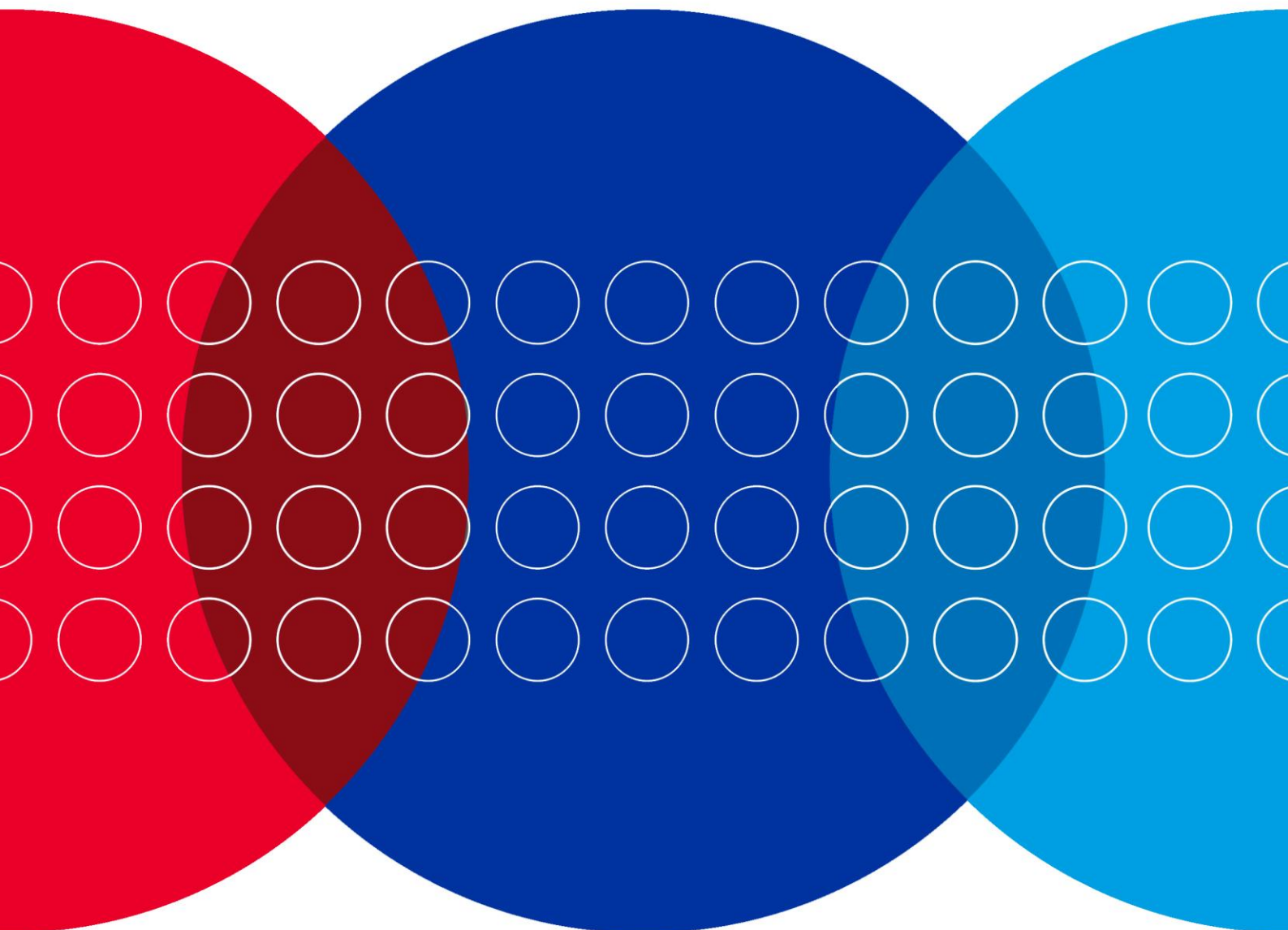




Government  
of South Australia

Office for the Public Sector

# SOUTH AUSTRALIAN PUBLIC SECTOR FRAUD AND CORRUPTION CONTROL POLICY



# **SOUTH AUSTRALIAN PUBLIC SECTOR FRAUD AND CORRUPTION CONTROL POLICY**

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## 1. OVERVIEW

The South Australian Government and Public Sector is committed to the prevention, detection and control of fraud, corruption and other criminal conduct, misconduct and maladministration in connection with the activities of public sector agencies.

## 2. OBJECTIVE

This Policy is designed to assist public sector agencies in the prevention, detection and response to activities labelled or defined as fraud or corruption, other criminal conduct, misconduct and maladministration within the sector.

## 3. SCOPE

This Policy is issued by the Commissioner for Public Sector Employment pursuant to *Treasurer's Instruction 2 - Financial Management* (Treasurer's Instruction 2). The Policy applies to all agencies and employees<sup>1</sup> in the South Australian Public Sector employed in agencies covered by Treasurer's Instructions. The Policy may be adopted by agencies not covered by Treasurer's Instructions.

For agencies covered by Treasurer's Instructions, pursuant to Treasurer's Instruction 2, this Policy may be adopted and applied by individual agencies. If agencies choose to produce agency-specific policies, this Policy is the minimum standard that any agency-specific policy must be at least equivalent to, in the context of the relative size and risk profile of a particular agency.

Agencies are to develop agency-level protocols or procedures consistent with this Policy or any agency-specific policy in respect of Fraud and Corruption (etc.), also tailored to the relative size and risk profile of the agency.

## 4. DEFINITIONS

Fraud - the term 'fraud' is a broad label. For the purposes of this Policy and any related procedure, the term is defined as a dishonest activity causing actual or potential financial loss to any person or entity including the theft of moneys or other property by employees or persons external to the entity (this includes the deliberate falsification, concealment, destruction or use of falsified documents used or intended for normal business purposes and the improper use of information or position/status for personal financial benefit).

Corruption in public administration is as defined in section 5(1) of the *Independent Commissioner Against Corruption Act 2012* (ICAC Act) as:

- (1) *Corruption in public administration means conduct that constitutes—*
  - (a) *an offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, 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 Public Sector (Honesty and Accountability) Act 1995 or the Public Corporations Act 1993, or an attempt to commit such an offence; or*

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<sup>1</sup> The Policy applies to employees but its content may be relevant to the conduct of non-employees whether they are public officers for the purposes of the Independent Commissioner Against Corruption Act 2012 or not.

- (c) *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; 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.*

Misconduct is defined in the *Public Sector Act 2009 (PS Act)* as:

*Misconduct means—*

- (a) *a breach of a disciplinary provision of a public sector code of conduct while in employment as a public sector employee; or*
- (b) *other misconduct while in employment as a public sector employee,*  
*the term includes making a false statement in connection with an application for engagement as a public sector employee and being convicted, while in employment as a public sector employee, of an offence punishable by imprisonment.*

Misconduct in public administration is defined in section 5(3) of the ICAC Act as:

- (3) *Misconduct in public administration means—*
  - (a) *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*
  - (b) *other misconduct of a public officer while acting in his or her capacity as a public officer.*

Maladministration in public administration is defined in section 5(4) of the ICAC Act as:

- (4) *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.*
- (5) *Without limiting or extending the conduct that may comprise corruption, misconduct or maladministration in public administration, this Act applies to conduct that—*
  - (a) *occurred before the commencement of this Act; or*
  - (b) *occurs outside this State; or*
  - (c) *comprises a failure to act; or*
  - (d) *is conduct of a person who was a public officer at the time of its occurrence but who has since*

- ceased to be a public officer; or*
- (e) *is conduct of a person who was not a public officer at the time of its occurrence but who has since become a public officer.*

## 5. RELEVANT OBLIGATIONS

All public sector agencies and public sector employees are accountable for the efficient and effective use of public resources and must exhibit the highest levels of ethical behaviour.

Treasurer's Instruction 2 issued pursuant to the *Public Finance and Audit Act 1987* requires:

*'The Commissioner for Public Sector Employment must issue and review on an annual basis, an aspirational policy with respect to the prevention, detection and control of fraud, corruption and other criminal conduct, maladministration and misconduct in connection with the activities of public sector agencies. Chief Executives or other agency heads must either adopt any policy issued by the Commissioner for Public Sector Employment or if they choose to issue an agency-specific policy with respect to the prevention, detection and control of fraud, corruption and other criminal conduct, maladministration and misconduct in connection with the activities of the public sector agency, any such policy must be at least equivalent to the policy issued by the Commissioner for Public Sector Employment. Any agency-specific policy must be reviewed on at least an annual basis, taking account of any review of the policy issued by the Commissioner for Public Sector Employment.*

*The Australian Standard AS 8001:2008 Fraud and Corruption Control may be of assistance in the development of agency-specific policies and/or protocols and procedures.'*

The Code of Ethics for the South Australian Public Sector (Code of Ethics) is issued under Part 4, Section 15(1)(a) of the PS Act. It applies to and is binding on all public sector employees. The Code of Ethics is the code of conduct for the purposes of the PS Act. The provisions of the Code of Ethics *'are directed towards the advancement of the objects of the...PS Act...and observance of the public sector principles enunciated in it'*. The Professional Conduct Standards in the Code of Ethics are the disciplinary provisions of the Code and conduct contrary to those provisions is misconduct. The Code of Ethics prescribes:

*The following values are the foundation of ethical behaviour in the South Australian Public Sector:*

- *democracy;*
- *impartiality;*
- *accountability; and*
- *diversity.*

The Independent Commissioner Against Corruption (ICAC) is established under the ICAC Act. The Commissioner has issued Directions and Guidelines under the Act (the ICAC Directions and Guidelines) that are binding on public authorities including agencies and public officers and all public sector employees. Agencies and employees must comply with the Directions and Guidelines issued by the Independent Commissioner Against Corruption.

## 6. POLICY

All employees will demonstrate their commitment to the prevention, detection and reporting of any actual or suspected fraud, corruption and other criminal conduct, misconduct and maladministration by behaving in a manner consistent with the significant ethical obligations on them; including under the Directions and Guidelines of the ICAC and the Code of Ethics.

The South Australian Government and public sector is strongly committed to an environment of sound governance, robust internal controls and a culture that will safeguard public resources. This Policy reflects a commitment to the prevention and management of fraud, corruption and other criminal conduct, misconduct and maladministration and the promotion of ethical and honest behaviour in the workplace and creation and maintenance of an appropriate workplace culture.

Agencies will not tolerate fraud, corruption and other criminal conduct, misconduct and maladministration and will investigate or otherwise address any suspected, alleged or proven instances of such conduct.

## Australian Standard AS 8001-2008 *Fraud and Corruption Control*

This Policy should be viewed as part of a control framework within each public sector agency, guided by Australian Standard *AS 8001-2008 Fraud and Corruption Control*. The framework consists of 5 key controls and following are those controls and the Policy and other response to them:

1. Governance and Ethics
  - this Policy or any agency-specific policy and related agency-level protocols or procedures;
  - the PS Act;
  - the *Public Sector (Honesty and Accountability) Act 1995*;
  - relevant criminal legislation;
  - the *Independent Commissioner Against Corruption Act 2012*;
  - The Code of Ethics;
  - the ICAC Directions and Guidelines; and
  - other whole-of-Government or agency-level policy and/or protocols or procedures relating to the prevention, detection and control of fraud, corruption and other criminal conduct, maladministration and misconduct in connection with the activities of public sector agencies.
2. Awareness and Training
  - executive employees and other managers will ensure all employees for whom they are responsible have received awareness training or education regarding fraud, corruption and other criminal conduct, maladministration and misconduct. Such training or education or re-training or refresher education should occur periodically with the frequency of such training or education being appropriate taking into consideration the relative size and risk profile of the agency;
  - the Code of Ethics is to be provided to all employees as part of any agency's induction process and whenever it is updated and reissued; employees are also alerted to their responsibilities under the *Public Sector (Honesty and Accountability) Act 1995* and the ICAC Directions and Guidelines; and
  - executive employees and other managers will promote an ethical culture within the agency they are employed in and promote the prevention, identification and reporting of any actual or suspected instances of fraud, corruption and other criminal conduct, maladministration and misconduct.
3. Fraud Prevention
  - this Policy or any agency-specific policy and related agency-level protocols or procedures; and
  - other whole of Government or agency-level policy and/or protocols or procedures relating to the prevention, detection and control of fraud, corruption and other criminal conduct, misconduct and maladministration in connection with the activities of public sector agencies.
4. Detection and Investigation
  - this Policy or any agency-specific policy and related agency-level protocols or procedures.
5. Monitoring and Reporting
  - this Policy and related agency-level protocols or procedures;
  - other whole of Government or agency-level policy and/or protocols or procedures relating to the prevention, detection and control of fraud, corruption and other criminal conduct, maladministration and misconduct in connection with the activities of public sector agencies;
  - the Code of Ethics; *Public Sector (Honesty and Accountability) Act 1995*; *Public Sector Act 2009*; *Independent Commissioner Against Corruption Act 2012*; and the ICAC Directions and Guidelines; and

- Treasurer's Instruction 2 and agency-level Financial Management Compliance policy, programs, protocols or procedures.

## **Prevention of fraud, corruption and other criminal conduct, maladministration and misconduct**

All public sector employees and other public officers should have a high level of awareness relating to the risk of fraud, corruption and other criminal conduct, misconduct and maladministration.

The key strategy for managing the risk of fraud, corruption and other criminal conduct, misconduct and maladministration is the proactive prevention of such conduct through the facilitation of a sound ethical culture in public sector agencies and throughout the South Australian public sector.

Periodic training of employees and other relevant public officers in relation to ethics, incorporating awareness of fraud, corruption and other criminal conduct, misconduct and maladministration will be conducted in agencies, in addition to an agency's induction process, with a frequency that is appropriate in consideration of the relative size, complexity and risk profile of the agency.

Agency chief executives or heads will ensure that branch or unit heads periodically confirm to them in writing that the area for which they are responsible has, over the previous relevant period, had adequate controls in place to ensure compliance with the Code of Ethics; *Public Sector Act 2009*; *Public Sector (Honesty and Accountability) Act 1995*; the ICAC Directions and Guidelines, this Policy or any agency-specific policy and any related whole of Government or agency-level policy, protocol or procedure and that they commit to ensuring compliance over the ensuing relevant period. The frequency of such reporting should be appropriate in consideration of the relative size and risk profile of the agency

If the level of awareness in respect of the risk of fraud, corruption and other criminal conduct, misconduct and maladministration is found to be lacking at any level any agency, the chief executive or agency head will ensure additional targeted awareness training is facilitated.

## **Detection and Response**

The risk of fraud, corruption and other criminal conduct, misconduct and maladministration within agencies will be systematically identified, analysed and evaluated on a regular basis. Agencies will investigate or otherwise address any suspected, alleged or proven instances of such conduct.

All agencies will have a robust internal control environment relative to the size, complexity and risk profile of the agency encompassing:

- appropriate segregation of duties;
- post transactional review;
- management reporting;
- a comprehensive internal audit program and
- a financial management compliance program,

to detect fraud, corruption and other criminal conduct, maladministration and misconduct.

In addition to the Directions and Guidelines of the ICAC, agency-level policies and/or protocols or procedures will provide instruction to employees or other relevant public officers for the reporting of suspected or alleged fraud, corruption and other criminal conduct, misconduct and maladministration.



## 7. RESPONSIBILITIES AND ACCOUNTABILITY

The following section outlines in detail the roles of key individuals and groups in relation to control of fraud, corruption and other criminal conduct, misconduct and maladministration within public sector agencies:

### Chief executives or other agency heads

Chief executives or other agency heads will, appropriate to the relative size and risk profile of the agency:

- appoint an employee or employees with appropriate seniority, qualifications and experience as a responsible officer(s) under this Policy or any agency-specific policy;
- seek to ensure employees employed in and other relevant public officers administered by their agency are aware of their ethical obligations as public sector employees/officers, including, but not limited to, (as relevant) those pursuant to the PS Act, the Code of Ethics, the *Public Sector (Honesty and Accountability) Act 1995*; *Independent Commissioner Against Corruption Act 2012* and the ICAC Directions and Guidelines and seek to ensure employees and other relevant public officers comply with such obligations;
- facilitate the creation of agency-level programs, protocols or procedures that encourage the minimisation, deterrence, detection and reporting of fraud, corruption and other criminal conduct, maladministration and misconduct;
- where relevant, ensure that conduct by employees or other relevant public officers that is reasonably suspected of being fraud, corruption and other criminal conduct, misconduct and maladministration is reported in accordance with the ICAC Directions and Guidelines and/or Code of Ethics and thoroughly investigated and otherwise appropriately managed seek to ensure appropriate action is taken in response to evidence of suspected or alleged fraud, corruption and other criminal conduct, misconduct and maladministration; and
- foster a culture that makes active control of fraud, corruption and other criminal conduct, misconduct and maladministration the responsibility of all employees and other public officers.

### Executive Employees and Other Managers (including Branch or Unit Heads)

Executive employees and other managers responsible to a chief executive or other agency head will, appropriate to the relative size and risk profile of the agency:

- seek to ensure compliance by employees with this Policy and the related procedure and promote an ethical culture within the agency;
- seek to identify fraud, corruption and other criminal conduct, misconduct and maladministration by employees and other public officers within an agency;
- oversee the development and delivery of training to employees and other relevant public officers to promote ethical conduct and an ethical culture;
- assess the risk of fraud, corruption and other criminal conduct, misconduct and maladministration in their area of responsibility and identify and implement appropriate risk management strategies;
- monitor the control systems in place, through informal information gathering, active supervision or formal information systems to minimise the risk of fraud, corruption and other criminal conduct, misconduct and maladministration;
- ensure appropriate security measures and clearances such as criminal and other background history checks and appropriate delegations are in place with regard to the prevention of fraud, corruption and other criminal conduct, misconduct and maladministration;
- attest to compliance with relevant policies, programs, protocols or procedures as necessary; and
- ensure recommendations pertaining to the minimisation of risk, detection, reporting or other management of actual or suspected fraud, corruption and other criminal conduct, misconduct and maladministration in their area of responsibility are implemented within acceptable timeframes.

## Audit and Risk Committees (or other responsible officer/s)

The Audit and Risk Committee constituted by the Commissioner for Public Sector Employment will:

- periodically, but at least annually, review this Policy and as necessary, any related whole of Government policies; and make recommendations for amendment as appropriate to the Commissioner.

Audit and Risk Committees or other responsible officer/s in agencies will, appropriate to the relative size and risk profile of the agency:

- periodically review any relevant agency-level policies, programs, protocols or procedures and make recommendations to the Chief Executive or other agency head for amendment as appropriate;
- review the approach by Executive employees and other Managers in the relevant agency in respect of the maintenance of an effective internal control framework to seek to ensure it is sound and internal controls are consistently applied;
- review steps taken by Executive employees and other Managers to embed a workplace culture which is committed to ethical and lawful behaviour;
- review the process of developing and implementing control arrangements in respect of fraud, corruption and other criminal conduct, misconduct and maladministration;
- oversee and evaluate associated controls in relation to the risks of fraud, corruption and other criminal conduct, misconduct and maladministration as part of a risk management process within an agency;
- coordinate risk management activities in relation to fraud, corruption and other criminal conduct, misconduct and maladministration across agencies including monitoring, reviewing and reporting;
- coordinate risk assessments in relation to fraud, corruption and other criminal conduct, misconduct and maladministration periodically with regard to the size and complexity of the agency, ideally, at least every three years;
- coordinate the follow up of risk assessments in relation to fraud, corruption and other criminal conduct, misconduct and maladministration by ensuring that all timetabled strategies are implemented;
- establish and maintain a Fraud and Corruption Control Compliance Program for annual reporting to the Audit and Risk Committee or other responsible officer/s and the chief executive or agency head;
- provide a central referral point(s) for preliminary consideration of suspected or alleged fraud, corruption and other criminal conduct, misconduct and maladministration in an agency or in connection with its operations by employees or other public officers;
- seek to ensure conduct reasonably suspected of fraud, corruption and other criminal conduct, misconduct and maladministration by employees or other public officers is reported in compliance with the ICAC Directions and Guidelines and/or Code of Ethics - including ensuring agency-level obligations are complied with; seeking to ensure reporting obligations under the *Public Sector (Honesty and Accountability) Act 1995* are complied with;
- review risk assessments in relation to fraud, corruption and other criminal conduct, misconduct and maladministration and consider high risk areas for inclusion in an agency's Internal Audit planning;
- assist in seeking and/or as qualified and competent, provide advice to chief executives or agency heads, Executive employees or other Managers and other employees in dealing with incidences of suspected or alleged fraud, corruption and other criminal conduct, misconduct and maladministration; and
- coordinate training or education or retraining or refresher education of employees and other public officers in relation to awareness and reporting of fraud, corruption and other criminal conduct, misconduct and maladministration.

## All employees and other relevant public officers

All employees and other relevant public officers will:

- comply with this Policy and any related legislation, policy, protocol or procedure;
- report all instances of conduct alleged or reasonably suspected to be fraud, corruption and other criminal conduct, maladministration and misconduct. Failure to report in compliance with the ICAC Directions and Guidelines and/or the Code of Ethics is misconduct and will render an employee liable to disciplinary action and may render other public officers subject to adverse action;
- at all times act in an ethical manner in the performance of their duties or in association with their role as a public sector employee or other public officer including by complying with the *Public Sector (Honesty and Accountability) Act 1995*;
- where relevant, comply with the *Whistleblowers Protection Act 1993*; and
- implement risk management strategies in relation to fraud, corruption and other criminal conduct, misconduct and maladministration as required and otherwise participate fully in management activities relating to control of such matters.

## 8. RELATED DOCUMENTS

Australian Standard – AS 8001:2008 Fraud and Corruption Control.

*Public Sector Act 2009.*

*Public Sector (Honesty and Accountability) Act 1995.*

*Public Sector (Honesty and Accountability) Regulations 2010.*

Code of Ethics for the South Australian Public Sector.

*Independent Commissioner Against Corruption Act 2012.*

Directions and Guidelines issued by the Independent Commissioner Against Corruption.

Treasurer's Instruction 2 - Financial Management.

*Whistleblowers Protection Act 1993.*

The Guideline of the Commissioner for Public Sector Employment – Management of Unsatisfactory Performance (Including Misconduct).

Agency-level policies and protocols and procedures governing the management of suspected misconduct or other unsatisfactory performance.

Agency-level financial management and control policies, protocols and procedures.