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## JUNEE SHIRE COUNCIL

### POLICY REGISTER

**SUBJECT:** STAFF

**POLICY TITLE:** CORRUPTION PREVENTION

**OBJECTIVE:** To ensure all staff are aware of the responsibility to report Corrupt Conduct under the Independent Commission Against Corruption Act, 1988 and to allow for speedy investigation and appropriate action in respect of any complaints.

**POLICY:**

The Independent Commission Against Corruption Act, 1988 (Section 11) places a statutory obligation on the Principal Officers of Public Authorities to refer all cases of suspected corrupt conduct within the Junee Shire Council to the Independent Commission Against Corruption.

This policy document and the procedures for Reporting Corrupt Conduct outlines the steps that should be followed by all employees of the Junee Shire Council and should be read in conjunction with Council's policies on

- Conflicts of Interest.
- Code of Conduct.

The aim of this Policy and the Reporting Corrupt Conduct procedures is:

- To ensure the prompt referral to the ICAC of all complaints or instances of suspected corrupt conduct that are reported to Council officers to comply with Section 11 of the Independent Commission Against Corruption Act.
- To allow for a speedy investigation of all complaints that are made regarding Council activities/operations.
- To ensure that appropriate action is taken when corrupt conduct occurs.

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| <b>RATIONALE</b> |
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The Junee Shire Council is committed to eliminating corrupt conduct and preventing its recurrence. The Council and the Management will review all instances reported where suspected corrupt conduct has occurred and where necessary carry out an investigation. All reported cases will be treated with strict confidentiality

Having a reporting policy at Junee Shire Council will encourage Councillors and Staff to come forward. Reporting Corrupt Conduct helps ensure honesty and impartiality, it will enhance the standing and reputation of the New South Wales public sector.

Corrupt conduct is unfair. It wastes public money and resources, leads to inefficiency and destroys trust. Corrupt conduct disadvantages everyone.

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Every staff member has a role to play in watching for and reporting corrupt conduct and in maintaining effective work practices to combat corrupt conduct.

#### **IMPLEMENTATION**

The policy and the procedures for Reporting Corrupt Conduct take effect from the date of adoption by the Council.

#### **DISSEMINATION**

This Policy and the procedures for Reporting Corrupt Conduct will be disseminated to Departmental staff who are responsible for a copy of the Corporate Policy Manual.

An information sheet containing details on this Policy and the procedures on Reporting Corrupt Conduct will be distributed to all staff.

#### **REVIEW**

This Policy and the procedures for Reporting Corrupt Conduct will be reviewed as necessary and when amendments are made to the Independent Commission Against Corruption Act, 1988.

#### **ENQUIRIES**

If assistance is required in respect of the procedures and issues covered herein, contact should be made with the General Manager.

#### **APPROVING AUTHORITY**

General Manager  
Junee Shire Council  
Belmore Street  
JUNEE NSW  
January 1998

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**DATE ADOPTED:** 15 January 1998  
**MIN. NO:** 07.0498  
**FILE REF NO:** P10.01

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## JUNEE SHIRE COUNCIL

**FUNCTION:                    Procedures for Reporting Corrupt Conduct.**

These procedures have been developed for reporting of corruption, maladministration and serious and substantial waste under the Independent Commission Against Corruption Act, 1998. Protection for those employees who provide information relating to Corrupt Conduct will be in accordance with the provisions under the Protected Disclosures Act, 1994.

**DATE REVIEWED:**

The following Management Practices and Procedures for dealing with reports of Corrupt Conduct is divided into two (2) distinct sections.

**Section 1:                    Internal reporting system for Corrupt Conduct Complaints.**

**Section 2:                    Investigation process for handling Corrupt Conduct Complaints.**

**1. Internal Reporting System for Complaints of Corrupt Conduct.**

The Independent Commission Against Corruption Act, 1988 – Section 11 (refer appendix A) places a statutory obligation on the principal officers of public authorities to refer all cases of suspected corrupt conduct to the Independent Commission Against Corruption (ICAC). The Principal Officer of Junee Shire Council is the General Manager.

**What is Corruption?**

The community trusts public officials to perform their duties with honesty and in the best interest of the public. Corruption involves breaching public trust. Corruption leads to inequality, wasted resources and wasted public money.

Corrupt conduct is broadly defined in Section 8 of the Independent Commission Against Corruption Act, 1988 (refer appendix B). The key notion is the misuse of public office. Commonly it involves the dishonest or biased use of power or position resulting in one person being advantaged over another.

Corrupt conduct can be by either a public sector employee or a person not employed in the public sector. The following outlines some of the corrupt conduct that can occur in these two (2) areas.

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## By public sector employees

Corrupt Conduct by a person who is employed in the public sector can involve:

- (a) Carrying out duties in a dishonest way or in a way which lacks impartiality
- (b) A breach of the community's trust
- (c) The improper dissemination of information
- (d) Any case which constitutes or could constitute a criminal offence; or
- (e) A disciplinary breach that provides reasonable grounds for the termination of his or her employment.

Obvious cases of corrupt conduct are:

- Accepting money or other benefits to use influence in favour of a particular person to:
  - Avoid prosecution
  - Win a contract
  - Gain favourable government approval.
- Conduct can be corrupt regardless of when it occurred, even though:
  - The person was not at that time, but later becomes a public official.
  - The conduct occurred outside of New South Wales.
  - The person did not receive money or a personal benefit.

## By persons not employed in the public sector

Corrupt Conduct includes the conduct of a person who is not in the public sector where the person's conduct adversely affects or could adversely affect the honest and impartial discharge of functions or exercise of powers of a public sector body or an officer of a public sector body.

Corrupt Conduct also includes a conspiracy or attempt to engage in such conduct. It is irrelevant that there can no longer be a criminal proceeding or action for the termination of employment.

## What should be reported?

All matters that a staff member suspects involves, or may involve a real possibility of corrupt conduct. Absolute proof is not necessary.

By reporting these matters to the Commission you will not breach your duty to maintain confidentiality or other organisational restrictions. Those who report suspected misconduct are protected by law from prosecution for breaching organisation policy. Refer to section *'What protection is provided to persons who provide information on corrupt conduct'*.

If you are uncertain whether an activity is corrupt conduct you can contact your supervisor/manager or the Independent Commission Against Corruption and seek advice. Refer to section *'Referral procedures'*.

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## **How to make a complaint relating to corrupt conduct.**

If you have information that you consider relates to corrupt conduct then you should talk to your supervisor/manager. If the corrupt conduct relates to your supervisor/manager then the information should be provided to another supervisor/manager, the General Manager or the Mayor. The provision of this information will allow the issues raised to be investigated.

The information that is provided should include the following details where possible:

- (a) The name and address of the person you suspect of corrupt conduct.
- (b) Full details of the events, dates and places concerning the suspected corrupt conduct.
- (c) The names of others who have witnessed or have information on the corrupt conduct.

When making a corruption complaint you should advise whether the information is confidential and to whom the information may be released.

## **Confidentiality of information.**

All information that is provided that relates to corrupt conduct will be kept confidential and will only be disclosed to those *'who need to know'*. The Council and Management have a duty of care to ensure that information that is provided remains confidential.

## **What protection is provided to persons who provide information on corrupt conduct?**

### **What is a protected disclosure?**

Protection is available under the *Protected Disclosures Act, 1994* to public sector employees who voluntarily disclose information relating to corruption, maladministration or serious and substantial waste of public money in a NSW public authority. Any employee can request protection under the Protected Disclosures Act when making a complaint.

### **Who can receive a protected disclosure?**

The ICAC is one of the investigating authorities, which can receive protected disclosures. Protected disclosures may also be made to:

- A nominated officer within a NSW public authority.
- The principal officer of a NSW public authority.
- Another investigating authority
  - The NSW Ombudsman (for maladministration).
  - The Auditor General of NSW (for serious or substantial waste of public money at state government level only).

In special circumstances protected disclosures may also be made to a Member of Parliament or to a Journalist.

At Junee Shire Council you can make a protected disclosure to either the General Manager, the Mayor or direct to the ICAC.

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## **What protection is given?**

The Protected Disclosures Act, 1994 guards against detrimental action being taken by the agency involved against the person making the disclosure. Detrimental action may involve:

- Injury, damage or loss to the person making the disclosure.
- Intimidation or harassment.
- Disadvantaging the person in their employment.
- Dismissal from a job.

The person making a protected disclosure is protected against defamation action, disciplinary action and criminal liability for breach of a secrecy provision.

The disclosure is not protected if it is made frivolously or vexatiously, is false or misleading is made to avoid disciplinary action, or to primarily question the merits of a government policy.

## **Who will or should the corrupt conduct complaint be referred to?**

### **Corrupt Conduct - ICAC.**

Complaints of corrupt conduct received by Junee Shire Council will be reported to the ICAC. This does not prevent any individual in the organisation (or anyone else) providing information direct to the ICAC about the same matter. Contact can be made as follows:

The Assessments Section, Independent Commission Against Corruption at:

191 Cleveland Street  
REDFERN NSW 2016

GPO Box 500  
SYDNEY NSW 2001

TELEPHONE: (02) 9318 5999  
1800 463 909 (Toll Free)

FACSIMILE: (02) 9699 8067

These telephones are staffed Monday to Friday 9.00am to 5.00pm.

### **The role of ICAC.**

The role of the Independent Commission Against Corruption is to expose and prevent Corruption in the NSW public sector. The NSW public sector includes:

- All NSW State Government Departments.
- Statutory Authorities.
- Local Councils.
- Members of Parliament.
- The Judiciary.
- Other Public Authorities and Public Officials.

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The ICAC cannot prosecute people, deal with matters not concerned with public sector corruption, or investigate criminal activity unless it involves corruption. Only matters that amount to a criminal offence, a disciplinary offence, or conduct which would warrant a dismissal may be investigated.

The behaviour of private citizens can also be investigated if it is aimed at subverting a public official's duty.

### **Criminal Offence – NSW Police.**

You should report a matter to the NSW Police if it involves, or you suspect it involves, a criminal offence. In some circumstances it may be an offence not to report a serious criminal offence to the Police. Refer to section 318 of the *NSW Crimes Act, 1900*.

### **Administrative Conduct - Ombudsman.**

Issues of this nature should be referred to the NSW Ombudsman. The role of the Ombudsman is to promote fairness and integrity in public administration in NSW. The Ombudsman is an independent organisation who investigates conduct that may be:

- Illegal;
- Unreasonable, unjust or oppressive;
- Improperly discriminatory;
- Based on improper motives or irrelevant grounds;
- Based on a mistake of law or fact.

The Ombudsman gives priority to complaints raising systemic and procedural deficiencies in public administration or serious abuse of power. The focus of the Office is to identify problems and mistakes to ensure that they are resolved or rectified.

Where possible, the Ombudsman prefers that public sector agencies first attempt to resolve matters internally. This could include attempting conciliation as an alternative to investigation. Contact can be made as follows:

The New South Wales Ombudsman at:

Level 3 580 George Street  
SYDNEY NSW 2000

TELEPHONE: (02) 9286 1000  
1800 451 524 (Toll Free)  
FACSIMILE: (02) 9283 2911

### **Serious and substantial waste – NSW Audit Office.**

Serious and substantial waste is any uneconomical, inefficient or ineffective use of resources, which results in a significant loss or wastage of public funds. The conduct that led to the waste may be authorised or unauthorised.

It includes expenditure that should not have been incurred, that exceeded what was required or had no benefit for the organisation.

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The Audit Office has no authority to investigate serious or substantial waste in Local Government. If the waste is a result of corruption or maladministration, the matter can be reported to the ICAC or the Ombudsman. If not, Councils should contact the investigations unit at the Department of Local Government for advice.

## **2. Investigation process for handling corrupt conduct complaints.**

All matters reported will initially be reviewed by the General Manager of the Council in consultation with the officer reporting the Complaint of Corrupt Conduct and the officer to whom the complaint was reported. All matters will be referred to the ICAC. Following review where warranted full investigations will be undertaken of the issues raised and the ICAC will be consulted for advice and possible further investigation.

### **ICAC CONTACT WITH YOU**

- The Independent Commission Against Corruption may contact you when carrying out its responsibilities to investigate and prevent corrupt conduct.
- If you have made a complaint the Commission may contact you if further information is required. You will be advised by the ICAC when a determination has been made of the complaint.
- You may be contacted as a result of a complaint made by someone else.
- These contacts or requests should not be seen as imputing guilt or misconduct on your part. You are entitled to seek legal advice before speaking to the ICAC.
- If it is necessary to contact you, the Commission will try to maintain discretion and confidentiality.

This confidentiality is necessary for three reasons:

- So that efforts to obtain the truth are not jeopardised.
- To protect the reputations of people where complaints are found to be without substance.
- To protect the identity of those who provide the information.

However, the ICAC does not guarantee complete confidentiality in all circumstances as the public interest may require the information to be referred to another agency. For the same reasons, you should not tell your colleagues or anyone else about your contact with the Commission or discuss the complaint with other staff.

### **ICAC Investigations.**

All complaints and information about suspected corrupt conduct, even those made anonymously, given to the Independent Commission Against Corruption are initially handled by the Assessments Section. All information received is acknowledged and considered, however, not all information can be investigated. The accumulated data may produce patterns and trends that can be used for research purposes or future use in corruption prevention work. In some cases the matter is referred to a more appropriate agency.

An Assessment Officer will generally interview the person who makes the complaint. This may be carried out in person, in writing or by telephone.



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Frivolous or vexatious complaints are rejected. Persons who make false complaints that are motivated solely by malice may be prosecuted.

All genuine complaints are first assessed to determine to what degree they should be investigated. This preliminary assessment takes into account:

- How long ago the alleged misconduct occurred.
- The seriousness of the conduct.
- The likelihood of a successful investigation into the misconduct.
- To what extent the complaint involves questions of public interest.

A Commission Investigator/s attached to the Commission carries out investigations. The Council liaising with the ICAC may carry out other investigations.

The ICAC receives advice from the Operations Review Committee (ORC) on whether to investigate a complaint raised by a member of the public or discontinue an investigation. The ORC includes representatives from the community and key government agencies. The ORC ensures the ICAC's decisions are fully accountable.

## **DETERMINATION**

At the conclusion of an assessment and/or investigation process the following result may occur:

- (a) A Criminal charge. The Courts will hear any criminal charges.
- (b) Disciplinary action. The Principal Officer will take any necessary disciplinary action for misconduct.
- (c) ICAC may prepare and table a report to publicise the findings.

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**Office use only**

**DATE ADOPTED:**

**MIN. NO:**

**FILE REF NO:**

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## Appendix A

### Duty to notify the Commission of possible corrupt conduct.

Section 11 – Independent Commission Against Corruption Act, 1988.

- 11 (1) *This section applies to the following officers:*
- (a) The Ombudsman;*
  - (b) The Commissioner of Police.*
  - (c) The Principal Officer of a Public Authority.*
  - (d) An Officer who constitutes a Public Authority.*
- (2) *An officer to whom this section applies is under a duty to report to the Commission any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct.*
- (3) *The Commission may issue guidelines as to what matters need or need not be reported.*
- (4) *This section has effect despite any duty or secrecy or other restriction on disclosure.*
- (5) *The regulations may prescribe who is the principal officer of a public authority, but in the absence of regulations applying in relation to a particular public authority, the principal officer is the person who is the head of the authority, its most senior officer or the person normally entitled to preside at its meetings.*

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## Appendix B

### General Nature of Corrupt Conduct.

Section 8 – Independent Commission Against Corruption Act, 1988.

- 8 (1) *Corrupt conduct is:*
- (a) *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*
  - (b) *Any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions; or*
  - (c) *Any conduct of a public official or former public official that constitutes or involves a breach of public trust; or*
  - (d) *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:*
- (a) *Official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition);*
  - (b) *Bribery;*
  - (c) *Blackmail;*
  - (d) *Obtaining or offering secret commissions;*
  - (e) *Fraud;*
  - (f) *Theft;*
  - (g) *Perverting the course of justice;*
  - (h) *Embezzlement;*
  - (i) *Election bribery;*
  - (j) *Election funding offences;*
  - (k) *Election fraud;*
  - (l) *Treating;*
  - (m) *Tax evasion;*
  - (n) *Revenue evasion;*
  - (o) *Currency violations;*
  - (p) *Illegal drug dealings;*
  - (q) *Illegal gambling;*
  - (r) *Obtaining financial benefit by vice engaged in by others;*
  - (s) *Bankruptcy and company violations;*
  - (t) *Harbouring criminals;*
  - (u) *Forgery;*
  - (v) *Treason or other offences against the Sovereign;*
  - (w) *Homicide or violence;*
  - (x) *Matters of the same or a similar nature to any listed above;*
  - (y) *Any conspiracy or attempt in relation to any of the above.*

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- (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.*
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**DATE ADOPTED:** 16 April 1998  
**MIN. NO:** 07.0498