



agriculture, land reform
& rural development

Department
agriculture, land reform & rural development
NORTHERN CAPE PROVINCE
REPUBLIC OF SOUTH AFRICA

Anti-Fraud & Whistle Blower Policy

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1. Introduction

- 1.1 One of the resolutions taken by the National Anti-Corruption Summit in April 1999 made specific reference to developing, encouraging and implementing whistle blowing mechanism, in include measures to protect persons from victimization where they expose corruption and unethical practices. During February 2001 the Protected Disclosure Act (Act no. 26 of 2000), which protects bona fide whistle blowers came into force. Under Public Service Code Conduct, 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.
- 1.2 Employees may periodically have concerns about various things going on at work. These issues of concern to the employee may relate to unlawful conduct, a possible fraud or danger to the public or the environment, or other serious malpractice, which might place the employees in a dilemma as what to do. The situation of being in a dilemma may arise due to the following:
 - The employee may be worried about raising such a concern
 - The employee may think it is best to keep it to himself/herself
 - The employee may feel it is none of her business
 - The employee may feel it is only a suspicion
 - The employee may feel raising the matter may be disloyal to the colleagues, managers or the department
 - The employee may decide to say something but find out that he/ she has spoken to the wrong person or raised the issue in the wrong way and is not dire what do next.
- 1.3 It is therefore crucial that proper arrangements are made in terms of approved whistle blowing policy to reassure employees that it is safe and acceptable to speak out whenever matters of concern come to their attention. The policy will also provide the necessary confidence to the employees to raise their concerns at an early stage and in the right way even if no concrete proof is yet available.
- 1.4 Therefore, any significant concern that a member of staff has about any aspect of service delivery, or the conduct of officers, managers, senior managers of the department, or other parties acting on behalf of the department which may be unlawful, harmful to the public and /or against the department procedures and policies and/or standard of established practice can and should be reported under this policy. This may include fraud, corruption, or any type of malpractice officers, managers and senior managers.

- 1.5 Employees can raise concerns and complaints regarding their employment conditions through the normal grievance procedures of the department. This Whistle-blowing policy is for members of staff to raise any concern where the interests of others or the department are at risk.
- 1.6 If a member of staff has a concern regarding possible fraud, such member of staff may wish to refer to the department Anti-Fraud and Corruption Strategy and the fraud response plan on appropriate action to take.

2. Definitions

2.1 Whistle-blowing

2.1.1 The term whistle-blowing is generally used to describe the process of disclosing information relating to some kind of malpractice or mistreatment of which members of staff may have come across during the course of their work and which they feel will put the interest of the public, department and provincial administration at risk. Whistle-blowing is about raising a concern about malpractice within an organisation. Whistle-blowing is therefore a key tool for promoting individual responsibility and organisational accountability.

2.1.2 Whistle-blowing is an early warning system to avert or mitigate possible risk to the organisation. An effective policy to encourage whistle-blowing enables the department to find out when something is going wrong in time to take the necessary corrective action. A positive whistle-blowing culture is a crucial element in the success of any risk management system. An organisation that positively encourages whistle-blowing stands a far better chance of demonstrating that it is properly run and managed.

2.2 Whistle-blower

2.2.1 Any member of staff who has reasonable believe that fraud, corruption, unlawful act or misconduct has occurred or occur may raise a concern under the procedures as detailed.

2.2.2 For purposes of this policy, an employee or member of staff is someone who is:

- (a) Employed on a permanent basis
- (b) On a fixed term or temporary contract employment
- (c) On a secondment to the department

2.2.3 Concerns may be raised without malice, in good faith and not for personal gain and the individual must reasonably believe that the information disclosed, an any allegations contained in it, are reasonably true.

2.2.4 The issue raised may relate to a manager, another member of staff, a group within staff, the employees own section or a different section/directorate within the department. The perpetrator may be an outsider, an employee, a manager, a customer or ex-employee. Whistle-blowers act in good faith and in the public interest to raise concerns around suspected impropriety within their place of employment. However, they often risk victimization, recrimination and sometimes dismissal.

2.3 Disclosure

2.3.1 "Disclosure" is defined as "any disclosure of information regarding any conduct of an employer, or an employee of that employer, made by any employee who has 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 legal obligation to which that person is subject;
- (c) That miscarriage of justice has occurred or is likely to occur;
- (d) That the environment has been, is being or is likely to be damaged;
- (e) Unfair discrimination as contemplated in Promotion of Equality and Unfair Discrimination Act, act 2000 (Act No. 4 2000); or
- (f) That any matter referred to above has been, is being or is likely to be deliberately concealed.

2.3.2 As set out in the definitions stated above, a further requirement is that the employee must have "reason to believe that information concerned shows or tend to show one or more" of the matters set in the definition.

3. LEGISLATIVE FRAMEWORK

3.1 General Outline

3.1.1 The Protected Disclosure Act (Act No. 26 of 2000) became effective in February 2001 and sets out a clear and simple framework to promote responsible whistle-blowing by:

- (a) Reassuring employees that silence is not the only safe option
- (b) Providing strong protection for workers who raise concerns internally
- (c) Reinforcing and protecting the right to raise concerns to public protection agencies such as the Public Protector and the Auditor General, and
- (d) Protecting more general disclosures provided that there is valid reason for going wider and that the particular disclosure is a reasonable one.

3.1.2 According to the Act, a disclosure is a protected disclosure under the Protected Disclosure Act if:

- I. The disclosure contains information about impropriety and
- II. The disclosure has been made to the right person, according to the scheme established by the act, commonly known as the four doors as enunciated below

3.2.1 Door One – Legal Advice (Section 5)

- (a) The first door is termed legal advice. A disclosure made by a whistle-blower to someone for the purposes of getting legal advice about the disclosure is a protected disclosure. This would include the employee's attorney or shop steward.

3.2.2 Door Two – An Internal Disclosure (Section 6)

- (a) The Protected disclosures Act signals that it is safest if concerns are raised internally. A disclosure to the employer will be protected if the whistle-blower acts in good faith, and follows the process set out for such disclosures by the employer. They should have a reason to believe that there is a problem of some sort, including the law being broken, the health and safety of people being endangered, or discrimination taking place. This is the door that the Protected Disclosure Acts wants the potential whistle-blower to go through, in everyone's interest. But it assumes the employer will take the disclosures seriously and respond appropriately. The Protected Disclosures Act encourages employers to have in place a whistle-blower policy. A good policy will operate like a bright light in top of the Internal Disclosure door, signalling that this is the first, the best, route for the whistle-blower to take.

3.2.3 Door Three – Regulatory Disclosures (Section 8)

- (a) The Act reinforces and strengthens the right to make disclosures to specified regulatory bodies, these currently include:
 - I. The office of the Public Protector
 - II. The Auditor General
- (b) Disclosures to these bodies will be protected where the whistle-blower makes the disclosure in good faith and the employer reasonably believes the Public Protector or Auditor General would usually deal with the kind of problem that the whistle-blower wants to talk about. There is no requirement that the concern should first have been raised with the employer.

3.1.4 Door Four – Wider Disclosures (Section 7 and 9)

- (c) Employees can also be protected under the Act if they make wider disclosures (e.g. to the police, MP's and even the media). This is known as general protected disclosure. The protection applies where the whistle-blower honestly and reasonably believes that the information and any allegations contained in it are substantially true and that the disclosure is not made for personal gain. Crucially, to be protected the must also be a good course for going outside and the particular disclosure must be reasonable. There are four good causes recognised in the law and they are as follows:
- I. The concern was raised internally or with a prescribed regulator, but has not been properly addressed
 - II. The concern was not raised internally or with a prescribed regulator because the whistle-blower reasonably believed he/she will be victimised.
 - III. The concern was not raised internally because the whistle-blower reasonably believed a cover-up was likely and there was not prescribed regulator, or
 - IV. The concern was exceptionally serious

3.2 Objects and Application of the act

- (a) The objects of the act are:
- I. Occupational detriment on account of having made a protected disclosure
 - II. To provide certain remedies in connection with any occupational detriment suffered on account of making a protected disclosure, and
 - III. To provide for procedures in terms of which an employee can in a responsible manner, disclose information regarding improprieties by his/her employer.

3.3 Application of the Act

- (a) The Act applies to any protected disclosures made after the date on which the Act becomes effective, irrespective of whether or not impropriety concerned has occurred before or after the date.
- (b) Any provision in a contract of employment or other agreement between employer and employee is void in so far as it:
- I. Purports to exclude any provision of the act, including an agreement to refrain from instituting or continuing any proceeding under this Act or any proceeding for breach of contract; or
 - II. Purports to preclude the employer; or

- III. Has the effect of discouraging the employee, from making protected disclosure
- (c) In terms of this act, employees are therefore encouraged to blow the whistle on all irregularities and misconduct in the working environment without fear of suffering an occupational detriment as defined by the Act.

4. Policy Statement

- 4.1 The Department of Agriculture, Land Reform and Rural Development (herein referred to as "Department") recognises that employees are often the first to realise that something is seriously wrong may be happening within the department. However, they may not express their concerns for fear of being disloyal to their colleagues or because they fear harassment or victimisation. In such circumstances, it is normally to ignore the concern then to report what may be just a suspicion of malpractice.
- 4.2 The Department is committed to achieving the highest possible standards of service, openness, accountability and the highest possible ethical standards in all its practices. In line with this commitment, it encourages staff to raise matters of concern responsibly through the procedures laid down in this policy document. The Department recognises that certain cases will have to proceed on a confidential basis.
- 4.3 To endorse this commitment, the Department has designed procedures for dealing with cases of whistle-blowing that protect the individual and ensure that the matter is fully and vigorously investigated.
- 4.4 This policy has been widely circulated for discussion and input. The Department recognises that an employee may wish to seek advice and be represented by his or her Trade Union when using this policy and endorses the role which trade unions and their officers play in this process.

5. PURPOSE AND SCOPE THE POLICY

5.1 Purpose

- 5.1.1 This policy has been written to serve the following crucial purposes:
 - I. To explain what whistle-blowing actually means;
 - II. To express the commitment of the department in supporting employees who blow the whistle in the interest of protecting the public,
 - III. To provide an operational framework for dealing with cases of whistle-blowing; and
 - IV. Finally, to reassure employees that concerns will be dealt with seriously and investigated fully with appropriate action being taken when necessary.

5.1.2 Generally, therefore the purpose of this policy is to provide means by which staff are able to raise their concerns with the appropriate line management, or specific appointed persons in the Department, where they have reasonable ground to believing there is fraud and corruption within the department.

5.2 Scope

5.2.1 The policy is designed to deal with concerns raised regarding issues relating to fraud, corruption, misconduct and malpractice within the Department.

5.2.2 The policy will not apply to personal grievances which will be dealt with under existing procedures on grievances, discipline and misconduct. Details for these procedures are obtainable from the Human Resource Directorate.

5.2.3 The policy covers all genuine concerns raised including:

- Financial misconduct
- Health and safety risks
- Environmental damage
- Unfair Discrimination
- Corruption, fraud, misconduct and illegal acts
- Attempts to suppress or conceal any information relating to any of the above

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

6. CULTURE OF OPENESS

6.1 The Department commits itself to encouraging a culture that promotes openness.

6.2 This will be done by:

6.2.1 Involving employees, listening to their concerns and encouraging appropriate use of this policy/process of whistle-blowing promoted by management. This policy will be issued to all existing employees and to each new employee.

6.2.2 Educating/training/informing/explaining to employees what constitutes fraud, corruption and malpractice and its effect in service delivery in general. Promoting awareness of standards of appropriate and acceptable

employee conduct and establishing a common understanding of what is acceptable behaviour and unacceptable behaviour. This training should be coordinated and promoted by the **Corporate Service Directorate**.

6.2.3 Encouraging unions to endorse and support this approach.

6.2.4 Having a policy to combat fraud.

7. ASSURANCES OF THE DEPARTMENT

7.1 Your Safety

- (a) The Department is committed to making whistle-blowing work. If an employee raises a genuine concern under these arrangements, the employee will not be at risk of losing his/her job or suffering any form of retribution as a result. Provided the employee is acting in good faith, it does not matter if he/she is mistaken. Of course, this assurance does not extend to someone who maliciously raises a matter he/she knows is untrue.

7.2 Confidentiality

- (a) The Department will not tolerate the harassment or victimisation of any employee who raises a genuine concern and with these assurances, the Department hope employees will raise their concerns openly. However, the Department recognises that may be circumstances when the employees prefer to speak with someone in confidence first. If this is the case, please say so at the outset. If the employee as the Department not to disclose his/her identity, the Department will not do so without the employees' consent unless required by law. The employee should understand that may be times when the Department may unable to resolve a concern without revealing their identity, (for example where the employee's personal evidence is essential). In such cases, the Department will discuss with the employee whether and how the mater can best proceed.

7.3 Anonymity

- (a) Remember that if you, the employee, do not tell the Department who you are, it will be much difficult for the Department to look into the matter, to protect your position, or to give you feedback. Accordingly, while the Department will consider anonymous reports, these arrangements are not well suited to deal with concerns raised anonymously.
- (b) If you are unsure about raising a concern you can get independent advice from The open Democracy Advice Centre (ODAC).

8. HOW TO RAISE A CONCERN INTERNALLY

8.1 Please remember that an employee does not need to have firm evidence of malpractice before raising a concern. However the Department asks that the employee explains as he/she can the information or circumstances that gave raise to his/her concern.

Step One

(a) If an employee have a concern about malpractice, the Department hopes he/she will feel able to raise it first with his/her line manager or with his/her immediate manager. This can be done orally or in writing.

Step Two

(a) If, for whatever reason, the employee feels raising it with his/her line manager or his/her immediate manager is not appropriate or it has not worked, the employer should raise the matter with the director of his/her directorate.

(b) If the employee wants to raise the matter in confidence, he/she should say so on the outset so that appropriate arrangements can be made.

Step three

(a) If these channels have been followed and the employee still have concerns, or feels that the matter is so serious that it cannot be discussed with any of the above, the under-mentioned persons have been identified to deal with these matters. Members of staff should feel free to contact and raise their concerns with any one of them:

I. Chief Financial Officer

II. Accounting Officer

III. Chairperson of the Anti-Fraud and Corruption Committee

IV. Head of Northern Cape Internal Audit

(b) If you as a civil servant believe being required to act in way that conflicts with the core values and standards set the Public Service Code of Ethics, or you have become aware of the actions of others which you believe conflicts with the Code, you should raise the matter with the Accounting Officer.

(c) Alternatively, and if your concern is about breach of Public Service Code of Ethics, you may also raise your concern directly with the Public Service Commission (PSC). (While it is the PSC preference that issues under the Code of Ethics are raised, in the first instance, internally within the

Department, the may be circumstances where the PSC will accept an appeal without this having occurred. The PSC will examine each case on its merits).

9. HOW THE DEPARTMENT WILL HANDLE THE MATTER

- 9.1 Once the employee has told the Department about his/her concern, the Department will look into it to assess initially what actions should be taken. This may involve an informal review, an internal inquiry or a more formal investigation. Where it is decided that a more formal investigation is necessary the overall responsibility for the investigation will lie with a nominated "investigation officer". In any event, the Department will tell the employee who is dealing with the matter, how he/she can contact the nominated "investigation officer", and whether further assistance of the employee may be needed. If the employee request, the Department to write to him/her summarising his/her concern and setting out how the Department proposes to handle it.
- 9.2 When an employee raises a concern he/she may be asked how he/she thinks the matter might best be resolved. If the employee does not have personal interest in the matter, the Department ask that he/she tell the Department at the outset. If the employee's concern falls more properly within the Grievance Procedure the Department will tell him/her.
- 9.3 The Department will give the employee has much feedback as the Department properly can, and if requested, the Department will confirm in writing. However, the Department may not be able to tell the employee the precise action that is taken where this would infringe a duty of confidence owed by the Department to someone else.
- 9.4 A referral of a concern will be acknowledged, and, where possible, an indication of how management proposes to deal with the matter. An indication of the likely time-scales involved in providing a final response will be provided. If it is not possible for initial inquiries to be completed within ten days the letter of acknowledgement will explain the situation. If a decision is made not to investigate, a brief explanation would be provided for the reasons for the decision.

10. EXTERNAL CONTRACT

- 10.1 While the Department hopes that employees have been given the reassurance the need to raise their concern internally with the Department, it recognizes that there may be circumstances where the employee can properly report a concern to an outside body. In fact, the Department will rather encourage employee to raise a matter with an appropriate regulator than not at all.

As far as employees are acting in good faith, concerns can also be raised with:

- a. Office of the Public Protector (www.publicprotector.org)

Tel: 053 – 831 7766

0800 112 040

Fax: 053 – 832 3404

- b. The Auditor General South Africa (AGSA)

Tel: 053 831 1016

- c. Independent Police Investigative Directorate

Tel: 053 832 5615

- d. Presidential Hotline

17737

- e. Anti-Corruption Hotline

0800 701 701

11. INDEPENDENT ADVICE

11.1 Employees who are unsure whether to use this procedure or want independent advice at any stage, may seek advice from their legal advisor (Attorney) or labour organisations (Shop Steward).

11.2 The Open Democracy Advice Centre (ODAC) can also be contacted on its toll free help line on 0800 525 352. There are legally trained staff that can give free confidential advice at any stage about how to raise a concern about serious malpractice at work.

12. MONITORING OF THE POLICY

12.1 The Accounting Officer will ensure that records of all matters raised through the whistleblowing policy are maintained in order that an assessment may be made of the effectiveness of the policy and any emerging patterns.

12.2 The line manager and other senior managers who receive whistle-blowing information should prepare monthly summaries of information received and what was done and submit monthly to the Accounting Officer.

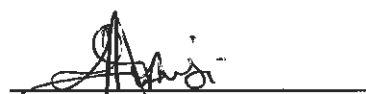
12.3 The Accounting Officer will report quarterly to the Member of the Executive Council on all whistle-blowing information and action as well as to such bodies responsible for monitoring anti-fraud and corruption programmes.

13. CONCLUSION AND APPROVAL

13.1 While the Department cannot guarantee that it will respond to matters in a way that the employees might wish, the Department will strive to handle the matter fairly and properly. By using these whistle-blowing arrangements the employees will help the Department to achieve this.

13.2 Please note, this document has been developed to meet best practice and comply with Protected Disclosure Act (Act 26 of 2000), which provides employment protection for whistle-blowing.

APPROVED BY



Mr. WVD Mothibi

Department of Agriculture, Land Reform and Rural Development

Date

01/09/2016