



**LIMPOPO**  
PROVINCIAL GOVERNMENT  
REPUBLIC OF SOUTH AFRICA

## **DEPARTMENT OF TRANSPORT**

### **WHISTLE BLOWING POLICY VERSION 1**

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## **ACRONYMS AND ABBREVIATIONS**

1. HoD – Head of Department
2. MANLAB – Management and Labour
3. MEC – Member of Executive Council
4. SAPS – South African Police Service
5. SBU – Sub Unit

## DEFINITIONS

1. **Accounting Authority** – Member of Executive Council
2. **Accounting Officer** - Head of Department
3. **Risk and Security Management** - a SBU established within the Department to promote integrity within the Department in line with National and Provincial Anti-Corruption strategy
4. **Anti -Fraud and Corruption Unit** - a unit designated by the Accounting Officer for the prevention, detection and investigation of fraud and corruption and the implementation of anti-corruption strategies contained in relevant and applicable legislation policies and guidelines
5. **Designated Officer** – an Anti – Fraud and Corruption Manager
6. **Disclosure** - any disclosure of information regarding any conduct of an employer or an employee of that employer, made by any employee who has a reason to believe that information concerned shows or tend to show one or more of the following:
  - (a) That a criminal offence has been committed, is being committed or is likely to be committed
  - (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject
  - (c) That miscarriage of justice has occurred, is occurring or is likely to occur
  - (d) That the health or safety of an individual has been, is being or is likely to be endangered
  - (e) That the environment has been, is being or is likely to be damaged
  - (f) Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (Act No. 4 of 2000)
  - (g) That an impropriety , malpractices, mal-administration of mismanagement has been/ is being or likely to be committed

- (h) Contravention of the Public Service Code of Conduct
- (i) Any act of misconduct as outlined in Resolution No.2 of 1999 as amended :  
Disciplinary Code and Procedures for Public Service
- (j) That any matter referred to above has been, is being or is likely to be deliberately concealed

7. **Employee** means -

- (a) A person who works for the Department of Transport and who receives, or is entitled to receive remuneration; or
- (b) Any other person who in any manner assists in carrying on or conducting the business of the employer

8. **Employer** means –

- (a) Department of Transport

9. **Executing Authority** means in relation to –

- (a) A Provincial Department, the member of the Executive Council responsible for such portfolio
- (b) The Office of the Premier, means the Premier

10. **Improper conduct** means that –

- (a) A criminal offence has been committed, is being committed or is likely to be committed
- (b) A person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject
- (c) A miscarriage of justice has occurred, is or is likely to occur
- (d) The health or safety of an individual has been, is being or is likely to occur
- (e) The environment has been, is being or is likely to be damaged
- (f) Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No 4 of 2000)



(g) Any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed; irrespective of whether or not –

- i. The improper conduct occurs or occurred in the Republic of South Africa or elsewhere; or
- ii. The law applying to the improper conduct is that of the Republic of South Africa or another country

11. **Occupational detriment** in relation to the working environment of an employee, means being –

- (a) Subjected to any disciplinary action
- (b) Dismissed, suspended, demoted, harassed or intimidated
- (c) Transferred against his or her will
- (d) Refused transfer or promotion
- (e) Subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage
- (f) Refused a reference, or being provided with an adverse reference, from his or her employer
- (g) Denied appointment to any employment, profession or office
- (h) Threatened with any actions referred to paragraph (a) to (g) above; or
- (i) Otherwise adversely affected in respect of his or her employment profession or office, including employment opportunities and work security.

12. **Protected Disclosure** - any disclosure as defined in item 6

## **1. INTRODUCTION AND BACKGROUND**

One of the key obstacles in the fight against corruption is the fact that without legal protection, officials are often too intimidated to blow the whistle on corrupt activities they observe in the workplace. Although they have the duty to report in terms of the employment code of conduct, employees are mostly afraid of being victimized or intimidated.

In the fight against corruption, government enacted the Protected Disclosures Act No 26. Of 2000) to make provision in terms of which employees who disclose information of unlawful or corrupt conduct by their employer or fellow employees are protected from occupational detriment. This legislation is effective corporate governance tool in the fight against corruption, to encourage employees to report wrongdoings and also to promote safe, accountable and responsive work environment in both public and private sector.

## **2. PURPOSE AND OBJECTIVES**

### **2.1.1 The Policy is intended to-**

- a) Strive to create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure.
- b) Promote the eradication of criminal and other irregular conduct within the Department.

### **2.1.2 Encourage and enable employees to raise concerns within the Department rather than overlooking a problem or blowing the whistle in inappropriate channels.**

### 2.1.3 Furthermore the policy aims to:-

- c) Provide avenues for employees to raise concerns and receive feedback on any action taken.
- d) Inform employees on how to take the matter further if they are dissatisfied with the response.
- e) Reassure employees that they will be protected from reprisals or victimisation for blowing in good faith.
- f) Reassure employees that concerns raised through procedures laid down in this policy will be appropriately and objectively dealt with.

## 2.2 Policy Statement

2.2.1 The Department of Transport is committed to achieving the highest standard of service, openness, accountability and ethical standards in all its practices. In line with that commitment, the Department encourages employees to raise matter of concerns responsibly through procedures laid down in this policy.

2.2.2 To endorse the commitment, the Department has designed procedures for dealing with cases of whistle blowing that protect individual and ensures that the matter is fully and vigorously investigated.

## 2.3 Scope of application

2.3.1 The policy applies to all employees of the Department of Transport

2.3.2 There are existing grievance procedures in place to enable employees of the Department to raise grievances relating to their employment. This Policy is intended to cover concerns that fall outside the scope of grievance procedures. These concerns indicated in the Act, are the following:-

- a) That criminal offence has been committed, is being committed or is likely to be committed.
- b) That a person has failed, is failing or is likely to fail to fail to comply with



any legal obligation to which that person is subject.

- c) That the miscarriage of justice has occurred is occurring or is likely to occur.
- d) That the health and safety of an individual has been , is being or likely to be endangered.
- e) That the environment has been, is being or likely to be damaged.
- f) Unfair discrimination as contemplated in the Promotion of the Promotion of Equality and Prevention of Unfair Discrimination Act, No.4 of 2000.
- g) That any matter referred to in paragraphs (a) to (f) has been, is being or likely to be deliberately concealed.

2.3.3 This Policy is developed based on the principle objects of the Protected Disclosures Act, which encourages employees to disclose any acts of misconduct without fear of any recriminations or reprisals.

### **3. Legal framework**

- (a) Protected Disclosures Act, 2000 (Act No. 26 of 2000)
- (b) Practical Guidelines for Employees issued in terms of section 10 of the Protected Disclosures Act, 2000 (Act No. 26 of 2000)
- (c) Whistle-blowing Guide for Public Sector Managers provided by the Department of Public Service Administration
- (d) Public Service Act; 1994 (Proclamation No. 103 of 1994) and Regulations made in terms thereof
- (e) Rules for dealing with grievances in the Public Service as published in Government Gazette No. 25209 of 25 July 2003
- (f) Disciplinary Code and Procedures for the Public Service as contained in the Public Service Bargaining Council Resolution 2 of 1999 as amended
- (g) Public Finance Management Act, 1999 (Act No.1 of 1999) and Treasury Regulations
- (h) Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004)
- (i) Labour Relations Act 66 Of 1995

- (j) Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No 4 of 2000)

#### 4. POLICY PRONOUNCEMENT

The implementation of this policy will be guided by Batho Pele Principles, Code of Conduct for Public Servants and any other piece of legislation.

#### 5. PROCEDURE FOR A PROTECTED DISCLOSURE

##### 5.1 INTERNAL DISCLOSURE

###### 5.1.1 Disclosure to employer

An **employee** who has a concern regarding **improper conduct** of the **employer** or other employees must – If the allegation is serious and it is /has been committed by any other employee within the Department, such an employee may contact the:

- (a) Office of the MEC( Executing Authority)
- (b) Head of the Department ( Accounting Officer)
- (c) Anti-fraud and Corruption Unit ( **Designated Officer** )

##### 5.2 External Protected Disclosure

5.2.1 An **employee** may also choose to make a protected disclosure to –

- (a) The Public Protector; or
- (b) The Auditor General

5.2.2 When an employee is unsure of which procedure to use and he or she desires to obtain independent advice at any stage, the employee may contact –

- (a) His or her personal legal advisor
- (b) His or her labour organization

### 5.3 Public Service Anti-Corruption Hotline

#### Anonymous Reporting:

- I. Allegations may be reported to the Public Service Anti-Corruption Hotline in any of the eleven official languages. It is a centralized toll-free hotline under custodianship of Public Service Commission.
- II. The hotline is strictly for reporting cases of corruption, and does not cater for service delivery complaints - unless these involve corruption as well.

**Toll Free Number: 0800 701 701**(National Anti – Corruption Hotline)

## 6. HOW THE COMPLAINT WILL BE DEALT WITH

6.1 The action taken by the Department will depend on the nature of the concern. The possible actions to the matters raised may, among other possible action be:-

- i. Investigated internally by (the Anti-fraud and Corruption unit) in line with applicable prescripts
- ii. Investigated by external forensic firms /Consultant
- iii. Referred to the SAPS or other relevant law enforcement agency

6.2 In order to protect individuals and the Department, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take.

6.3 Some concerns may be resolved by agreed action without the need for investigation.

6.4 The Department will acknowledge the concern raised within seven days of the date of receipt to whistle blowers who have identified themselves and informing them whether further investigations will take place, and if not, why not.



- 6.5 The amount of contact between the body investigating the issues and the persons raising the concern will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from the individual.
- 6.6 The Department accepts that employees need to be assured that the matter has been properly addressed. However, the progression of investigations will be handled in a confidential manner and will not be disclosed or discussed with any persons other than those who have a legitimate right to such information. This is important in order to avoid damaging the reputation of suspected persons who are subsequently found innocent of wrongful conduct

## **6.2 Confidentiality**

- 6.2.1 The department will take all necessary steps to protect an individual's identity when he/she raises a concern and does not want their identity to be disclosed.

## **6.3 Anonymous Reporting**

- 6.3.1 In view of the protection offered to employees raising a concern, the Department encourages employees to put their names to the disclosures. Concerns expressed anonymously are difficult to investigate; nevertheless they will be followed up by taking into account the following:-
- a) seriousness of the issue raised
  - b) credibility of the concern
  - c) likelihood of confirming the allegation
- 6.3.2 An employee making the disclosure anonymously needs to give as much information as possible in order to improve the possibility of both a successful investigation and prosecution. When reporting an allegation, he or she is required to clearly state/provide the following:



- a) Which alleged wrongdoing are you reporting
- b) Where and when (dates and times, if available) the alleged wrongdoing took place
- c) Who, how much was involved in the alleged wrongdoing
- d) How the individual or which firm committed the act
- e) Why was the offence committed

6.3.3 Anonymity means that you must not reveal your identity when reporting unethical or illegal conduct. The person who is reporting anonymously is responsible for protecting his or her anonymity.

## 6.4 Untrue Allegations

6.4.1 Employees are discouraged from making allegations which are false and made with malicious intentions. Where such malicious, vexatious, or false allegations are discovered, the person who made the allegations will be subjected to a disciplinary action, or other appropriate action in the case of external parties.

## 6.5 Urgent matters

6.5.1 In urgent matters, where the **Designated Officer** reasonably believes that it is likely that evidence relating to the **improper conduct** will be concealed or destroyed, the designated officer may deviate from the procedure in this and take appropriate steps to bring the disclosure to the attention of the employer or **Executing Authority**.

## 7. REMEDIES

- a. An **employee** may not be subjected to any **occupational detriment** by his or her **employer** on account of having made a protected **disclosure**.
- b. An **employee** who is subjected or may be subjected to any **occupational detriment** because of a **protected disclosure** made by him or her may –

- i. Approach internal Labour Relations unit
  - ii. Any court having jurisdiction, including the Labour Court
  - iii. Pursue any other process allowed or prescribed by law.
- c. When an employee is –
  - iv. Subjected to any **occupational detriment**, on account of making a **protected disclosure**, it is regarded as an unfair labour practice and the matter may in terms of the **procedure** of the Labour relation Act, 1995 (Act No. 66 of 1995) be referred for conciliation or to the Labour Court for a hearing.
  - v. Dismissed on account of making a **protected disclosure**, the dismissal is regarded as an automatically unfair dismissal in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995)
- d. An **employee** who has made a **protected disclosure** and who reasonably believes that he or she may be adversely affected on account of making the **protected disclosure**, must at his or her request and if reasonably possible be transferred from the post or position occupied by him or her to another post or position in the same division or another division of his or her **employer** or where the **employee** is employed by an organ of state, to another organ of state.
- e. The terms and conditions of employment of an **employee** transferred in as indicated in paragraph (d) must not be less favourable than the terms and conditions applicable to the **employee** immediately before his or her transfer.
- f. A transfer of an **employee** in paragraph (e) must be done with the written consent of the **employee**.

## 8. RESPONSIBILITIES OF THE DESIGNATED OFFICER

The **Designated Officer** must –

- (a) Act as a neutral person on matters of disclosure and must assist employees
- (b) Provide advice to employees who are considering making a disclosure
- (c) Receive, record and review the disclosures of improper conduct from employees
- (d) Ensure that procedures are in place to manage instances of improper conduct
- (e) Make recommendations to the Accounting Authority or Accounting Office on how to address or correct the disclosure
- (f) Monitor the type and disposition of disclosures
- (g) Prepare an annual report for the Accounting Authority or Accounting Officer on all disclosures made in terms of this policy.

## 9. CREATING AWARENESS

9.1 In order for the Policy to be sustainable, it must be supported by a structured education, communication and awareness programme.

9.2 It is the responsibility of all Heads of Departments and managers to ensure that all employees, are made aware of, and receive appropriate education with regard to the Whistle Blowing Policy Version 1.

**9.3 Employees are therefore encouraged to report fraudulent and corrupt activities affecting the Department either through telephones or emails and their information will be treated confidentially as prescribed by this policy.**

**See Annexure A for contact details**

**See Annexure B for the Protected Disclosure form**



## **10. REVIEW AND TERMINATION OF THE POLICY**

The policy will be reviewed every 36 months based on the comments and inputs from the stakeholders and it will be terminated upon the inception of the new policy.

## **11. MONITORING AND EVALUATION**

Anti-Fraud and Corruption Unit will monitor the implementation of this policy. Monitoring and Evaluation Unit within the Department will also track progress and policy achievement in terms of the objectives.

## **12. DEFAULT**

This policy is the Departmental guide of Anti-Fraud and Corruption Unit and anyone who violates the provision of this policy will be disciplined in terms of this policy or any other contractual clause between the Department and the employee.

## **13. INCEPTION DATE**

The inception date of this policy will be within 30 days after the approval by the Executive Authority.

#### 14. ENQUIRIES

Enquiries regarding this policy should in the first instance be directed to the Anti-Fraud and Corruption Unit.

**RECOMMENDED/ NOT RECOMMENDED**

*for approval*

  
**ACCOUNTING OFFICER**

*17/3/16*  
**Date**

**APPROVED/ NOT APPROVED**

*Approval GRANTED*

  
**MEMBER OF EXECUTIVE COUNCIL**

*01/04/16*  
**Date**

## **ANNEXURE A**

The following are the contact details to be utilized:

**NATIONAL HOTLINE: 0800 701 701(Toll-Free)**

**Fax: 0800 204 965 toll free number**

**Email: [Integrity@publicservicecorruptionhotline.org.za](mailto:Integrity@publicservicecorruptionhotline.org.za)**

**SMS facilities:39772**

**Walk in disclosures at the following office:**

**Department of Transport**

**Phamoko Towers**

**Corner Church and Bodenstein Street**

**Polokwane**

**Office no 27,33 and 34 (Seventh Floor)**

**Mr Moeng Rakgobadi (Manager: Anti-Fraud and Corruption Unit)**

**Tel: 015 2951125**

**Cell: 0795195059**

**Email: [moengr@dot.limpopo.gov.za](mailto:moengr@dot.limpopo.gov.za)**

**Ms. Madidimalo Mmatau (Deputy Manager: Anti-Fraud and Corruption Unit)**

**Tel: 015 294 8445**

**Cell: 072 6219711**

**Email: [madidimalom@dot.limpopo.gov.za](mailto:madidimalom@dot.limpopo.gov.za)**

**Ms. Shiburi Winnie (Investigator: Anti-Fraud and Corruption Unit)**

**Tel: 015 294 8246**

**Cell: 0795103991**

**Email: [shiburiw@dot.limpopo.gov.za](mailto:shiburiw@dot.limpopo.gov.za)**



## ANNEXURE B

### PROTECTED DISCLOSURE POLICY FRAMEWORK FORM A

<b>INFORMATION OF EMPLOYEE</b>	
<b>FULL NAMES AND SURNAME</b>	
<b>IDENTITY NUMBER</b>	
<b>RESIDENTIAL ADDRESS</b>	
<b>POSTAL ADDRESS</b>	
<b>CONTACT NUMBERS</b>  <b>OFFICE:</b>  <b>HOME:</b>  <b>CELL:</b>	

**I would like to make a protected disclosure to:**

THE EMPLOYER			
THE EXECUTING AUTHORITY			
THE PUBLIC PROTECTOR		I WOULD LIKE TO BE ASSISTED TO IN THIS REGARD	
THE ACCOUNTANT GENERAL		I WOULD LIKE TO BE ASSISTED TO IN THIS REGARD	
A LEGAL ADVISOR			

Please make a mark in the relevant box

**FOR OFFICE USE:**

**DISCLOSURE MADE TO THE EMPLOYER:**

THE EMPLOYEE COMPLIES WITH DEFINITION OF "EMPLOYEE"	
THE DISCLOSURE COMPLIES WITH THE DEFINITION OF "DISCLOSURE"	
IS A PRELIMINARY INVESTIGATION NECESSARY?	
TO WHICH BODY MUST THE MATTER BE REFERRED?	

**OFFICE USE:**

**DISCLOSURE MADE TO THE EXECUTING AUTHORITY:**

DOES THE EMPLOYEE COMPLY WITH REQUIREMENTS OF 6.2.1 OF POLICY	
WAS A MEETING ARRANGED WITH THE EXECUTING AUTHORITY?	

**OFFICE USE:**

**DISCLOSURE TO PUBLIC PROTECTOR OR ACCOUNTING OFFICER**

DID THE EMPLOYEE REQUEST ANY ASSISTANCE TO REFER THE DISCLOSURE?	
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