



## 1.3.12 FRAUD AND MISCONDUCT MANAGEMENT POLICY

Finance

1.3.12

<b>Title:</b>	<b>1.3.12 FRAUD AND MISCONDUCT MANAGEMENT POLICY</b>
<b>Adopted:</b>	14 December 2022 (NEW)
<b>Reviewed:</b>	-
<b>Associated Legislation:</b>	Local Government Act 1995 Public Interest Disclosure Act 2003 Corruption, Crime and Misconduct Act 2003
<b>Associated Documentation:</b>	Nil
<b>Review Responsibility:</b>	Governance and Community Manager
<b>Delegation:</b>	Chief Executive Officer

---

Previous Policy Number/s N/A

### Objectives:

The purpose of this policy is to demonstrate and communicate the Council's commitment to the prevention, deterrence, detection and investigation of all forms of fraud and corruption.

### Scope:

This policy applies to all Shire employees, contractors, volunteers and elected members.

### Policy Statement:

#### 1.1. Fraud

As fraud constitutes a significant risk to any organisation, it is appropriate that a culture of ethical conduct be developed to recognise and avoid fraud and to deal appropriately with any cases of fraud. Fraud can lead to financial loss, reputational damage and loss of public confidence in the way that public money and other resources are being used. It is therefore important that the Shire has robust systems and procedures in place to ensure that the risk of impropriety is minimised, as far as possible, that there is a process in place to enable fraud to be adequately reported and that where instances of fraud do occur, there is a prompt and effective response to them.

- 1.1.1. *Fraud* is defined as "wrongful or criminal deception intended to result in financial or personal gain". Fraud is a deliberate act by an individual or group of individuals and is therefore always intentional and dishonest.
- 1.1.2. *Internal fraud* refers to fraudulent acts undertaken by Councillors and employees. Examples of such fraud would include falsification of expenses and wages claims, theft of cash and alteration of records to conceal the deficiency, falsification of invoices for payment, failure to account for monies collected, falsification of timesheets and timecards, dealing inappropriately with benefits claims of friends or relatives.
- 1.1.3. It is also worth noting that there may, in some instances, be potential for those in positions of trust within the Shire to perpetrate frauds against third parties. The Shire has the responsibility for the integrity of staff employed in such positions of trust.
- 1.1.4. *External fraud* is defined as fraud committed against the Shire by persons outside of the organisation. Examples include false statements in applications for Shire programs and applications for grants or false invoices for goods or services.
- 1.1.5. Fraud and other similar irregularities include:

- Forgery or alteration of cheques, invoices, computer records and other documents;
- Any misappropriation of funds, securities, supplies or any other asset;
- Any irregularity in the handling or reporting of money transactions;
- Misappropriation of furniture, fixtures and equipment;
- Seeking or accepting anything of material value from vendors, consultants or contractors doing business with the Shire;
- Unauthorised use or misuse of Shire property, equipment, materials or records;
- Any computer related activity involving the alteration, destruction, forgery or manipulation of data for fraudulent purposes or misappropriation of Council owned software;
- Any claim for reimbursement of expenses that are not made for the exclusive benefit of Shire;
- The intentional distortion of financial statements or other records by persons internal or external to the organisation which is carried out to conceal the misappropriation of assets or otherwise for gain;
- Providing false or misleading information related to financial interests and disclosure statements;
- Any similar or related irregularity.

## 1.2. Corruption

Corruption is dishonest activity in which an employee, or contractor of an entity acts contrary to the interests of the entity and abuses his/her position of trust in order to achieve some personal gain or advantage for him or herself or for another person or entity.

Corruption may also constitute any behaviour that may involve fraud, theft, the misuse of position or authority or other acts which are unacceptable to an organisation, its clients or the general community. It may also include other elements such as breaches of trust and confidentiality.

Corrupt conduct is demonstrated by a deliberate intent or an improper purpose and motivation and may involve conduct such as:

- undertaking, soliciting or accepting the provision of something of value (a bribe) for the purpose of influencing the action or decision of an official in the discharge of their public or legal duties;
- deliberate failure to perform the functions of office properly;
- the exercise of a power or duty for an improper purpose;
- involves a breach of the trust placed in the person as a public officer, either knowingly or recklessly;
- involves a misuse of official information or material; or
- performance of functions or the exercise of powers for the purpose of providing a benefit either to the person or another person or causing a detriment to another person.

Anyone who tries to corrupt a public sector officer can also be guilty of corrupt conduct if the matter involves a criminal offence.

## 1.3 Misconduct

Section 4 of the Corruption, Crime and Misconduct Act 2003 (CCM) defines misconduct.

Notwithstanding the specific definition of misconduct set out in the CCM Act, misconduct generally occurs when a public officer abuses their authority for personal gain, causes detriment to another person or acts contrary to the public interest. Misconduct also constitutes inappropriate or improper conduct by a public officer that reflects seriously and adversely on the public service.

The CCM Act characterises misconduct to either be serious or minor misconduct with serious misconduct dealt with by the Corruption and Crime Commission (CCC) and minor misconduct dealt with by the Public Sector Commission (PSC).

### 1.3.1 *Minor Misconduct*

Section 4(d) of the CCM Act defines minor misconduct for public officers other than WA Police officers.

Minor misconduct is misconduct that is significant enough that it could possibly lead to termination of a public officer's employment if proved. Minor misconduct occurs when a public officer engages in conduct that:

- adversely affects the honest or impartial performance of the functions of a public authority or public officer, whether the public officer was acting in their public officer capacity at the time of engaging in the conduct;
- involves the performance of functions in a manner that is not honest or impartial;
- involves a breach of the trust placed in the public officer; or
- involves the misuse of information or material that is in connection with their functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person; AND
- constitutes, or could constitute, a disciplinary offence providing reasonable grounds for termination of a person's office or employment.

Where the Principal Officer (in the case of the Shire, the CEO) has a reasonable suspicion that an instance of minor misconduct has occurred, the Principal Officer must report to the Public Sector Commission (PSC) as soon as practicable.

### 1.3.2 *Serious Misconduct*

Serious misconduct refers only to corrupt or criminal conduct as described in sections 4(a), (b) and (c) of the CCM Act.

Serious misconduct is misconduct that involves corrupt intent and/or criminal conduct and occurs when a public officer:

- • acts corruptly or corruptly fails to act in the course of their duties; or
- • corruptly takes advantage of their position for the benefit or detriment of any person; or
- • commits an offence which carries a penalty of two or more years imprisonment.

Where the Principal Officer has a reasonable suspicion that an instance of serious misconduct has occurred, the Principal Officer must report to the Corruption and Crime Commission (CCC) as soon as practicable.

## **Roles and Responsibilities**

### 1.2.1 *Councillors*

Councillors have a duty to ensure that Shire assets are safeguarded from fraud and abuse and to ensure that Council's powers, duties and responsibilities are exercised in an open, fair and proper manner to the highest standards of probity. These issues need to be borne in mind when considering reports, making decisions and scrutinising Council's activities. Councillors should endorse and support all policies and measures taken to prevent, deter, detect and resolve instances, or suspected instances, of fraud throughout the Shire.

### 1.2.2 *Chief Executive Officer*

The Chief Executive Officer has primary responsibility for the proper management of the Shire's resources and the development and implementation of systems and practices to minimise the risk of fraud. The Chief Executive Officer, under the Corruption, Crime and Misconduct Act 2003 must notify the Corruption and Crime Commission or the Public Sector commission if misconduct is suspected.

### 1.2.3 *Leadership Team*

The Leadership Team includes the Chief Executive Officer, Finance and Administration Manager, Governance & Community Manager and Works Manager. The Leadership Team is responsible for implementing fraud control initiatives and in particular:

- Provide leadership, guidance, training and support to employees in preventing fraud and corruption; • Identify high fraud risk areas;
- Participate in fraud and corruption risk assessment reviews which are presented to the Audit Committee to assess and provide assurance that the 3 entity has appropriate processes and systems in place; • Monitor the continued operation of controls;
- Conducting or coordinating investigations into allegations of fraud;
- Complying with legislation and Shire policies and practices;
- Ensuring staff understand their responsibilities through adequate communication, supervision, written procedures and job descriptions;
- Responding positively to matters raised and advice given by internal and external audit. Management need to be vigilant in guarding against fraud, be aware of any circumstances which may indicate that there may be a problem and report any such suspicions to the Directors or Chief Executive Officer for an independent investigation or advice. In carrying out their responsibilities, all managers (and staff) should be conscious of the fact that they are spending public money collected through rates and taxes. This provides an extra responsibility not only to spend it economically and effectively but also fairly

#### *1.2.4. Staff*

Staff are responsible for acting with honesty and integrity in all council activities and must:

- Not use their position with the Council to gain personal advantage or to confer undue advantage, or disadvantage, on any other person or entity.
- Safeguard Council assets against theft, waste or improper use.
- Understand what behaviour constitutes fraud and / or corruption.
- Familiarise themselves with and adhere to Council's policies and procedures.

Staff have a duty to make management aware of any concerns they have about the conduct of the Shire's affairs or the use of Shire assets and resources. Any matters raised by them should be taken seriously and properly investigated.

Staff who suspect that fraud has occurred should advise their Line Supervisor, Manager or Director as soon as possible. The Shire has prepared Operating Procedures following the introduction of the Public Interest Disclosure Act 2003 which protects "whistleblowers" from unjust recrimination where they have an honest and reasonable suspicion of malpractice, and they act on it. The Shire, in the interests of probity and good local government, encourages staff to raise matters so that they can be properly investigated.

#### *1.2.5. Audit & Risk Committee*

The Audit & Risk Committee a responsibility to:

- Have oversight of risk management, including fraud, misconduct and corruption control;
- Review governance processes to ensure all matters relating to alleged fraud, misconduct and corruption or unethical conduct are dealt with appropriately
- Review the Shire's Risk Management Framework
- Review the Shire's Internal Audit Plan
- Review the Shire's Risk Register

#### *1.2.6. Internal Auditors*

Internal Audit Internal Audit has an important role in assisting management in the prevention and detection of fraud by:

- Independently reviewing systems, procedures and controls to ensure that there are adequate safeguards to prevent, deter and detect fraud with particular attention being paid to the review of contracts and computer systems where there is potentially a significant risk;
- Through specific audits and testing of systems, identifying areas of concern;
- Responding to requests for advice from managers on controls to put in systems;
- Independently investigating suspected frauds and irregularities and reporting conclusions to the Audit Committee, management and, where necessary, the Police;
- Producing, and advising on the production, of rules, regulations and policies which deter fraud.

#### 1.2.7. External Auditors

External Auditors certify that the Shire's accounts represent a true and fair view of the Shire's financial position. In reaching this conclusion, they must satisfy themselves that control systems are sound and that measures are being taken to minimise the chances of fraud. 1.3. Induction Process The elements of fraud and the responsibility of all staff to not participate in and report fraudulent activity will form part of Council's induction process.

### 1.3. Risk Assessment

Fraud, misconduct and corruption risk assessment is an integral part of the Shires overall risk management framework and provides the Shire with an understanding of its fraud, misconduct and corruption vulnerabilities and possible strategies to eliminate or minimise those risks.

Fraud, misconduct and corruption risk assessments are conducted by the Shire at least annually and incorporated into the Shire's Operational and Strategic Risk Register. The Audit & Risk Committee reviews the Register Annually and the Leadership Team is accountable for monitoring risks and actioning any required controls to remove or reduce the risk.

The Internal Audit Plan is another tool for which more specific risk areas are assessed to determine the effectiveness of risk controls.

### 1.4. Response to Allegations and Concerns

1.4.1. Allegations and concerns about fraudulent or corrupt activity may come from different sources e.g.

- Members of the public, sometimes anonymously
- Other local authorities
- Councillors
- Council managers or staff
- Internal or external audit reviews

1.4.2. Allegations and concerns about fraudulent activity can be reported to the Chief Executive Officer, Directors, Managers and Line Supervisors and those persons making and/or raising allegations and concerns must be either willing to put this in writing and/or have supported evidence to avoid those persons who maliciously and knowingly create a false allegation.

1.4.3. Wherever these concerns come from they must be treated seriously and confidentiality will be respected as far as possible. A thorough investigation will be made of all concerns but the level of resources applied to this will be dependent on the nature of the concern e.g. sums or resources involved, sensitivity of the area, source of concern, evidence provided or available, risk inherent in that area.

1.4.4. For cases of internal fraud, investigations should be closely managed and documented in accordance with Shire procedures.

- 1.4.5. At all times confidentiality must be maintained and information disclosed only to those who need to know it, in order not to prejudice any disciplinary or criminal action.

## **1.5. Actions to be taken when Fraud is Uncovered or Suspected**

- 1.5.1. Investigations into suspected fraudulent activity will be comprehensive and will be based on the principles of independence, objectivity and the rules of natural justice.
- 1.5.2. Investigations will be conducted by an appropriately skilled and experienced person who is independent of the area in which the alleged fraudulent conduct occurred.
- 1.5.3. Where there is sufficient evidence of fraud, or there is strong suspicion but internal investigations are unable to obtain further evidence required, the Police should be involved where it is considered in the "Council or public interest".
- 1.5.4. Determination of the "Council or public interest" will include factors such as the sums or resources involved, the strength of the evidence obtained or available, the potential cost to the Council of pursuing the matter, the sensitivity of the area concerned. Referral to the Police will be the normal course of action unless there is a strong case not to do so.
- 1.5.5. Where involvement of the Police is not appropriate, the strongest action possible should be taken. This may involve disciplinary action including dismissal and the recovery of any sums of money or resources misappropriated.
- 1.5.6. At the conclusion of any fraud investigation, systems and procedures will be reviewed and any remedial actions implemented, whether or not there was sufficient evidence to prove any wrongdoing.
- 1.5.7. Any remedial actions identified from this process shall be recorded in the Shire's Risk Register and allocated to the relevant manager through his/her Risk Plan.
- 1.5.8. Monitoring of remedial actions will be undertaken by the Shire's Internal Auditors on an annual basis.
- 1.5.9. A fraud, integrity and conduct register will be maintained by the Governance and Community Manager.

## **1.6. Training**

Biennial training will be given to all staff in the principles of fraud, the reporting of fraud and the process involved in investigating suspected fraud.

## **1.7. Insurance**

The Shire shall maintain a fidelity guarantee insurance policy that provides insurance against the risk of loss arising from internal fraudulent conduct.