

THE BAROSSA COUNCIL

REPORTING FRAUD, CORRUPTION, MISCONDUCT AND MALADMINISTRATION PROCESS



1. Overview

- 1.1 Public Officers should utilise this Process to report Fraud, Corruption, Misconduct and Maladministration in accordance with the:
- Directions and Guidelines published by the Office for Public Integrity, under the *Independent Commission Against Corruption Act 2012* (the ICAC Act);
 - Directions and Guidelines published by the South Australian Ombudsman under the *Ombudsman Act* (the OA Act); and
 - the *Public Interest Disclosure Act 2018*.
- 1.2 The Barossa Council (Council) expects all Public Officers, including Volunteers where they meet the requirements, to report on documented or reasonably suspected instances of Fraud, Corruption, systemic Misconduct or Maladministration.

Note: Where Council's Volunteers are not Public Officers, they are not mandated to make reports under the relevant Acts, but they are encouraged to do so where appropriate under this Policy, the supporting Process and/or Council's supporting *Public Interest Disclosure Policy* and *Public Interest Disclosure Process* Where applicable.

2. Core Components

[Reporting Corruption, Serious and Systemic Misconduct or Maladministration](#)

[Reporting Fraud](#)

[Reporting Where There is No Obligation to Report Under ICAC Act](#)

[Confidentiality and Publication Prohibitions](#)

[Action by the Chief Executive Officer](#)

[False Disclosure](#)

[Training](#)

[Documents to Implement Process](#)

[Legislation and Reference](#)

[Definitions](#)

3. Process

3.1. Reporting Corruption, Serious and Systemic Misconduct or Maladministration

- 3.1.1. Any Public Officer who has knowledge of actual or suspected Corruption or Serious or Systemic Misconduct or Maladministration in the Council or in other public entities. Public Officers must report this information to the Ombudsman as soon as practicable.

Approval date: 10/11/2022	Review date: 10/11/2026	Approved by: CEO ELT Minutes 10 November 2022	Ref: 14/21787	Page 1 of 9
Uncontrolled once removed from webpage or Council's Record Management System. Before using printed copy, please verify that it is the current version. © The Barossa Council 2020				

- 3.1.2. All reasonable suspicions of Corruption, Serious or Systemic Misconduct or Maladministration must be reported to the Ombudsman in accordance with the Directions and Guidelines, and may be made using the online report form available at <https://ombudsman.sa.gov.au>
- 3.1.3. When reporting a reasonable suspicion of Corruption, Serious or Systemic Misconduct or Maladministration to the Ombudsman, any requirements of the documents that form part of the Council's Fraud, Corruption, Misconduct and Maladministration policy should also be adhered to.
- 3.1.4. Nothing in this clause 3.1 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 Authorities to a Relevant Authority, including a Responsible Officer, for the purposes of the PID Act. Such a Disclosure may be protected under the PID Act and will be managed in accordance with the Council's Public Interest Disclosure Policy and Process. The PID Policy and Process provides further information on where to direct a Disclosure.
- 3.1.5. Further information about reporting requirements and Public Officer's obligations are available on the Ombudsman SA website <https://www.ombudsman.sa.gov.au/>
- 3.1.6. Public Officers have an obligation to report certain types of improper conduct to the Office for Public Integrity (OPI):
- Bribery or corruption of public officers;
 - Threats or reprisals against public officers
 - Abuse of public office
 - Offences relating to appointment to public office
- 3.1.7. Reports to the OPI can be made through their website:
<https://publicintegrity.sa.gov.au>

3.2. **Reporting Fraud**

- 3.2.1. Any Elected Member or Worker who has knowledge of reasonably suspected Fraud that:
- Does not constitute Corruption in Public Administration; or
 - Impacts or causes detriment (or has the potential to impact or cause detriment) to the Council –
- should report such information to Council's Responsible Officer or SAPOL.
- 3.2.2. In order for the Informant to obtain protections under the *Public Interest Disclosure Act 2018*, a report made under clause 3.2.1 may be made in accordance with Council's *Public Interest Disclosure Policy* and *Public Interest Disclosure Process*.

3.3. **Reporting Where There is No Obligation to Report Under ICAC Act**

- 3.3.1. Where an Elected Member or Worker has knowledge of reasonably suspected Fraud or other similar conduct that does not constitute Corruption or Serious or Systemic Misconduct or Maladministration), that knowledge should be reported to the Council's Responsible Officer. Such a disclosure may be protected under the PID Act and if so, will be managed in accordance with the Council's *Public Interest Disclosure Policy* and *Process*.

Approval date: 10/11/2022	Review date: 10/11/2026	Approved by: CEO ELT Minutes 10 November 2022	Ref: 14/21787	Page 2 of 9
Uncontrolled once removed from webpage or Council's Record Management System. Before using printed copy, please verify that it is the current version. © The Barossa Council 2020				

- 3.3.2. Complaints can be made by members of the general public. The online form for making complaints and further information is available on the ICAC website: <https://icac.sa.gov.au/opi>

3.4. **Confidentiality and Publication Prohibitions**

- 3.4.1. Unless the *Public Interest Disclosure Act 2018* applies, the Ombudsman will disclose your identity to an agency for purposes of assessing and investigating the complaint.
- 3.4.2. If you do not want to be identified to the agency, please advise when making the complaint. If notified the Ombudsman will not disclose your identity unless they consider it necessary to properly assess and investigate the complaint. If it is deemed necessary, the Ombudsman will advise you of the disclosure prior to releasing your information.
- 3.4.3. The Ombudsman may also decide to publish an assessment outcome or investigation report, based on their Publication of Ombudsman Act Decisions and FOI Determinations policy.

3.5. **Action by the Chief Executive Officer**

- 3.5.1. Unless otherwise directed by an external authority such as the OPI or SAPOL, the CEO will investigate allegations of Fraud, Corruption, Misconduct or Maladministration. Where allegations can be substantiated the CEO will determine the causal factors and identify any recommendations as to changes required. Causal factors may include (but are not limited to):
- a breakdown in controls;
 - personal conduct; or
 - a breach of Policies or Processes.
- 3.5.2. The investigation should:
- occur as soon as practicable after the alleged incident;
 - not impose on or detract from any investigation being undertaken by an external authority such as the OPI or SAPOL; and
 - have regard to any recommendations in any report on the incident received from an external authority, such as the Commissioner or SAPOL.
- 3.5.3. 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 Process*, the Ombudsman and ICAC's Directions and Guidelines and any confidentiality requirements under the *PID Act*, the *ICAC Act*, Council's policies and processes, and any other relevant legislation.
- 3.5.4. Action taken by the CEO following an investigation into alleged Corruption, Fraud, Misconduct or Maladministration may include disciplinary action, in accordance with Council's policies and processes.

3.6. **False Disclosure**

- 3.6.1. 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 *OA Act*, *ICAC Act* and *PID Act* and may receive a hefty fine or jail sentence.
- 3.6.2. A Council Worker who makes a false disclosure may also face disciplinary action which may include dismissal from employment.

Approval date: 10/11/2022	Review date: 10/11/2026	Approved by: CEO ELT Minutes 10 November 2022	Ref: 14/21787	Page 3 of 9
Uncontrolled once removed from webpage or Council's Record Management System. Before using printed copy, please verify that it is the current version. © The Barossa Council 2020				

4.	Training
-----------	-----------------

All Elected Members and Workers (including contractors, consultants and volunteers) will be made aware of this Process and overarching Policy during their Induction and in refresher training upon request.

5.	Documents to Implement Process
-----------	---------------------------------------

All records created from these tools must be retained within the EDRMS in accordance with the current version of the General Disposal Schedule.

6.	Legislation and References
-----------	-----------------------------------

Ombudsman Act 1972
Ombudsman Directions and Guidelines
Independent Commission Against Corruption Act 2012
Office for Public Integrity Directions and Guidelines
Public Interest Disclosure Act 2018

7.	Review
-----------	---------------

This Process will be reviewed by the Document Control Officer in consultation with the relevant stakeholders, within four (4) years or more frequently if legislation or Council's need changes.

8.	Further Information
-----------	----------------------------

- 8.1. This Policy is available on Council's website at www.barossa.sa.gov.au. It can also be viewed electronically at Council's principal office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Policy can be obtained at those venues upon payment of a fixed fee.
- 8.2. Complaints regarding this Policy or its application can be made to the Customer Service team on 8563 8444 or barossa@barossa.sa.gov.au at first instance, who will refer you to the most appropriate officer according to Council's Customer Service Policy (see clause 8.1 above for availability).

9.	Document Control
-----------	-------------------------

Policy Link:	Fraud, Corruption, Misconduct and Maladministration Prevention Policy		
Document Owner:	Chief Executive Officer	Document Control Officer:	Team Leader Corporate Governance and Information Services
Audience:	External	Next Review Date:	10/11/2026
Version history			
Version No.	Date	Description of Change	
2.0	10/11/2022	Policy updated to reflect new legislation and Local Government Association's best practice model policy	
1.0	20/05/2014	New Process	

10.	Definitions
Corruption (in public administration) [as per section 5(1) of the ICAC Act]	Conduct that constitutes: - a) an offence against Part 7 Division 4 (Offences relating to Public Officers) of the <i>Criminal Law Consolidation Act 1935</i>, which includes the following offences: i. bribery or Corruption of Public Officers; ii. threats or reprisals against Public Officers; iii. abuse of public office; iv. demanding or requiring benefit on basis of public office; v. offences relating to appointment to public office; or b) an offence against the <i>Public Sector (Honesty and Accountability) Act 1995</i> or the <i>Public Corporations Act 1993</i>, or an attempt to commit such an offence; or ba) an offence against the <i>Lobbyist Act 2015</i>, or an attempt to commit such as offence; or d) 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; 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.
Business Day	A day when Council is normally open for business – Monday to Friday, excluding Public Holidays and when Council's Principal Office may be closed (e.g. over the Christmas holiday period).
CEO	The Chief Executive Officer of The Barossa Council.
Directions and Guidelines	The Directions and Guidelines issued by the Commissioner and as in force from time to time pursuant to section 20 of the ICAC Act and/or section 14 of the <i>Public Interest Disclosure Act 218</i>, which are available on the Commissioner's website: www.icac.sa.gov.au
Disclosure	Means an appropriate Disclosure of Public Interest Information, in accordance with the <i>Public Interest Disclosure Act</i>. For more information, please refer to Council's Public Interest Disclosure Policy and Public Interest Disclosure Process.
Electronic Document and Records Management System ("EDRMS")	An automated system used to manage the creation, use, management, storage and disposal of physical and electronic Documents and Records, for the purposes of supporting the creation, revision and management of digital Documents; improving Council's work-flow, and providing evidence of business activities.
Executive Leadership Team	The Committee comprising the Directors and Chief Executive Officer of Council.
Employee	All full-time, part-time and casual employees of The Barossa Council including trainees, apprentices, and on-hire employees.

False Disclosure	A disclosure of information relating to Fraud or Corruption, Maladministration or Misconduct that is made by a person who knows the information to be false or misleading.
Fraud	Includes an intentional dishonest act or omission done with the purpose of deceiving. Note: unlike 'Corruption' there is no statutory definition of 'Fraud'. Fraud is a style of offending. The offences addressed under Part 5 and Part 6 of the <i>Criminal Law Consolidation Act 1935</i> 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 or practices that involve knowingly dishonest or deceitful behaviour meant to obtain an unjust benefit. Dishonesty is the key element of fraudulent behaviour, as provided for under section 131 of the <i>Criminal Law Consolidation Act 1935</i> .
ICAC Act	The <i>Independent Commissioner Against Corruption Act 2012</i> .
Independent Commission Against Corruption or Commissioner	The Independent Commission Against Corruption is the body that has the function to identify, investigate and refer allegations of Corruption, Maladministration and Misconduct. The person holding or acting in the office of Commissioner has the powers and functions described at section 7 of the ICAC Act.
Maladministration (in public administration)	Section 4 of the <i>Ombudsman Act 1972</i> – 1) Maladministration in public administration— (a) means— (i) 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 (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and (b) includes conduct resulting from impropriety, incompetence or negligence; and (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
Misconduct (in public administration)	Section 4 of the <i>Ombudsman Act 1972</i> – 2) Misconduct in public administration means an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer.
Manager	Any Employee of the Council who is responsible for the direct supervision of a team of Employees or Volunteers, and/or, for the management of a Council Department.

Office for Public Integrity (OPI)	An office established under the <i>ICAC Act</i> that has the function to: a) receive and assess complaints about public administration from members of the public; b) receive and assess reports about Corruption, misconduct and maladministration in public administration from inquiry agencies (including the Ombudsman), the Council and Public Officers; c) 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; d) give direction or guidance to public authorities in circumstances approved by the Commissioner; e) perform other functions assigned to the Office by the Commissioner
Ombudsman	The Ombudsman is an independent officer who handles complaints about government, including government departments, state authorities, local councils and their elected members and return to work breaches of services standards and other administrative acts.
Ombudsman Act 1972	The <i>Ombudsman Act 1972</i> – was established to provide for the appointment of an Ombudsman to investigate the exercise of the administrative powers of certain agencies and allegations of misconduct or maladministration; to provide for the powers, functions and duties of the Ombudsman; and for other purposes.
PID Act	The <i>Public Interest Disclosure Act 2018</i> .
Public Administration	The administration of government policy (Macquarie dictionary). At section 4 of the <i>ICAC Act 2012</i> - without limiting the acts that may comprise public administration - an administrative act within the meaning of the <i>Ombudsman Act 1972</i> will be taken to be carried out in the course of public administration. For the purposes of this Process, references to Corruption, Misconduct and Maladministration are taken to mean references to such conduct in public administration.
Public Authority	Public authorities are, for the purposes of the <i>ICAC Act 2012</i> , those authorities listed in Schedule 1 of the <i>ICAC Act 2012</i> .
Public Officer <i>[as per section 4 and Schedule 1 of the ICAC Act]</i>	Includes: • a Council Member of Council, including the Mayor; and • an Employee or Officer of the Council; • a person performing contract work for Council • Council's Volunteers where they: a) hold a delegation from Council or the CEO or b) in accordance with an Act, assist a Public Officer in the enforcement of the Act.
Publish <i>[as per section 4 of the ICAC Act]</i>	Publish by: a) newspaper, radio or television; b) internet or other electronic means of creating and sharing content with the public of participating social networking with the public; or

Approval date:
10/11/2022

Review date:
10/11/2026

Approved by: CEO
ELT Minutes 10 November 2022

Ref:
14/21787

Page 7 of 9

Uncontrolled once removed from webpage or Council's Record Management System. Before using printed copy, please verify that it is the current version. © The Barossa Council 2020

	c) 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	Person/s who have completed any training courses approved by the Commissioner for the purposes of the <i>Public Interest Disclosure Regulations 2019</i> and has been designated by the Council as a responsible Officer under section 12 of the PID Act. Refer to Council's Public Interest Disclosure Policy and Process for a list of Council's Responsible Officers.
Volunteer	A person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses). [As defined in the <i>Work Health Safety Act 2012</i>] Includes work experience students.
Serious or Systemic (in relation to Misconduct or Maladministration)	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: - a) is of such a significant nature that it would undermine public confidence in the relevant public authority, or in public administration generally; and b) has significant implications for the relevant public authority or for public administration generally (rather than just for the individual public officer concerned). Note: further information about serious or systemic Misconduct or Maladministration is available at the ICAC website: www.icac.sa.gov.au/glossary
Supervisor	Any direct line supervisor, including Chief Executive Officer, Director, Team Manager, Line Manager, Coordinator, Supervisor or Leading Worker who are responsible for Worker(s) reporting to them.
Worker	A person is a worker if the person carries out work in any capacity for Council, including work as: (a) an employee; or (b) a contractor or subcontractor; or (c) an employee of a contractor or subcontractor; or (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or (e) an outworker; or (f) an apprentice or trainee; or (g) a student gaining work experience; or (h) a volunteer; or (i) a person of a prescribed class.

