



WHISTLE BLOWING POLICY

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DEFINITIONS AND TERMS

No.	Term	Definition
1.	Accounting Officer	Means the Accounting Officer of a Department or Provincial Government in terms of Public Finance Management Act No 1 of 1999 as amended.
2.	Audit Committee	An independent committee constitute to review the control, governance and risk management within the Department established in terms of section 77 of PFMA
3.	Chief Risk Officer	Head of Risk Management & Anti-Corruption unit.
4.	Corruption	Corruption is a form of dishonesty undertaken by a person entrusted with a position of authority, often to acquire personal benefit.
5.	Country	Republic of South Africa
6.	Executive Authority	The Member of the Executive Council of the province who is accountable to the Provincial Legislature for that department
7.	Extortion	is a crime in which one person forces another person to do something against his will, generally to give up money or other property, by threat of violence, property damage, damage to the person's reputation, or extreme financial hardship
8.	Fraud	Fraud is an intentionally deceptive action designed to provide the perpetrator with an unlawful gain, or to deny a right to a victim.
10.	Forgery	The action of forging a copy or imitation of a document, signature, banknote, or work of art.
11.	Risk	An unwanted outcome, actual or potential, to the department's services delivery and other performance objectives, caused by the presence of risk factors.
12.	Tolerance level	is the amount risk that the department is willing to accept
13.	Theft	Theft is an unauthorized taking of property from another with the intent to permanently deprive them of it.
14.	Senior Management Services	All Senior Management Service members appointed in terms of Public Service Act.
15.	Whistle Blower	The person that has reported allegations of fraud, misconduct or corruption in the department.
16.	Whistle Blowing	is the processes of disclosing information relating to some kind of malpractice, misconduct which members of staff may have come across during the course of their work and which they feel would compromise the interest of the public and tarnish the image of the department.
17.	Risk & Anti-Corruption Committee	A committee appointed by the Accounting Officer to review the Department's system of risk management, Ethics management, and Anti-corruption strategies implemented by the Department.
18.	Occupational Detriment	Means in working environment: <ul style="list-style-type: none"> a) Being subjected to any disciplinary action b) Being dismissed, suspended, demoted, harassed, intimidated c) Being transferred against his/her will d) Being refused transfer or promotion

		<ul style="list-style-type: none"> e) Being subjected to a term or condition of employment or retirement which is altered or kept altered to his or disadvantage f) Being refused a reference or being provided with an adverse reference, from his or her employer g) Being denied appointment to any employment, profession or office h) Being subjected to any civil claim for the alleged breach of duty of confidentiality or a confidentiality agreement arising out of the disclosure of criminal offence, i) Being threatened with any of the actions referred above.
20	Public official	Any person who is a member, an officer, an employee or servant of a public body.
21	Public Body	Any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government
ACRONYMS		
	PFMA	Public Finance Management Act 1 Of 1999
	PRECCA	Prevention and Combatting of Corrupt Activities Act 12 of 2004
	SAPS	South African Police Services
	MEC	Member of the Executive Council
	DPCI	Department of Priority Crime Investigations

LEGISLATIVE FRAMEWORK

- 1. Constitution of Republic of South Africa**
- 2. Code of Conduct for Public Service 1997**
- 1. Eastern Cape Provincial Whistle Blowing Policy 2014**
- 2. Eastern Cape Fraud and Anti-Corruption Strategy**
- 3. Labour Relations Act 66 of 1995**
- 4. National Anti-Corruption Strategy 2017**
- 5. Protected Disclosure Amendment Act 5 of 2017**
- 6. Prevention and Combating of Corrupt Activities Act No 12 of 2004**
- 7. Promotion of Access to Information Act 2 of 2000**
- 8. Promotion of Administrative Justice Act 3 of 2000**
- 9. Public Administration Management Act 11 of 2014**
- 10. Public Protector Act 22 of 2003**
- 11. Public Service Act 103 of 1994**
- 12. South African Police Service Act 68 1995**

1. PREAMBLE

- 1.1 Department of Social Development recognizes the fact that, criminal and other irregular conduct is detrimental to good, effective, accountable and transparent governance and can endanger the economic stability and have the potential to cause reputational damage.**
- 1.2 The Department is developing the policy to be in line with Public Service Code of Conduct of 1997 which requires public servants in the course of their official duties shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest. The Protected Disclosure Act No 5 of 2017, which encourages employees to disclose any acts of misconduct without fear of any occupational detriment.**
- 1.3 The Whistle blowing policy is intended to break this cycle of silence and inaction prevent corruption in the public sector.**

2. PURPOSE

The purpose of this policy is to provide a policy guiding framework and procedures in terms of which an employee can, in a responsible manner, disclose information regarding improprieties by his or her colleagues, other stakeholders and employer.

3. OBJECTIVES

The objective of this policy is to:

- a) To encourage employee to disclose any genuine misconduct without fear of any occupational detriment.**
- b) To protect an employee from being subjected to an occupation detriment on account of blowing the whistle.**
- c) To provide for procedures in terms of which an employee can, in a responsible manner, disclose information regarding improprieties by his or her colleagues, other stakeholders and employer.**
- d) To report on issues of maladministration in the Department of Social Development which will assist the institution in delivery of services to communities of the Eastern Cape.**

4. SCOPE OF APPLICABILITY

This policy is applicable to all officials of the Department including its Institutions

It covers all genuine concerns raised including:

- a) Financial and non-financial misconduct (e.g. Theft, fraud, breach of contract etc.)
- b) Corruption (e.g. bribes, embezzlement of funds etc.)
- c) Attempts to suppress or conceal any information relating to any of the above.

If in the course of investigation any concern raised in relation to the above matters appears to the investigator to relate more appropriately to grievance or discipline, those procedures will be revoked.

5. PRINCIPLES AND VALUES

The Department to the following principles and values in all times:

- a) Integrity: To report honest, fair and with respect to others
- b) Accountability: To uphold professional standard of conduct when reporting
- c) Trustworthy: To be able to be relied on as honest and ethical.
- d) Openness: To provide full detailed information regarding the concern raised
- e) Ethics: the processes will be conducted in an ethical manner
- f) Confidentiality: the processes will maintain the highest level of confidentiality
- g) Anonymity: the process on an anonymity of the whistle blower will be maintained accordingly

6. POLICY STATEMENT

The Department of Social Development is committed to achieving the highest possible standards of service openness, accountability and the highest ethical standards in all its practices. In line with that commitment, it encourages all staff to raise matters of concern through the procedures prescribed in this policy.

Department of Social Development is committed to this policy. The Department shall ensure that an employee who makes a disclosure in according to this policy and shall not be penalized or suffer any occupational detriment for doing so.

If a concern is raised in good faith in terms of this policy, an employee shall not be at a risk of losing his/her job. This assurance is not extended to employees who maliciously raise matters they know to be untrue.

6.1. WHAT IS WHISTLE-BLOWING

The term is generally used to describe the process of disclosing information relating to some kind of malpractice, misconduct which members of staff may have come across during the course of their work and which they feel would compromise the interest of the public and tarnish the image of the department.

6.2. WHAT IS A DISCLOSURE

The Protected Disclosure Act No 5 of 2017, in its definition of "disclosure" and "protected disclosure" in section 1, read with section 5 sets out what disclosures, made by the employee to an employer, are protected in terms of the Act. "Disclosure is any disclosure of information regarding any conduct of an employer, or an employee of that employer, made by an employee who has reasons to believe that the 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 likely to fail to comply with any legal obligation to which that person is subjected
- c) That a miscarriage of justice has occurred or is likely to be endangered
- d) That the environment has been, is being or is likely to be endangered
- e) Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000
- f) That any matter referred to in paragraphs (a) –(f) has been, is being or likely to be deliberately concealed.

6.3. WHAT IS NOT A DISCLOSURE

Employees must avoid reporting maliciously. The following disclosures shall not be protected:

- a) A disclosure that is made in bad faith is not a disclosure;
- b) The Provincial Code of Ethics prohibits unauthorized disclosure of official information to press. E.g. newspaper

Malicious disclosure by employees and/ employer shall be treated as misconduct and will be dealt in terms of Section 16A and 16 B of the Public Service Act.

6.4. PROTECTION OF WHISTLE BLOWERS

6.4.1. Harassment and Victimization

- a) The Department of Social Development will not tolerate harassment or victimization and will take action to protect employee when they raise concern in good faith.
- b) Any employee who may be subjected to acts of victimisation and or harassment, through threats, intimidation, as a result of protected disclosure shall immediately report to the Head of Department.
- c) Risk Management & Anti-Corruption unit together with Labour Relations will investigate such reported victimization/harassment of the whistle blower and if *Prima Facie* evidence is found, a disciplinary action will be taken against the person harassing/victimizing the whistle blower.
- d) If an employee is dismissed as a result of making a protected disclosure, that dismissal is deemed to be an automatically unfair dismissal.
- e) All reported cases of victimization and harassment shall be investigated within forty (40) working days.

6.4.2. Confidentiality

- a) The Department shall protect an individual's identity when he/she raises concern and those who do not want their identity to be disclosed.

6.4.3. External Protection of Whistle blowers

- a) Department of Social Development shall advise the whistle blower on the channels available for protection by Department of Justice and SAPS when a case had to be in court of law.
- b) Risk Management and Anti-Corruption unit shall assist the whistle blower in accessing those protection services that are available from South African Police Services (SAPS) and Department of Justice.
- c) In cases where an employee experiences life threats after disclosure, they must immediately inform Director: Risk Management & Anti-Corruption so that she/he can be assisted in report such incidents to SAPS immediately.

6.4.4. Anonymous reporting

- a) The Department encourages employees to report anonymously with full details of the allegations

6.4.5 False Allegations

- a) Employees or other parties must understand the Implications (resource and costs) of undertaking investigations and should therefore guard against making allegations, which are false and made with malicious intent.
- b) The department shall tolerate any false reporting from the employees and if it came to the attention of the department that a false reporting was made by employee, disciplinary actions will be taken against that officials according to disciplinary procedures of the department.

6.4.6 Withdrawal of raised concern by whistle blower

- a) If the whistle blower withdraws the reported allegation, the department shall continue with the investigation until the case is finalized.
- b) The whistle-blower may be summoned as witness in the future if the need arises irrespective of withdrawal.

6.5. IMPLEMENTATION PLAN

6.5.1. How to raise the concern internally?

- a) For minor issues (e.g. personal use of Department stationery, telephone etc.) employee should raise the concerns with their immediate supervisor /manager.
- b) For major issues (e.g. fraud and corruption), the whistle blower must:
 - (I) The first step shall be for an employee to approach his/her immediate supervisor/manager.
 - (II) In the event that the immediate supervisor / manager is implicated the whistle-blower must report directly to the Director: Risk Management & Anti-Corruption, using the stated telephone numbers and email (reportcorruption@ecdsd.gov.za/ 043 605 5297/5399/5452).
- c) Should the complaint by the whistle-blower be found to be substantive, the unit shall consult with Accounting Officer (AO).

- d) In cases where the AO and Deputy Director-General (DDG) is a subject matter, the matter shall be transferred to Provincial Treasury and relevant law enforcement agencies (Special Investigating Unit (SIU), SAPS and Hawks) for further investigations.
- e) Concerns are better raised in writing. The background and history of the concern, give names, dates and places where possible should be set out
- f) Employees are not expected to prove the truth of an allegation; they will need to demonstrate to the person contacted that there are sufficient grounds for concern
- g) Advice and guidance on how matters of concern may be pursued can be obtained from the Risk Management & Anti-Corruption unit.

6.5.2. How the concern will be handled?

- a) Once a concern is raised, it must be assessed to decide what actions shall be taken as this may involve internally inquiry or more formally investigation.
- b) The issue raised shall be acknowledged in writing within seven (7) working days.
- c) If a decision is made not to investigate the matter, reasons must be given in writing to the person reported the case.
- d) If the concern falls more properly within the Grievance Procedure, he/she shall be informed accordingly.
- e) Feedback on progress of the raised concern shall be provided in writing within forty (40) working days.

6.5.3. Raising a concern External

Where a person or an employee has reported his/her concern through any of the channels described in para 6.5.1 and have substantial reason to believe that they may be a cover up or that evidence may be destroyed or that matter may not be handled properly, that person or employee may raise his/her concern in good faith (*bona fide*) with a member of the Member of the Executive Council and the following law enforcement agencies:

- a) The Office of the Public Protector- 040 635 1286
- b) National Anti-Corruption Hotline – 0800 701 701
- c) Presidential Hotline – 17737
- d) South African Police Services (Nearest police station)

6.6 DISSATISFACTION WITH OUTCOMES OF INVESTIGATION

- a) If an employee is at any stage unhappy with the outcomes of the investigation, he/she can go to law enforcing agencies and bodies described in para 6.5.3 of this policy.

6.7 TRAINING, EDUCATION AND AWARENESS

In order for the policy to be sustainable, it must be supported by structured education, communication and awareness programs.

- a) Risk Management & Anti-Corruption unit shall facilitate the awareness and training to staff of the department including induction of newly appointed staff.
- b) It is the responsibility of all managers to ensure that all employees, are made aware of and receive appropriate training and education with regard to the Whistle Blowing Policy.
- c) For the purposes of reporting by members of the public, the Accounting Officer must ensure that the policy is available and accessible on the Departmental website.

7 APPROVING AUTHORITY

The Accounting Officer and Member of Executive Council (MEC) shall approve this policy.

8. EXCEPTIONS / EXEMPTIONS

There are no exceptions and exemptions.

9. ADMINISTRATION OF THE POLICY

The custodian of this policy is the Accounting Officer who is supported in its implementation by Risk Management & Anti-Corruption Unit.

10. ACCOUNTABILITIES AND RESPONSIBILITIES

10.1 Accounting Officers shall be responsible for the following:

- a) Ensure enforcement and proper implementation of this policy.
- b) Monitor the handling of reported cases at all levels.
- c) Institute consequence management where and when necessary.

10.2 Director: Risk Management & Anti-Corruption shall be responsible for the following:

- a) Advocate and conduct awareness education to all employees of the Department.
- b) Handle and maintain register of reported cases.
- c) Conduct investigation on reported cases.
- d) Proper and timeous feedback to the whistle-blowers.
- e) Monitor and evaluate the implementation of the policy.
- f) Liaison with relevant law enforcing agencies to protect whistle-blowers.

10.3 All employees shall be responsible for the following:

- a) To raise concerns noticed during their course of employment as detailed in this policy and in good faith.

11. EFFECTIVE DATE OF THE POLICY

This policy shall be effective from the date of its approval.

12. PROCEDURES FOR IMPLEMENTATION

A detailed plan on implementation procedures shall be compiled to include but not limited to the followings:

- a) Capture received cases into the investigation register
- b) Assign cases to skilled personnel to handle
- c) Proper and timeous feedback to the whistle-blowers.
- d) Maintain confidentiality of employees who raised concerns
- e) Protect employees raising concerns in good faith from occupational detriment.

13. MONITORING MECHANISMS

The monitoring of the policy shall be carried out through the following mechanism:

- a) Feedback report to whistle-blowers raising concerns.
- b) Timeous completion of cases reported (completed within 40 working days of reporting the allegation).
- c) Reports with recommendations to the Accounting Officer on reported cases within the 40 days' period.

14. ENFORCEMENT

Non-adherence to this policy will constitute a misconduct and shall be dealt with in accordance with Public Service Act, section 16A and B.

15. POLICY REVIEW

This policy shall be reviewed after three (3) years and or whenever a need arises e.g. change in legislation, new directives or national mandates had been given.

16. POLICY APPROVAL



HEAD OF DEPARTMENT
DEPT. OF SOCIAL DEVELOPMENT

15/10/18
DATE

APPROVED/ NOT APPROVED



MEMBER OF EXECUTIVE COUNCIL
DEPT. OF SOCIAL DEVELOPMENT

15/10/18
DATE