

# Fraud and Corruption Prevention Policy

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# 1. Purpose

The purpose of this policy is to clearly demonstrate that Council does not and will not tolerate fraudulent practices either by its own staff, contractors or others working for Council and will not tolerate others using fraudulent practices against Council, its staff or the functions and services it provides.

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# 2. Scope and Application

This Policy applies to all Council Officials. Council Officials are defined to include Councillors, members of council staff and delegates of Council. A delegate of Council is a person or body to whom a function of Council is delegated, such as staff, Councillors, community representatives, volunteers, consultants and contractors.

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# 3. Definitions

## 3.1 What is fraud?

Fraud is defined in Australian Standard AS 8001-2008 as:

“Dishonest activity causing actual or potential financial loss to any person or entity including theft of moneys or other property by employees or persons external to the entity and whether or not deception is used at the time, immediately before or immediately following the activity. This 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.”

For the purpose of this Policy, fraud includes both tangible and intangible benefits such as information which may not be in documentary form.

## 3.2 What is corruption?

For the purpose of this Policy, corruption and corrupt conduct will have the same meanings as defined in the ICAC Act 1988 which is set out in Appendix 1.

In summary, corrupt conduct means any conduct which could affect the honest or impartial exercise of official functions, or may be a breach of trust, or may involve the misuse of any Council information by any Council Official.

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# 4. Approach to Fraud and Corruption

Randwick City Council emphasises its support for better practice processes through the following:

- Having in place a comprehensive fraud and corruption prevention framework and a documented fraud & corruption prevention plan (known as “Probity at Randwick City Council”) which reflects better practice in local government and complies with Australian Standards, legislation, and guidelines issued by other regulatory bodies.
- Appropriate assignment of responsibility for the effective implementation and operation of the fraud and corruption control framework and fraud and corruption prevention plan.

- Assessment of fraud and corruption risks and review of the fraud and corruption prevention framework and fraud and corruption prevention plan at least every 2 years or after any significant changes to ensure effectiveness is maintained.
- Clear communication and integration of fraud and corruption accountabilities into Council's regular activities and processes.
- Respect of the civil rights of employees and citizens and the commitment to natural justice.
- Implementation of the Fraud Corruption & Prevention framework and fraud and corruption prevention plan.

## 4.1 Fraud and corruption framework

In particular utilisation of the Fraud & Corruption Prevention Framework provides:

- The Internal Audit Committee with an effective way to review and monitor fraud and corruption.
- Executive management with a structured way to meet their fraud and corruption obligations
- Assistance to the General Manager when making representations about fraud and corruption control.

Through use of the framework Council can:

- Assess whether, and where, the implementation of its fraud and corruption prevention framework and “Probity at Randwick City Council” document need to improve.
- Develop specific actions for improving the implementation of the fraud and corruption prevention framework and “Probity at Randwick City Council” document.
- Monitor the ongoing extent of council’s fraud and corruption prevention framework and “Probity at Randwick City Council” document across all operational units within council.

The key objective of this policy is to demonstrably influence culture and behaviour by generating a testable fraud and corruption prevention environment. The General Manager shall establish and implement a detailed fraud and corruption prevention framework and “Probity at Randwick City Council” document in order to give this policy effect.

## 4.2 Record keeping, confidentiality and privacy

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. Applications to access documentation arising out of the implementation of this Policy can be made under Council’s Access to Information Policy. 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. Applications to access documentation arising out of the implementation of this Policy can be made under Council’s Access to Information Policy.

## 4.3 Reporting

Under the Code of Conduct there is an obligation for each Council Official to report any improper conduct, which includes suspected fraudulent or corrupt behaviour or breaches of this Policy. An individual may report the matter either internally or externally as outlined below.

You should report your suspicions to only those people who absolutely need to know. This protects people from allegations that may not be proven and prevents the possible destruction of evidence.

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

- their Supervisor, Manager or Director;
- General Manager;
- Mayor

Supervisors, Managers, Directors and the Office of the Internal Ombudsman have an obligation to immediately pass on the reports of suspected fraudulent or corrupt behaviour or breaches of the Policy to the General Manager.

The only exception to this is where the General Manager is suspected of conduct relating to fraud and corruption, in which case the matter should be reported to the:

- Mayor
- The relevant external agency

Alternatively, matters relating to suspected fraudulent or corrupt activities can also be reported to the following external agencies.

- The Independent Commission Against Corruption – Telephone 8281 5999 (*in the case of allegations of fraud or corruption*).
- The Department of Local Government – Telephone 4428 4100 (*in the case of allegations relating to pecuniary interests*).
- NSW Police – Telephone 9281 0000 (*in the case of allegations relating to fraud*).
- NSW Electoral Commission – Telephone 9290 5999 (*in the case of allegations relating to election fraud*).

#### 4.4 Breaches and sanctions

A breach of the Fraud & Corruption Prevention Policy amounts to a breach of Council's Code of Conduct for Councillors, Staff and Delegates and therefore invokes the sanctions as outlined by that Code. Criminal action may be taken against any person found to be in breach of any relevant legislation.

Staff investigations arising from a complaint made in accordance with this Policy/Code/Procedure (add which one) will be undertaken in accordance with the [Data Collection for Staff Investigations](#) procedure.

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## 5. Reporting and Protected Disclosure

Council is committed to supporting persons who report wrongdoing and who have done so voluntarily and in good faith and has adopted an Internal Reporting Policy – Public Interest Disclosures to enact this support. It is also committed to the aims and objectives of the *Protected Disclosures Act 1994*.

If any person reports suspected fraud or corrupt conduct through the appropriate channels as set out above they may seek protection from detrimental action under the *Protected Disclosures Act 1994*. This protection may apply whether the matter is reported internally or externally.

If the matter is reported internally, the procedures for the granting of this protection would fall under Council's Internal Reporting Policy – Public Interest Disclosures.

To receive this additional protection, the Protected Disclosures Coordinator (the Manager Administrative Services) or the General Manager should be contacted. The Internal Reporting Policy – Public Interest Disclosures should be referred to for guidance.

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## 6. Monitoring and Review

Council's commitment to fraud and corruption control will be met by actively investigating allegations of fraud or corrupt activity in a timely manner. As appropriate Council will report fraudulent or corrupt activity to relevant authorities and/or initiate disciplinary action under the Code of Conduct.

The General Manager, assisted by Directors, Managers and the Internal Audit Committee, will monitor fraud and corruption activities and identify and act on any trends that arise.

To ensure the Fraud and Corruption Prevention Policy remains relevant, it will be reviewed every two (2) years. If legislative requirements alter, this Policy should be reviewed immediately to accord with these requirements.

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## 7. Authorities & Responsibilities

Randwick Council accepts that managing the risk of fraud & corruption is a core part of our business. It is not an 'add on' or separate activity. A comprehensive responsibility structure is required to implement our organisation's fraud & corruption control framework. Whilst it is important our staff and Councillors recognise that everyone in the organisation has a role to play in preventing, detecting and reporting fraud & corruption, Council's management in particular have clearly defined responsibilities for managing fraud & corruption as detailed below:-

### 7.1 Staff

The **General Manager** has the primary responsibility for the prevention and detection of fraud and corruption, and for the governance of the Council. This involves a commitment to creating and maintaining a culture of honesty and ethical behaviour. The General Manager is responsible for ensuring that appropriate resources are dedicated to fraud & corruption control in proportion to the size and risk profile of our organisation. This includes allocating a budget and assigning specific responsibilities. The General Manager is also responsible for the appointment and resourcing of Council's Audit & Risk Committee.

**Directors**, as part of the executive management team with the General Manager, share responsibility for the prevention and detection of fraud and corruption, the governance of the Council and the creation and maintenance of an ethical culture. Directors are responsible for ensuring that specific and ongoing training is provided for staff primarily engaged in fraud and corruption control activities and staff working in high risk fraud & corruption areas.

**Managers** are responsible for ensuring that policies, procedures, systems and controls are understood by staff, implemented and fit for purpose. They have operational responsibility for the detection of fraud and corruption in their departments. Managers are responsible for reporting fraud & corruption risks to their respective Directors and the mitigating actions taken in response. Managers are also responsible for ensuring that managing fraud & corruption risks is included within their Department's annual operating plans.

**Internal Audit** provides independent, objective assurance and consulting activity designed to add value and improve Council's operations. It helps Council accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, internal controls and governance processes. The Internal Audit Charter defines Internal Audit's purpose, authority, and responsibility. Internal Audit is responsible for obtaining relevant data on fraudulent activities, for example ICAC reports, which can be used to inform Council's business processes. For example, an alleged or actual fraud may highlight weaknesses that may also exist in Council's systems. Internal audit is also responsible for examining the adequacy of Council's internal controls over high-risk processes and evaluating the potential for fraud & corruption to occur. Internal audit also undertakes specific assignments on the adequacy of the fraud and corruption control framework and provides corruption prevention and probity advice. Internal Audit conducts Code of Conduct-related training for all new staff at Induction Training sessions and acts as the central point of contact for all corruption related matters.

**External Audit** is responsible for obtaining reasonable assurance that the financial report taken as a whole is free from material misstatement, whether caused by fraud & corruption or error. When obtaining reasonable assurance, the External Auditor is responsible for maintaining professional scepticism throughout the audit, considering the potential for management override of controls and recognising the fact that audit procedures that are effective for detecting error may not be effective in detecting fraud & corruption.

The objective of the **Internal Audit Committee (IAC)** is to provide independent assurance and assistance to Randwick City Council on areas including risk management, control, legislative compliance, integrated planning and external accountability responsibilities. Council's Internal Audit Committee is responsible for informing and recommending improvements to fraud and corruption control frameworks and to act as a forum for senior managers to better understand fraud and corruption risks and mitigation strategies.

The Internal Audit Committee provides independent assurance to the General Manager and Council by overseeing and monitoring the adequacy of Council's Strategic Audit Plan and the processes and systems in place to capture and effectively investigate fraud and corruption related information. It also reviews Council's fraud and corruption control plan and framework. The Audit Committee Charter provides further detail on the responsibilities of the Committee. The IAC consists of the Mayor and three independent external members, all of whom have voting rights, and the General Manager and Internal Auditors in an advisory capacity. Representatives of Council's external auditors and Council officers attend by invitation for specific agenda items.

**All Staff** have the responsibility to adhere to Council's values, apply the Code of Conduct, follow Council's policies and procedures and report any known or suspected wrongdoing. Senior Finance and Procurement staff also have specific fraud control responsibilities included in their position descriptions.

## 7.2 Councillors

**Councillors** have responsibility for directing and controlling the affairs of Council in accordance with the requirements of the *Local Government Act 1993*. Councillors have an obligation to report possible fraud and corruption related activities to the Mayor, or General Manager. Councillors should also provide support to other Councillors, the General Manager and/or staff who may make such disclosures or manage such disclosures in the course of their duties.

Councillors must:

- be aware of and comply with the requirements of this Policy, and all supporting procedures; and
- report suspected fraudulent or corrupt behaviour or breaches of this Policy to the Mayor, or the General Manager, or external agencies.

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## 8. Relevant Legislation

The following Legislation effects the operation of this Policy:

- Local Government Act 1993 (NSW) (Act)
- Local Government (General) Regulations 2005
- Environmental Planning and Assessment Act 1979
- Independent Commission against Corruption 1988 (NSW)
- Protected Disclosures Act 1994 (NSW)
- Crimes Act 1900 (NSW)

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## 9. Related Policies

- Code of Conduct for Councillors
- Code of Conduct for Staff
- Councillors Expenses & Facilities Policy
- Gifts and Benefits Policy
- Procurement Policy & Procedure
- Protected Disclosures- Internal Reporting System
- Complaints Management Policy & Procedure
- Statement of Business Ethics

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## A. Appendix – ICAC Act

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

### **Corrupt conduct**

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.

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).

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.

### **General nature of corrupt conduct**

(1) Corrupt conduct is:

- 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
- any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- 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:

- official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition), bribery, blackmail, obtaining or offering secret commissions, fraud, theft, perverting the course of justice, embezzlement, election bribery, election funding offences, election fraud, treating, tax evasion, revenue evasion, currency violations, illegal drug dealings, illegal gambling, obtaining financial benefit by vice engaged in by others, bankruptcy and company violations, harbouring criminals, forgery, treason or other offences against the Sovereign, homicide or violence, matters of the same or a similar nature to any listed above, 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.

**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 purposes 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.
- (6) A reference to a disciplinary offence in this section and sections 74A and 74B includes a 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

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