#### *Directions and Guidelines*

Is a reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act and 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))

#### *Employee*

Any person who is employed by Council, whether they are working in a full-time, part-time or casual capacity.

#### *False disclosure*

Refers to a disclosure of information relating to Fraud, Corruption, Maladministration or Misconduct that is made by a person who knows the information to be false.

#### *Fraud*

Includes an intentional dishonest act or omission done with the purpose of deceiving. Offences addressed under Part 5 and Part 6 of the Criminal Law Consolidation Act 1935 are considered to constitute Fraud offences. An ordinary meaning of Fraud is 'to obtain dishonestly that which the person is not entitled to'. Fraud is a broad label applicable to conduct / practices that involve knowingly dishonest or deceitful behaviour meant to obtain an unjust benefit.

#### *ICAC*

Independent Commissioner against Corruption as appointed under the ICAC Act.

#### *ICAC Act*

Independent Commissioner against Corruption Act 2012

#### *Inquiry Agency*

As listed in section 4 of the ICAC Act. Relevant in the context of Local Government, this includes the Ombudsman, and also includes:

- The Police Ombudsman, and
- A person declared by regulation to be an Inquiry Agency (as at the last Policy review, no persons are declared by regulation for this purpose).

#### *Maladministration - (in Public Administration)*

Is defined in section 5(4) of the ICAC Act, and means:



- Conduct of a Public Officer, or a practice, policy or procedure of a public authority, which results in an irregular and unauthorised use of public money or substantial mismanagement of public resources and Conduct of a Public Officer involving substantial mismanagement in or in relation to the performance of official functions. It 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)*

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. 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).

#### *OPI - Office for Public Integrity*

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
- Refer complaints and reports to inquiry agencies, Public Authorities and Public Officers in circumstances approved by the Commissioner, or make recommendations as to whether and by whom complaints and reports should be investigated
- Give directions or guidance to public authorities in circumstances approved by the Commissioner
- Perform other functions assigned to the Office by the Commissioner.

#### *PID Act*

Refers to the Public Interest Disclosure Act 2018.

#### *Public Administration*

Defined in section 4 of the ICAC Act and means (without limitation) an administrative act within the meaning of the Ombudsman Act 1972 taken to be carried out in the course of Public Administration. For the purposes of this Policy, references to Corruption, Misconduct and Maladministration are taken to mean references to such conduct in Public Administration.

#### *Public Authorities and Public Officers*

Are for the purposes of the ICAC Act, those authorities and officers listed in Schedule 1 of the ICAC Act. Relevant in the context of this Policy:

- Public Authority – includes the Council in addition to:
  - o The Governor
  - o Both Houses of Parliament
  - o South Australian government departments, agencies and statutory bodies, and
  - o Other local councils
- Public Officer - includes:

- o An Elected Member of Council
- o An Independent Member of Council's Development Assessment Panel
- o An Independent Member of a Council Committee or subsidiary of Council
- o A member of a Council regional subsidiary
- o An officer or Employee of Council (including a person performing contract work)
- o An officer or Employee of the Local Government Association of South Australia.

#### *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 in social networking with the public or
- Any similar means of communication with the public.

#### *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.

#### *Responsible Officer*

Refers to a person who has completed any training courses approved by the Commissioner for the purposes of the Public Interest Disclosure Regulations 2019 and has been designated by the Council as a responsible officer under section 12 of the PID Act.

#### *SAPOL*

Refers to South Australian Police.

#### *Waste*

Public resources includes the irregular or unauthorised use of public resources.

### **POLICY IMPLEMENTATION**

This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.

### **ACCESSIBILITY**

#### **Contact Details**

Where a ratepayer believes that the Council has failed to properly apply this policy it should raise the matter firstly with Council's Rates Officer. If after initial contact a ratepayer is still dissatisfied they should write to:

The Chief Executive Officer  
Berri Barmera Council  
PO Box 229  
BERRI SA 5343

Ph: 08 8582 1922  
Fax: 08 8582 3029  
Email: [bbc@bbc.sa.gov.au](mailto:bbc@bbc.sa.gov.au)  
Web: [www.berribarmera.sa.gov.au](http://www.berribarmera.sa.gov.au)

### **Availability of Policy**

This policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website [www.berribarmera.sa.gov.au](http://www.berribarmera.sa.gov.au) Copies will also be provided to the public upon request and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

*Electronic version on the Intranet is the controlled version.  
Printed copies are considered uncontrolled.  
Before using a printed copy, verify that is the current version.*

## APPENDIX 1 OFFENCES

### ***Local Government Act 1999***

#### **(a) Council 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)

(1) A person must not— (a) publish 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 (b) comment on the facts set forth in a Register unless the comment is fair and published in the public interest and without malice.

(2) If information or comment is published by a person in contravention of subsection (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.*

**(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(1-2))

A person must not disclose to any other person any information furnished pursuant to this Division unless the disclosure—

1(a) is necessary for the purposes of the preparation or use of the Register by the chief executive officer; or

(1b) is made at a meeting of the council, a council committee or a subsidiary of the council. Maximum penalty: \$10 000.

(2) Despite any other provision of this Act—

2(a) the public must be excluded from attendance at any part of a meeting of the council, a council committee or a subsidiary of the council where information is disclosed under subsection (2)(b); and

(2b) any part of the minutes of a meeting of the council, a council committee or a subsidiary of the council which contains information disclosed under subsection

(2)(b) is not available for public inspection

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.*

### ***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*

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.

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.

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.*