

DEPARTMENT OF TRANSPORT



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GLOSSARY**Director-General:** Director-General of the Department of Transport**Disclosure:** Any disclosure of information regarding any conduct of the Department, or an employee of the Department, made by any employee who has reason to believe that the information concerned shows or tends to show one or more of the following:

- That a criminal offence has been committed, is being committed or is likely to be committed.
- That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject.
- That a miscarriage of justice has occurred, is occurring or is likely to occur.
- That the health or safety of an individual has been, is being or is likely to be endangered.
- That the environment has been, is being or is likely to be damaged.
- Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No 4 of 2000).
- That any matter referred to above has been, is being or is likely to be deliberately concealed.
- That an employee or any party associated with the Department has committed, is committing or is likely to commit an act that constitute fraud and corruption as stipulated in the Anti-Fraud and Corruption Policy.

General Disclosure:

Whistle blowers are protected if they make wider general disclosures (e.g. to the SAPS, MP's or even the media). For wider disclosures the requirements are:

- Good faith.
- Reasonable belief that the information disclosed and allegations contained in it are substantially true.
- Allegations are not made for personal gain (excluding rewards payable in terms of law, e.g. Police, South African Revenue Services, etc.).
- Reasonable to make the general disclosure considering all the circumstances of the case.
- The improper act is of an exceptionally serious nature.
- The disclosure has been made to the employer and no action has been taken within a reasonable period.
- The employee has reason to believe that the evidence will be concealed or destroyed if the disclosure is made to the employer and there is no regulatory body prescribed.
- The employee has reason to believe that s/he will be subjected to occupational detriment.

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MP's: Members of Parliament

SAPS: South African Police Services

Occupational Detriment: Occupational detriment means:

- Being subjected to any disciplinary action.
- Being dismissed, suspended, demoted, harassed or intimidated.
- Being transferred against his or her will.
- Being refused transfer or promotion.
- Being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage.
- Being refused a reference, or being provided with an adverse reference, from his or her employer.
- Being denied appointment to any employment, profession or office.
- Being threatened with any of the actions referred to under 'disclosures'.
- Being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security.

ODAC: Open Democracy Advice Centre

SARS: South African Revenue Services

The Act: The Protected Disclosures Act, Act 26 of 2000



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PART A: WHISTLE BLOWER POLICY

1 INTRODUCTION

The Departmental Anti-Corruption and Fraud Prevention Policy allows the officials and other stakeholders to disclose or report acts or suspected acts of fraud and/or corruption. The policy further provides for the protection and confidentiality of officials and other persons who report such acts of fraud and/or corruption. The Protected Disclosures Act, Act 26 of 2000, which became effective in February 2001 makes provision for procedures in terms of which:

- a) Employees in the Department are protected from being subjected to an *occupational detriment* on account of having made a protected disclosure;
- b) Certain remedies are provided in connection with any occupational detriment suffered on account of having made a *protected disclosure*; and
- c) Procedures are provided whereby an employee can fearlessly and in a responsible manner make *disclosures*.

These provisions of the Protected Disclosures Act cover, amongst others, the protection of the whistle blowers. Officials and other persons who report acts or suspected acts of fraud and corruption are generally referred to as whistle blowers.

The implementation of the Protected Disclosures Act will improve good corporate governance in the Department.

2. MANDATE

This policy obtains its mandate from the followings acts and prescripts:

- a) The Protected Disclosures Act, Act 26 of 2000.
- b) The Public Finance Management Act, Act No. 1 of 1999.
- c) The Departmental Code of Conduct.
- d) Public Service Anti- Corruption Strategy
- e) Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004

Principles of Strategic Framework

The Department of Transport 's Anti – Corruption Strategy is informed by the under mentioned principles to enhance the fight against corruption:

- The holistic and integrated approach to enhance the fight against corruption with balanced scorecard on prevention, investigations, prosecutions, internal enquiries and public participation by way of reports and or whistle-blowing as the platform for the strategy;
- National strategy for best practice and conventions that are set particularly for detention, investigation, prosecution and adjudication of acts of corruption as well as the recovery of the proceeds therefore;
- Dealing with corruption either in administrative or criminal justice system or both if necessary;

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- Taking regard of the criminal justice system and Bill of Rights as far as the constitution requires;
- Pro-activeness in dealing with issues of fraud and corruption; and
- Comprehensive education, training and awareness programmes including the continuous risk assessment.

3. SCOPE OF APPLICATION

The policy is applicable to the public and the Departmental officials who want to report or disclose information relating to fraud, corruption, misconduct and malpractice.

The policy covers, but is not limited to the disclosure of the following:

- a) Fraud and Corruption (as defined in the anti-corruption and fraud prevention policy)
- b) Financial misconduct
- c) Unfair discrimination
- d) Acts of misconduct
- e) Environmental damage
- f) Health and safety risks
- g) Attempts to suppress or conceal any information relating to any of the above

The information being disclosed may relate to an official or group of officials, and/or a division within the Department. The information may also relate to an ex official of the Department, a customer, a service provider or supplier or any other parties associated with the Department. It may even be a system or procedure in use, which may cause the Department to transgress legal obligations.

Information must be disclosed without malice, in good faith and not for personal gain (excluding rewards payable in terms of law, e.g. the Police, the South African Revenue Services) and the individual must reasonably believe that the information disclosed, and any allegations contained in it, are substantially true.

4. ELEMENTS OF AN EFFECTIVE WHISTLE BLOWING MECHANISM

The Director-General takes overall responsibility for the implementation of an effective whistle-blowing infrastructure in the Department. The following are elements of an effective whistle blowing mechanism for the establishment of a whistle-blowing infrastructure: -

4.1 Consultation and participation

Ensure that the Departmental officials and Organized Labour are **consulted and participate** in the development and maintenance of a Whistle-blowing Policy and other related processes by: -

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- a) Allowing them the opportunity to provide inputs in the development and maintenance of the Whistle-blowing Policy and whistle blowing processes;
- b) Seeking the endorsement and support of Organised Labour on the whistle blowing policy and processes;
- c) Seeking top management participation, commitment and support; and
- d) Seeking all official's participation and support

4.2 Conducive environment

The creation of a **conducive environment** to encourage the reporting of wrongdoing by:

- a) Obtaining a commitment from the Minister, Director-General and members of the Senior Management Services (SMS) for the elimination of corruption in the Department. Performance Agreements of SMS members shall reflect this commitment;
- b) Securing Management's commitment to the whistle-blowing policy/processes for ensuring that any official who discloses information in terms of this policy will not be penalised or suffer any occupational detriment for doing so;
- c) Not disclosing a concern raised in confidence without the consent of the employer, e.g. where evidence is needed in court. The same confidentiality is expected from the employee;
- d) Preventing harassment or victimization of anyone raising a genuine concern;
- e) Developing a culture of accountability and a positive perception of whistle blowing;
- f) Ensuring that wrongdoers are effectively punished;
- g) Providing feedback and recognition to whistle-blowers;
- h) Protecting whistle-blowers outside the working environment if necessary; and
- i) Protecting whistle-blowers in *bona fide* cases from disciplinary action (occupational detriment) that might result from whistle blowing.

4.3 Awareness programs

The facilitation of **awareness programs** by:

- a) Communicating the process extensively to all role players to secure buy-in;
- b) Having regular feedback sessions and allowing a free flow of information;
- c) Promoting the policy through hotlines, posters, screensavers, stickers, and newsletters;
- d) Creating awareness of the Protected Disclosures Act; and
- e) Reporting publicly on the successful outcomes of whistle-blowing cases.

4.4 Education and Training

The facilitation of **education and training** by:

- a) Educating employees what constitutes fraud, corruption and malpractice and its effect on the Department;
- b) Promoting awareness of standards of appropriate and accepted employee conduct and establishing a common understanding of what is acceptable and what is unacceptable behaviour; and

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- c) Holding training workshops on the Whistle-blowing Policy and anti-corruption initiatives.

4.5 Structural arrangements

The setting up of **structural arrangements** as follows:

4.5.1 Training Programs

Training and Education practitioners will be identified to facilitate education and training programs.

4.5.2 Corporate Communication Strategy

The facilitation of an awareness strategy to promote the objective of the Whistle-blowing policy.

4.5.3 Independent Legal Advice

An independent Legal Advisor will assist whistleblowers with legal advice.

4.5.4 Whistle-blowing Coordinator

The Directorate: Internal Control will take responsibility for managing and implementing the policy. The implementation of the policy includes amongst others the setting up of a telephone hotline / fraud box and/or confidential mailbox for reporting purposes as well as creating investigative capacity to handle reported cases.

4.5.5 Labour Relations interventions

The evoking of procedures on matters that relate to disciplinary action and grievances will be facilitated by the Labour Relations Advisor/ Sub-Directorate: Labour Relations.

4.5.6 An Investigation mechanism

The Department shall create the necessary capacity to ensure that all tip-offs are investigated timely and decisively and that the whistle-blowing processes are subjected to effective and efficient risk analysis and internal control measures.

4.5.7 An Employee Protection Plan

An Employee Protection Plan will be put in place in consultation with the Special Programme Officer to provide protection and assistance to whistleblowers.

4.5.8 Feedback mechanism to whistleblowers

Receipt of disclosures will be acknowledged and positive recognition will be given to whistleblowers.

4.6 Monitoring and Evaluation

To ensure **monitoring and evaluation**, the responsible Directorate will:

- a) Compile a report on the number of fraud/corruption matters and the outcome thereof, which will be submitted through the Office of the Chief Operating Officer to the Director-General on an annual basis;
- b) Assess the trend of complaints;

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- c) Perform risk analysis;
- d) Publicise the results;
- e) Set up a feedback mechanism to the whistleblowers; and
- f) Set up effective and efficient internal control measures.

4.7 Remedies

Any employee, who has been subjected, is subjected or may be subjected to an occupational detriment in breach of the Act, may consider the following remedies:

- a) Approach any court having jurisdiction, including the Labour Court established by the Labour Relations Act 1995, Act No 66 of 1995 (as amended) for appropriate relief;
- b) Pursue any other process allowed or prescribed by any law;
- c) Employees who have made a protected disclosure and who reasonably believe that he or she may be adversely affected on account of having made the disclosure, must, at his or her request and if reasonably possible or practicable, be transferred from the post or position occupied by him or her at the time of the disclosure to another post or position in the Department or to another organ of state; and
- d) The terms and conditions of employment of a person transferred in terms of the Act may not, without his or her written consent, be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer.

4.8 Punishment of wrongdoers

The Director-General shall in consultation with Labour Relations and in accordance with the recommendations of the Investigation Officer, decide on the disciplinary steps to be taken to punish the wrongdoers.

5. WHISTLE-BLOWING FACILITIES AND CONTACT NUMBERS

The following whistle blowing facilities are available for reporting by any person:

- Toll-free National Anti-Corruption Hotline: 0800 701 701
- Toll-free National Fax line: 0800 00 77 88
- National Anti corruption Free Post: Fraud
DN 298
Umhlanga Rocks
4320
- Email: hotline@anticorruption.co.za
- The Open Democracy Advice Centre (ODAC): 0800 525 352

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Cases may also be reported to the following directorates within the Department:

- | | |
|----------------------------------------------|--------------|
| ▪ Directorate: Internal Control | 012 309 3756 |
| ▪ Legal Services (Independent Legal Advisor) | 012 309 3292 |
| ▪ The Training & Development Practitioner | 012 309 3811 |
| ▪ The Independent EAP Advisor | 012 309 3224 |
| ▪ The Labour Relations Advisor | 012 309 3926 |
| ▪ Directorate: Security Services | 012 309 3882 |
| ▪ The designated employee for grievances | 012 309 3219 |

PART B: WHISTLE BLOWING PROCEDURES

1. INTRODUCTION

The Department is committed to investigate all reported cases of fraud, corruption, malpractice and all other cases of misconduct. Whistle blowing procedures are therefore put in place to guide people who want to disclose information relating to fraud, corruption and other acts of misconduct. The Department further commits itself to uphold the principle of confidentiality in dealing with information reported by whistle blowers.

The procedures documented below seek to guide whistle blowers and other role players on steps to take in reporting or dealing with information reported.

2. STEPS TO BE FOLLOWED BY THE WHISTLE BLOWER

STEP 1: LEGAL ADVICE

The first step is to seek legal advice from the Department's Independent Legal Advisor (or a person whose occupation involves the giving of legal advice) about the concern and how to raise it. The information shall be treated as confidential.

STEP 2: INTERNAL DISCLOSURES

The Act indicates that it is the safest and in everyone's interest if concerns are raised internally. A whistle-blower can use the normal channels through the supervisor, the whistle-blowing telephone hotline or the fraud box to report on fraud and corruption in the Department or contact the relevant directorates (Internal Control, Internal Audit, Resource Management or Security Services). In severe cases there might be a need to report the malpractice to the Director-General. The disclosure will be protected. The whistle-blower must act in good faith and follow the process set out for such disclosures. The Department must take the disclosure seriously and act on the information provided by the whistle blower.

STEP 3: REGULATORY DISCLOSURES

Once the whistle-blower has exhausted the internal mechanisms or where s/he has substantial reason to believe that there would be a cover-

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up or that evidence will be destroyed or that the matter might not be handled properly, s/he has the right to make disclosures outside the Department to specified regulatory bodies including the Office of the Public Protector or the Office of the Auditor-General. If the whistle-blower is unsure whether to use this procedure or wants independent advice at any stage, s/he may contact her/his personal legal advisor or union, or the independent legal advice centre; Open Democracy Advice Centre (ODAC) on its toll free helpline on 0800 525 352. Disclosures to these bodies will be protected where the whistle-blower makes the disclosure in good faith.

STEP 4: GENERAL PROTECTED DISCLOSURES

Where the whistle-blower honestly and reasonably believes that the information and any allegations raised are substantially true and that the disclosure is not made for personal gain (excluding rewards payable in terms of the law, e.g. Police, SARS), s/he can also be protected under the Act if he/she makes a wider disclosure (e.g. to the Police, SARS, MPs and even the media). Crucially, to be protected there must also be a good cause for going outside

3: STEPS TO BE FOLLOWED BY THE DEPARTMENT IN RESPONSE TO THE DISCLOSURE

STEP 1: Refer the case to the Investigating Officer / Labour Relations Advisor / DD: HRS

The Directorate: Internal Control will refer the case to the Investigating Officer for investigation. Cases relating to discipline and grievances shall be referred to the Directorate: Resource Management (Labour Relation Advisor and/or Deputy Director: HRS). In cases where the matter is reported to the South African Police Service for investigation, only the Chief Financial Officer, after consultation with the Director-General may report a case to the SAPS. All cases referred to SAPS must via the Directorate: Security Services.

STEP 2: Investigate the case, make recommendations and draft a final report

The Investigation Officer will investigate the case, make recommendations and draft a final report. The final report shall be submitted to the Director-General. The Directorate: Internal Control and/or Chief Directorate: Corporate Services must counter-sign the report.

STEP 3: Decide on the action to be taken and the control measures to be put in place.

The Director-General shall, in consultation with the Chief Director: Corporate Services and/or CFO/Director: Internal Control decide on the action to be taken and the control measures to be put in place.

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STEP 4: Inform the whistle-blower of the outcome and arrange positive recognition and protection if necessary.

The Directorate: Internal Control will inform the whistle-blower of the outcome and arrange with the Director-General to give positive recognition. Where necessary, measures will be put in place to support and protect the whistleblower.

STEP 5: Improve Access to Report Wrongdoing and Protection of Whistleblowers and Witnesses.

Effective measures to improve and promote a culture of whistle blowing amongst employees and members of the public shall be maintained through:

- Establishing guidelines for the implementation of the Protection Disclosure Act, including guidelines that make a distinction between whistle blowing and witness protection; and
- Reviewing the effectiveness of the existing reporting mechanisms in order to improve the system, with particular reference to access to the independent agency.

STEP 6: Prohibition of Corrupt Individuals and Businesses

Employees and businesses that have been party to acts of corruption often change employers within the Public sector or, in the case of businesses, change names or the segments/ locations in which they operated. The following mechanisms shall be put in place to remedy this situation:

- Inform the National Treasury of any business and the names of directors/owners who was found guilty of corruption. The National Treasury will facilitate the exclusion of such business and/or directors/owners of such a business from doing business with the State. Similarly, the Department, through Supply Chain Management unit, will ensure that the Department does not contract businesses, which have been excluded from doing business with the State;
- Inform the Department of Public Service Administration (DPSA) of any employee found guilty of corruption. The DPSA will then facilitate the exclusion of such an employee from being employed by the State. Similarly, the Department, through Human Resource Management unit, will ensure that the Department does not employ persons who are excluded from being employed by the State;
- Record the prohibition of such persons on employment system;

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- Publication of sanctions, names of business, owners and directors; and
- Requiring Departments to declare previous criminal convictions related to corrupt practises.

STEP 7: Managing Professional Ethics

Coherent processes and mechanisms to manage professional ethics are key to a fight against corruption. Professional ethics shall be managed through:

- The promotion of a concept and practice of ethics management;
- Establishment of a generic professional ethics statement in the Department, and
- Conducting regular ethics audits

STEP 8: Apply more stringent employment procedures

The department shall build the capacity and the level of integrity by:

- Applying the pre, post employment vetting of its employees as well as vetting at certain intervals; and
- Obtaining positive security clearances for all managers and procurement officials and other employees holding sensitive or high-risk positions.

PART C: APPROVAL OF THE POLICY

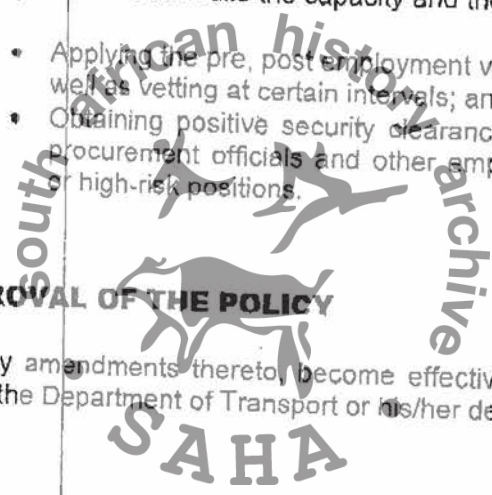
This policy, and any amendments thereto, become effective upon approval by the Director-General of the Department of Transport or his/her delegated official.

APPROVED BY:



DIRECTOR-GENERAL: TRANSPORT

DATE: 07/06/2008



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