

VERSION 1

ANTI-FRAUD AND CORRUPTION POLICY

DEPARTMENT OF
TRANSPORT AND COMMUNITY SAFETY

LIMPOPO
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA



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ACRONYMS AND ABBREVIATIONS

1. AFC – Anti-Fraud and Corruption
2. AG – Auditor General
3. CFO – Chief Financial Officer
4. DPCI – Directorate for Priority Crime Investigation
5. DSO – Directorate for Special Operations
6. GITO – Government Information Technology Office
7. HOD – Head of Department
8. MEC – Member of Executive Council
9. PFMA – Public Finance Management Act
10. SAPS – South African Police Service
11. SIU – Special Investigative Unit
12. SSA – State Security Agency

DEFINITIONS

In this policy, unless the context indicates otherwise-

1.1 **Accounting Authority** - the person referred to in section 49 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

1.2 **Accounting Officer**- the person referred to in section 36 of the Public Finance Management Act, 1999 (Act No.1 of 1999);

1.3 **Department** - the Limpopo Department of Transport and Community Safety.

1.4 **Designated officer** - an officer in the Anti-Fraud and Corruption Unit designated by the Accounting Authority Officer of that public entity or department respectively;

1.5 **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 tends to show one or more of the following:

- (a) That a criminal offences 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 a 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); or
- (g) That any matter referred to in paragraphs (a) to (g) has been, is being or is likely to be deliberately concealed,

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- 1.6 Employee -
 - (a) A person who works for the states and who receive 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;
- 1.7 Employer -
 - (a) The Limpopo Department of Transport and Community Safety or
 - (b) A Public Entity listed in Schedule 3C and 3D of the Public Finance Management act, 1999 (Act No.1 of 1999);
- 1.8 Executing Authority in relation to-
 - (a) A provincial department , the Member of the Executive Council responsible for such portfolio; and
 - (b) The Office of the Premier, means the Premier;
- 1.9 Improper conduct 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 comply with any legal obligation to which that person is subject;
 - (c) a miscarriage of justice has occurred, is occurring 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 Equity and Prevention of Unfair Discrimination Act,2000 (Act No.4 of 2000); or
 - (g) Any matter 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 of another country;

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- 1.10 **Ethics** – is the moral principles that govern a person's behaviour or conduct of an activity.
- 1.11 **Fraud** – is the unlawful and intentional making of a misrepresentation, which causes actual and or potential prejudice to another.
- 1.12 **Irregularity** – is an act that amounts to a departure from prescripts or directives, without and gratification. It is commonly prescribed in relation of irregularities in terms of the Public Finance Management Act. Examples of irregularity: failure to obtain quotations in procurement processes where a deviation was not approved, failure to declare interests in a bidding process where the employee has a relationship with the supplier etc.
- 1.13 **Theft** is the unlawful and intentional appropriation of movable corporeal property belonging to another person with the intention of depriving the owner permanently of its possession.
- 1.14 **Whistle blower** is a person who exposes any kind of information or activity that is deemed illegal, unethical, or not correct within an organization that is either private or public.
- 1.15 **Code of Conduct** is a set of rules outlining rules and responsibilities of, or proper practices for an individual, party or organisation.
- 1.16 **Code of ethics** is the mission and values upon which the department's professional standards are held.
- 1.17 **Corruption**
- 1.17.1 **General offence of corruption**
- (a) Any person who directly or indirectly accepts, agrees or offers to accept any gratification from any other person whether for the benefit of himself/ herself or for the benefit of another person or
- (b) Gives, agrees or offers to give to any other person any gratification whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act in manner
- (i) That amounts to the:-

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- (a) The abuse of a position of authority
- iv. That amounts to obligation.
- arising out of a constitutional, statutory, contractual or any other legal
- exercise carrying out or performance of any powers, duties or functions
- (b) Misuse or selling of information or materials acquired in the course of
- (a) Illegal, dishonest, unauthorised, incomplete, or biased: or
- !!! that amounts to the: -
- manner
- In order to act, personally or by influencing another person so to act, in a
- for the benefit of another person,
- gratification to a public officer, whether for the benefit of that public officer or
- ii. Person who, directly or indirectly, gives or agrees or offers to give any
- himself or herself or for the benefit of another person; or
- accept any gratification from any other person, whether for the benefit of
- i. Public officers who, directly or indirectly, accepts or agrees or offers to
- 1. Any: -

1.17.2 Offences in respect of corrupt activities relating to public officers

- to do anything is guilty of the offence of corruption
- (iv). that amounts to any other unauthorised or improper inducement to do or not
- (iii). that is designed to achieve an unjustified result: or
- (c) The violation of a legal duty or a set of rules:
- (b) A breach of trust; or
- (a) The abuse of a position of authority
- (ii). that amounts to:-
- obligation
- arising out of a constitutional, statutory, contractual or any other legal
- exercise, carrying out or performance of any powers, duties or functions
- (b) Misuse, selling of information or material acquired in the course of the
- (a) Illegal, Dishonest Unauthorised, Incomplete, Biased or

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The prevention and combating of corruption and related corrupt activities is a responsibility of all State Departments and requires mutual cooperation and involvement of individuals within and outside the public sector, groups such as organs of civil society, non-government and community-based organisations.

1. INTRODUCTION AND BACKGROUND

- (h) Exerting any improper influence over the decision making of any person performing functions in a public body.
 - (g) Diverting, for purposes unrelated to those for which they were intended, any property belonging to the state which such officer received by virtue of his or her position for purposes of administration, custody or for any other reason, to another person; or
 - (f) Showing any favour or disfavour to any person in performing a function as a public officer;
 - (e) Aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with a public body;
 - (d) Aiding, assisting or favouring any particular person in the transaction of any business with a public body.
 - (c) Expediting, delaying, hindering or preventing the performance of an official act.
 - (b) Performing or not adequately performing any official functions:
 - (a) Voting at any meeting of a public body.
2. Without derogating from the generality of section 2(4), "to act" in subsection (1).

- v. Designed to achieve an unjustified result; or
- vi. that amounts to any other unauthorised or improper inducement to do or not to anything is guilty of the offence of corrupt activities relating to public officers.
- (b) A breach of trust; or
- (c) The violation of a legal duty or a set of rules;

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This policy aims to articulate the department's zero tolerance approach to corruption in promoting integrity by strengthening measures to improve anti-corruption and ethics management. It further provides for investigative measures in respect of corruption and related corrupt activities, to place a duty on any person holding a position of authority to report corrupt transactions and activities, and to provide for jurisdiction in respect of the offence of corruption and offences relating to corrupt activities.

2. PURPOSE AND OBJECTIVE

If their efforts in this area are to be efficient and effective they must take effective and concrete action to combat all forms of corruption and related corrupt practices. The Constitution places a duty on the State to respect, protect, promote and fulfill all the rights as enshrined in the Bill of Rights.

Corruption and related corrupt activities undermine the said Rights, endanger the stability and security of societies, undermine the institutions and values of democracy and ethical values and morality, jeopardise sustainable development, the rule of law and the credibility of governments, and provide a breeding ground for organised crime.

The illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies, ethical values and the rules of laws.

There are links between corrupt activities and other forms of crime in particular organised crime and economic crime, including money-laundering.

The Public Finance Management Act (Act 1 of 1999) was introduced to eliminate hierarchical systems of management, poor information and weak accountability. One of the key objectives of the Act is to eliminate waste and corruption in the use of public assets.

This policy places a duty on all staff to be vigilant in ensuring those standards are met and provides guidance for action if it is suspected that those standards are being breached

3. LEGAL FRAMEWORK

- 3.1. Protected Disclosure Act, 2000 (Act No. 26 of 2000);
- 3.2. Practical Guidelines for Employees issued in terms of section 10 of the Protected Disclosures Act, 2000 (Act No. 26 of 2000);
- 3.3. Whistle-blowing Guide for Public Sector Managers provided by the Department of Public Service Administration;
- 3.4. Public Service Act, 1994 (Proclamation No. 103 of 1994) and Regulations made in terms thereof;
- 3.5. Rules for dealing with grievances in the Public Service as published in government Gazette No. 25209 of 25 July 2003;
- 3.6. Disciplinary Code and Procedures for the Public Service as contained in the Public Service Bargaining Resolution 2 of 1999;
- 3.7. Public Finance Management Act, 1999 (Act No. 1 of 1999) and Treasury Regulations issued in terms thereof;
- 3.8. Prevention and Combating of Corrupt Activities Act, 2004 (Act no. 12 of 2004).
- 3.9. Limpopo Protected Disclosure Policy Framework.
- 3.10. National Road Traffic Act No. 93 of 1996
- 3.11. Public Service Anti-Corruption Strategy
- 3.12. Limpopo Provincial Government Anti-Corruption Strategy
- 3.13. Justices of the Peace and Commissioners of Oath Act No. 16 of 1963
- 3.14. Criminal Procedure Act No. 51 of 1977
- 3.15. Organised Crime Act no. 121 of 1998
- 3.16. Minimum Anti-Corruption Capacity Requirements approved by Cabinet in 2003
- 3.17. The Republic of South Africa Constitution 1996
- 3.18. Promotion of Access to Information Act, 2 of 2000

- 3.19. Intimidation Act 72 of 1982
- 3.20. Witness Protection Act 112 of 1998
- 3.21. Minimum Information Security Standards

4. SCOPE OF THE APPLICATION

This policy will be applicable to all corruption activities involving the following persons or entities;

- (a) All officials/employees or entities involved in the administration of Limpopo Department of Transport and Community Safety including but not limited to: -
 - i. Employees/officials of the department
 - ii. All statutory bodies and entities funded by the Department.
- (b) Consultants, suppliers, contractors and other providers of services to the department.

5. STRATEGIC CONSIDERATIONS

In order for the employer to effectively prevent and combat all corrupt activities, emphasis will be placed on the implementation of the strategic objectives from Public Service Anti-Corruption Strategy.

5.1. Increased institutional capacity

The employer must create minimum capacity to address corruption.

5.2. Improved access to report wrong doing and Protection of Whistle-blowers

Employer must promote the reporting of corruption and the subsequent protection of the whistle-blowers.

5.3. Prohibition of corrupt individuals and business

Employees and service providers that have been party to acts of corruption often change employer within the Public Sector or, in the case of service providers, change name or the location in which they operated.

To remedy this situation and to raise integrity and ethics of the employer prohibition

must be established by: -

- (a) Supply chain must exclude from contracts, all owners and directors of businesses found criminally guilty of corruption and also listed on the National Treasury database of tender defaulters.
- (b) All defaulters must be reported to National Treasury for inclusion in the defaulter database.
- (c) Conducting vetting/probity check of all prospective employees and contractors.

5.4. Improved management policies, practices and standard operating procedures

Management must be responsible for preventing corruption in their business units and this must be stipulated in their performance agreements. Good management is the first line of attack on corruption.

This consideration entails six elements that relate to: -

- (a) Procurement
- (b) Employment
- (c) Managing discipline
- (d) Risk management
- (e) Management information systems.
- (f) Managing corporal resources

5.5. Managing professional ethics

Employer must promote the concept and practice of ethics management.
(a) Establish a generic professional ethics statement for the department.
(a) Professional ethics must be promoted through explanatory
(b) Manuals, continuous training and education and establishing partnership with professional associations.

9.1. Disciplinary Action

9. CORRECTIVE ACTION AND DISCIPLINE

The following documents details when and how corruption matters should be dealt with.

(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. The employer must develop and implement a department whistle-blowing policy. The policy must include mechanisms for supporting officials and persons maliciously and falsely implicated.

It is the responsibility of all employees, service providers, contractors and members of the public to report all corrupt activities when they come across such incidents.

8. REPORTING CORRUPTION

Implementation of this policy will be guided by Batho Pele Principles.

7. POLICY PRONOUNCEMENT

A comprehensive awareness campaign supported with education and training, needs to be established and implemented by Anti-Fraud and Corruption Unit in collaboration with Policy Coordination Unit.

6. AWARENESS, TRAINING AND EDUCATION

(c) Senior management must be developed to espouse professional ethics and to provide leadership to other employees.

10.1. Executive Authority: approves the policies.

10. ROLES, RESPONSIBILITIES AND POWERS

requested to institute an investigation.

9.3.4. In matters relating to information, the State Security Agency should be

Directorate for Priority Crime Investigation (DPCI) should be requested.

9.3.3. In cases involving organised crime and serious financial crimes, the

should be requested to assist in the investigation.

9.3.2. In cases of criminal activities, the South African Police Services (SAPS)

Unit (SIU) can be requested to assist in the investigation.

9.3.1. In cases of serious corruption and maladministration, the Special Investigation

corruption cases must be reported to relevant agencies:

The employer will conduct preliminary investigations in all reported cases. All

9.3. Forwarding Information to the relevant Agencies

its resolution of cases.

through corrupt activities. The employer must undertake recovery of losses as part of

An effort should be made to recover all monies and assets that have been obtained

9.2. Recovery of losses

have an influence on the finding of the other).

concurrently and their outcomes are not related (finding in the one does not

9.1.4. These two processes (criminal and disciplinary action) must be taken

9.1.3. Disciplinary action must be taken against all offenders.

investigations for criminal prosecution.

9.1.2. All cases of fraud and corruption must be referred to the SAPS for/or after

cases of corruption against employees of the department.

9.1.1. The employer must establish a capacity to institute disciplinary actions on

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- 10.2. **Head of Department:** oversees the implementation of the policies, recommends approval of the policy to the Executive Authority and appoints an external investigator when necessary.
- 10.3. **Ethics committee:** the committee is responsible for providing the strategic direction and oversight to the ethics management programme and assess the state of ethics in the department.
- 10.4. **Ethics Officer:** is responsible for implementing ethics management strategies within the department.
- 10.5. **External audit (Auditor-General):** provides independent opinion on the effectiveness of corruption and fraud risk management.
- 10.6. **Other officials:** are responsible for integrating corruption and fraud risk management into their day-to-day activities.
- 10.7. **The Anti-Fraud and Corruption Committee:** is to oversee the department's approach to fraud prevention, fraud detection strategies and response to fraud and corruption incidents reported by employees or other external parties. The various programmes should have representation on this committee.
- 10.8. **Risk Management Committee:** reviews the corruption and fraud risk management policy and strategy as well as the fraud risk register.
- 10.9. **Audit Committee:** is an independent committee responsible for oversight of the department's control, governance and assess the state of ethics in the department.
- The department adopts an integrated approach to fight against corruption and management of ethics that include analysis of ethics and corruption risks as part of the Department's system of risk management. Therefore, the anti-fraud, corruption and an ethics management committee will be combined in the department and on a quarterly basis reports will be shared with the Audit Committee and Risk Management Committee.

11. CONFIDENTIALITY

- 11.1. The employer acknowledges that employees need to be assured that reported matters will be properly addressed.
- 11.2. Progression of investigations will be handled in a confidential manner and disclosed or discussed only with any persons who have a legitimate right to such information.

- 11.3. The reputation of whistle-blowers and suspected persons who are subsequently found innocent of wrongful conduct will always be protected.

- 11.4. Liaison with the media pertaining to Fraud, Corruption theft and Maladministration will only be done with the express authorization of the Head of Department.

12. 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.

13. MONITORING AND EVALUATION

The office of the HoD will monitor the implementation of this policy. Monitoring and evaluation unit within the Department will also track progress and policy achievements in terms of the objectives.

14. DEFAULT

Any employee who contravenes the provisions of this policy which may lead to violation of the Public Service Code of Conduct or other policies, that employee shall be charged with misconduct and the necessary disciplinary measures should be taken against him or her. Any party who has a contractual relationship with the department and contravenes the provision of this policy will be dealt with in terms of the penalty clause of the agreement entered into by and between him/her and the department.

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MEMBER OF EXECUTIVE COUNCIL

DATE

30/03/2021

[Signature]

APPROVED/ ~~NOT APPROVED~~

ACCOUNTING OFFICER

DATE

19/3/21

[Signature]

RECOMMENDED/ ~~NOT RECOMMENDED~~

Enquiries regarding this policy should in the first instance be directed to the HoD's Office.

16. ENQUIRIES

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

15. INCEPTION DATE