higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

FRAUD PREVENTION POLICY

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Table of Contents

SECTION	SUBJECT	PAGE
A	**Acronyms**	i
B	**Glossary of Terms**	ii
1.	**Background and Introduction**	1
1.1	Policy Statement	1
1.2	Legislative Framework	2
2	**Policy Purpose, Objectives and Principles**	2
2.1	Purpose	2
2.2	Objectives and Principles	3
3.	**Scope of Application**	3
4.	**Reporting Channels**	3
5.	**Fraud and Corruption Concepts**	4
5.1	Fraud	4
5.2	Corruption	7
6.	**Components of the Fraud Prevention Strategy**	8
6.1	Prevention	8
6.2	Detection	9
6.3	Investigation	10
6.4	Resolution	10
7.	**Implementation, Monitoring and Evaluation**	10
8.	**Policy Review**	11
9.	**Policy Approval**	11

A. ACRONYMS

Acronym	Definition
AFU	Asset Forfeiture Unit
AG	Office of the Auditor-General of South Africa
CET	Community Education and Training
EXCO	The Executive Committee of the Department of Higher Education and Training
DHET	Department of Higher Education and Training
DPA	Protected Disclosure Act
DPCI	Directorate for Priority Crimes Investigation, popularly known as the HAWKS
DPSA	Department of Public Service and Administration
FDT	Fraud Diamond Theory
FTT	Fraud Triangle Theory
MACC	Minimum Anti-Corruption Capacity
NPA	National Prosecuting Authority of South Africa
PRECCA	Prevention and Combating of Corrupt Activities Act
PSET	Post School Education and Training
PSTT	Public Service Task Team
SAPS	South African Police Services
TVET	Technical Vocational Education and Training

B. GLOSARY TERMS

Term	Definition
Abuse of power	The use by a public servant of his/her vested authority to improperly benefit another public servant, person (or using the vested authority to improperly discriminate against another public servant or person).
Abuse of privileged information	The use of privileged information and knowledge that a public servant as a result of his or her office to provide an unfair advantage to another person or entity to obtain a benefit, or to accrue a benefit for himself or herself.
Affected/ implicated official	An official against whom allegations are made and investigated within the public service.
Bribery	It involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of a public servant.
Conflict of interest	The failure by a public servant to act or to consciously fail to act on a matter the public servant has an interest or another person that had some form of relationship with the public servant has some interest.
Corruption	It is dishonest activity in which a person abuses his/her position of trust in order to achieve some personal gain or advantage for themselves, or provide an advantage/disadvantage for another person or entity.
Detection	Process of putting in place effective strategies to detect fraud and corruption incidents.
Disciplinary action or hearing:	A formal procedure or hearing at which the conduct of a member of an organization, institution, profession etc. is examined after which a punishment may be handed down should he/she found guilty.
Embezzlement:	It is a form of theft where one is in possession of, or has control over assets.
Extortion	Process of coercing of a person or an entity to provide a benefit to a public servant, another person or an entity in exchange for acting in a particular manner.
Fraud	It is the crime of intentionally and unlawfully making misrepresentation to the actual or potential prejudice of another person.
Investigation	A formal fact finding enquiry to examine allegations of misconduct and wrongdoing in order to determine whether they have occurred and if so, the person or persons responsible.
Maladministration	Bad, inefficient, or dishonest management of the affairs of an organization, such as a business or institution.
Prevention	Process of implementing a strategy to detect fraudulent transactions or actions and prevent these actions from causing financial and reputational damage to the department and its clients.

Theft	It is the taking of another person's property or services without that person's permission or consent with the intent to deprive the rightful owner of it.
Unethical conduct	It may literally be defined as an action that falls outside of what is considered morally right or proper for a person, a profession or an industry
Whistle-blower	A person who exposes secretive information that is deemed illegal, unethical, or not correct or activity within a private or public organization by informing another person or an organization.

1. Background and Introduction

During a National Anti-Corruption Summit held in April 1999, the Department of Public Service and Administration (DPSA) was instructed to forge various initiatives across the public service into a coherent strategy with the support of other Departments. A Public Service Task Team (PSTT) consisting of key departments was convened for establishing sectoral anti-corruption strategy and representation from local government and public entities were included in order to establish a platform for the roll-out of the strategy to the whole of the Public Sector (Public Service, Local Government and Public Entities).

Following consideration of the PSTT report and as part of its commitment to good governance, the South African government through Cabinet promulgated the Minimum Anti-Corruption Capacity (MACC) in 2002 as an initiative to combat and prevent corruption in the public service. The government has through, the DPSA developed a Public Service Ant-Corruption Strategy, 2002, which prescribes that all Accounting Officers in the public service departments should establish a "minimum capacity" to investigate allegations of fraud and corruption, and detect risks at a preliminary level.

In order to conform to the abovementioned requirement, the Department of Higher Education and Training (DHET) through the Sub-directorate: Risk Management, developed the Fraud Prevention Strategy which was approved on 15 March 2017. The office of the Auditor-General has made adverse findings against the department that the Fraud Prevention Strategy was outdated, which necessitated the Sub-Directorate: Fraud Prevention to initiate the process of reviewing the strategy to keep abreast with the developments to effectively fight fraud and corruption in the department.

1.1 Policy Statement

Incidents of fraud and corruption are viewed as a major setback which pose serious potential risks to the department's assets, service delivery efficacy and reputation.

The department will not tolerate any form of fraud and corruption, and will employ all possible, permissible and legal means such as instituting disciplinary action and/or criminal investigation/prosecution to decisively deal with implicated officials in such criminal activities in the workplace.

1.2 Legislative Framework

The Sub-Directorate: Fraud Prevention within the Directorate: Ethics, Integrity, Fraud and Risk Management is the sole entity responsible for receiving reports and conducting investigations into allegations of fraud, corruption, theft, maladministration on behalf of the department, and is legally bound by various pieces of legislation. The following key legislation relates to the Sub-directorate: Fraud Prevention activities:

- Constitution of the Republic of South Africa, (Act 108 of 1996), as amended
- Public Finance Management Act, (Act 1 of 1999), as amended
- Treasury Regulations 2002 (issued in terms of PFMA)
- Prevention and Combating of Corrupt Activities Act (Act 12 of 2004)
- Public Service Anti-Corruption Strategy, 2002
- Prevention of Organized Crime Act (Act 121 of 1998)
- Protected Disclosure Act (Act 26 of 2000), as amended
- Promotion of Administrative Justice Act, (Act 3 of 2000)
- Public Service Act (act 103 of 1994), as amended
- Public Service Regulations, 2001, as amended
- Financial Intelligence Centre Act (Act 38 of 2001)
- Promotion of Access to Information Act (Act 2 of 2000)
- Protection of Personal Information Act (Act 4 of 2013), as amended
- Code of Conduct for the Public Service

2. Policy Purpose, Objectives and Principles

2.1 Purpose

This policy is intended to communicate the department's zero-tolerance to fraud and corruption, and to strengthen the existing control systems, policies and procedures of the department with the aim of detecting, prevention, deterring, reacting to and reducing the incidents and impact of fraud and corruption.

2.2 Objectives and Principles

The objective of this policy is to create and promote ethical culture in the department and across the Post School Education and Training (PSET) with the aim of strengthening good governance and accountability.

This policy also aims to set the tone which Top Management of the department commits themselves to rejecting fraud and corruption by communicating the fraud prevention and anti-corruption measures; and decisively dealing with implicated officials in the acts of fraud and corruption in the workplace.

3. Scope of Application

This policy document applies to the following:

- all employees of the department, whether seconded from other departments, institutions, permanent or on contract.
- internal and external stakeholders such as consultants, contractors, suppliers and/or other parties with a business relationship with the department.

4. Reporting Channels

The Protected Disclosure Act (PDA) (Act 26 of 2000) demands that all government departments should create an enabling environment to encourage whistleblowers to report incidents of fraud and corruption without any fear of victimization, discrimination and retaliation from the people they report.

Currently, the department relies on the following internal and external reporting channels to receive reports into allegations of fraud and corruption:

- Fraud email **(fraud@dhet.gov.za)**
- Call center **(0800 87 2222)**
- Walk-ins
- Presidential Hotline **(17737 or president@presidency.gov.za)**
- National Anti-Corruption Hotline (managed by the Office of Public Service Commission (PSC), **0800 701 701**).

The department also receives reports from the office of the Auditor-General (AG) and the Department of Public Service and Administration (DPSA) into of fraud and corruption which necessitated the Sub-directorate: Fraud Prevention to conduct an investigation to test the veracity of the reported allegations.

There are some challenges associated with the afore-mentioned internal and external reporting channels which necessitate the Sub-Directorate: Fraud Prevention to initiate the process of procuring an independent hotline.

The Sub-Directorate: Fraud Prevention always ensures, from the moment reports into allegations of fraud and corruption are received from the whistleblowers until the investigation process is completed, that the confidentiality of the reports as well as identity of whistleblowers (witnesses) are protected.

5. Fraud and Corruption Concepts

5.1 Fraud

In South Africa, the common law offence of fraud is defined as the "unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another" (Snyman C.R). In order to have a better understanding of the concept of fraud, it is important to unpack the Fraud Triangle Theory (FTT) and Fraud Diamond Theory (FDT) illustrated below, both of which demonstrates how opportunistic predators use various forms of deception for dishonest gain.

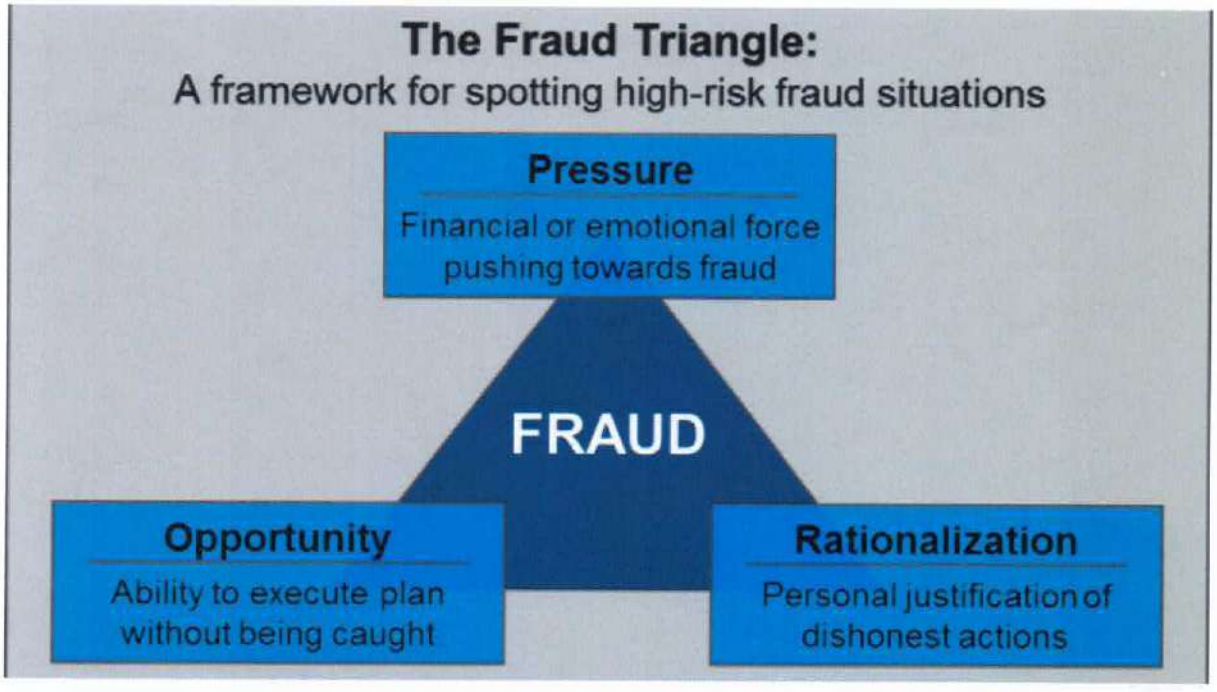

Figure1.1 Cressey's Fraud Triangle Theory

Figure 1.2: Fraud Diamond Theory

To appreciate the similarities and differences between FTT and FDT, it is important to define all the components or pillars of both theories as demonstrated on the above diagrams. Opportunity, pressure, and rationalization all of which will be described below, are the similar components forming part of both the FTT and FDT.

Pressure

It relates to the motivation that leads to unethical or criminal conduct. During national disaster such as COVID-19, financial pressure becomes a major impact on the employees' motivation and is considered the most common type of pressure. This argument is supported by Albrecht et al (2006) that about 95% of all cases of fraud have been influenced by financial pressure.

Opportunity

It is considered the as the most second necessary element for fraud to occur as a result of ineffective control or governance system that allows an individual to commit organizational fraud. According to Kelly and Hartley (2010) the concept of opportunity, suggests that people will take advantage of the circumstances available to them.

Rationalization

It refers to the justification that the unethical conduct is something other than a criminal activity. This concept suggests that the perpetrator must formulate some type of morally acceptable rationalization before engaging in an unethical conduct.

The similarities between the FTT and FDT are clearly highlighted in the components described or defined above, however the FDT extends the thinking beyond rationalization to add a fourth model component called capability which is described below as follows:

Capability

It can be described as the situation of having the necessary traits or skills and abilities for the person to commit fraud. Wilson (2004) discloses that rationalization and capability are all inter-related, and the strength of each element influences the others. Capability considers six other individual abilities and traits that are observable which include position, intelligence, ego, coercion, deceit, and stress.

5.1.1 Fraud indicators

Fraud indicators can take the following different forms:

Internal control weaknesses

- Poor tone of top of department i.e. management's leadership and commitment towards openness, honesty, integrity and ethical behaviour
- Lack of Segregation of duties
- Management override of key existing controls
- Lack of physical safeguards
- Lack of independent checks
- Lack of proper authorization procedures
- Inadequate accounting system
- Lack of employee education
- Lack of clear lines of authority
- Lack of reporting mechanisms

Accounting anomalies

- Unusual deviations from standard accounting practices, resulting in irregularities in the accounting system
- Anomalies in documents, reconciliations, journals entries and financial statements

Operational anomalies

- Unusual relationships, procedures, and events concerning the department's operations
- Transactions/situations involving times, places, people, amounts, or frequencies

Behavioral anomalies

- Living beyond means
- Financial difficulties
- Control issues
- Addiction problems
- Control issues
- Key employee never taking leave or vacation
- Recent divorce or family problems
- Employees who consistently work longer hours than their colleagues for no apparent reason.
- Excessively high or low staff turnover and/or new employees resigning quickly

5.2 Corruption

The general offence of corruption is contained in Section 3 of the Prevention and Combating of Corrupt Activities Act (PRECCA). This section provides that any person who gives, accepts or agrees or offers to accept/ receive any gratification from another person in order to influence such other person in manner will be guilty of corruption.

Corruption in its wider meaning, includes any conduct or behaviour where a person accepts, agrees or offers any gratification for him/her or another person where a person is to act dishonestly or illegally.

Corruption can manifest itself in the following different forms in the public service and elsewhere in the society:

Bribery: it involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of a public servant.

Extortion: coercing of a person or an entity to provide a benefit to a public servant, another person or an entity in exchange for acting in a particular manner.

Embezzlement: is a form of theft where one is in possession of, or has control over assets.

Abuse of power: the use by a public servant of his/her vested authority to improperly benefit another public servant, person (or using the vested authority to improperly discriminate against another public servant or person).

Conflict of interest: the failure by a public servant to act or to consciously fail to act on a matter the public servant has an interest or another person that had some form of relationship with the public servant has some interest.

Abuse of privileged information: the use of privileged information and knowledge that a public servant as a result of his or her office to provide an unfair advantage to another person or entity to obtain a benefit, or to accrue a benefit for himself or herself.

6. Components of the Fraud Prevention Strategy

In order to effectively fight fraud and corruption, the department is required to align its strategy to the following components of the anti-corruption best practices:

- Prevention
- Detection
- investigation
- Resolution

6.1 Prevention

A combination of a number of preventative strategies and initiatives can go a long way in reducing the incidents of fraud and corruption in the department. The department should employ the following prevention strategies to deal with fraud and corruption in the workplace:

Employee awareness and training

Awareness sessions and workshops play a pivotal role in the prevention, detection and reporting of fraud and corruption by raising level of awareness and sensitizing employees on how fraud and corruption are manifested in the workplace. Other awareness initiatives may include the following:

- Internal circulars/ email and intranet communications

- Pamphlets, posters, boards and other promotional material
- Other strategies created by management/ other stakeholders

In addition to these awareness sessions and workshops, all employees should receive training on the following:

- Fraud Prevention Strategy
- Whistleblowing Policy
- Fraud Prevention Plan
- Code of Conduct for the Public Service
- Conflict of Interest Policy
- Ethics and Integrity Management Policy
- DHET values
- Batho Pele Principles

The Sub-Directorate: Fraud Prevention should ensure that employees who attend such awareness sessions and workshops sign an Attendance Register for record purposes.

Pre-employment screening

Human Resource Management should conduct pre-employment screening on all appointment with documentary evidence kept in the employees' personal files. Pre-employment screening must focus on the following:

- Verification of identity
- Verification of all qualifications
- Criminal record
- Reference checks with the most recent employers
- Life style audits
- Credit checks
- Previous disciplinary record

6.2 Detection

Detection strategies for fraud and corruption may include the following:

- Segregation of duties
- Vigilance on the part of employees, including management
- Ad hoc management reviews
- Anonymous reports from whistleblowers
- Criminal record checks on all employees within the system
- Internal audit activity or reports
- Unannounced visits by management to essential directorates and/or branches

6.3 Investigation

Following the receipt of reports into allegations of fraud and corruption, investigations will be initiated to establish the veracity of allegations from the whistleblowers. In the vent the allegations from the whistleblowers are substantiated, the department will initiate disciplinary proceedings, refer the matter to SAPS for criminal prosecution, or any action aimed at the recovery of loses is initiated.

6.4 Resolution

This stage which is also referred to Consequence Management focuses on post-investigation activities where allegations are substantiated and can include but not limited to the following:

6.4.1 Disciplinary action.

The disciplinary actions as part of findings and recommendations of internal investigation will be instituted against the implicated persons. It is important to note that there is no legislation around decisions made, however, management is encouraged to disciplining in a consistent manner as precedent is important for future reference. In instances where there are issues of criminal allegations against the implicated person, the matter should be reported to the relevant law enforcement agencies such as SAPS, HAWKS, SIU and NPA to pursue criminal investigation and prosecution. It should be emphasized that disciplinary hearing and criminal investigation and/or prosecution are independent processes that can be carried out at the same time.

6.4.2 Civil recovery

In terms of Treasury Regulation, the department employ every possible means to recover losses suffered by the state during fraudulent, corrupt and/or misconduct act.

6.4.3 Decision on controls to be developed / reviewed

Management should use the findings of the investigations to address any deficiencies on internal controls to avoid re-occurrence of the incidents that were investigated.

6.4.4 Awareness and communication

As a preventative measure and for transparency purpose, all incidents reported and investigated must be communicated all employees.

6.4.5 Lesson learned

This helps the department to ensure that it is not hit by one scheme more than once.

6.4.6 Updating incidents database for future reference

A proper case register that is updated regularly must be used for future reference, with all the information pertaining to the incident must be recorded and kept, i.e. nature of the incident, how it was investigated and the resolutions that were taken.

6.4.7 Reporting Information about investigated and finalized cases

Proper record of investigation reports as well as exhibits and evidence thereto must be kept safely and readily available to be submitted upon request to other government institutions such as the National Treasury, DPSA, and Auditor-General.

7. Implementation, Monitoring and Evaluation

This policy will be implemented as soon as it is approved by the Accounting Officer (Director-General).

The custodian of this policy is the Accounting Officer (Director-General) who will be supported by all members of the Executive Committee (EXCO) to ensure that the policy is communicated and implemented to all employees, contractors, service providers, stakeholders, and other entities having a business relationship with the department.

The contact of this policy is the Sub-Directorate: Fraud Prevention which is entrusted with the responsibility of recording feedback from stakeholders and policy gaps identified during investigation process for review purposes.

8 Policy Review

The policy contact will be responsible for ensuring that the policy is regularly reviewed and that the timeframe for review are appropriate and adhered to.

The review of this policy will be to be conducted after a three cycle and the appropriate changes effected as deemed necessary.

9. Policy Approval

Consultation meetings were held with critical stakeholders (i.e. Policy development Unit of the department; the principals in both TVET and CET branches) with their inputs and comments incorporated in this policy document. The policy was further presented and discussed with the relevant oversight structures in the department (i.e. Risk Management Committee and Audit Committee) with the meaning contributions thereof also incorporated in the policy document.

The Fraud Prevention Strategy/Policy of the Department of Higher Education and Training is hereby approved.

Signed at Pretoria on this day 10th of August 2022.

Dr S Sishi

Director-General: Higher Education and Training