



# public works

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Department:  
Public Works  
REPUBLIC OF SOUTH AFRICA

**NATIONAL DEPARTMENT OF PUBLIC WORKS**

**ANTI-FRAUD AND CORRUPTION STRATEGY**

8<sup>th</sup> Revision, December 2013

## **1. DEFINITIONS**

### **FRAUD**

In South Africa, the Common Law offence of *fraud* is defined as “the unlawful and intentional making of a misrepresentation which causes actual and/ or potential prejudice to another”. The term “fraud” is also used in a wider sense by the general public.

In this regard, the term is used in this document in its widest possible meaning and is intended to include all aspects of economic crime and acts of dishonesty.

In other words, fraud can be described as any conduct or behavior of which a dishonest representation and/or appropriation forms an element.

### **CORRUPTION**

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

- Illegal or unauthorized performance of such other person's powers, duties or functions;
- An abuse of authority, a breach of trust, or the violation of a legal duty or a set of rules;
- Achievement of an unjustified result; and
- Any other unauthorized or improper inducement to do or not to do anything is guilty of the offence of Corruption.

Corruption in its wider meaning, and as referred to in this document, includes any conduct or behavior where a person accepts, agrees or offers any gratification for him/her or for another person where the purpose is to act dishonestly or illegally. Such

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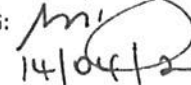
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behavior also includes the misuse of material or information, abuse of a position of authority or a breach of trust or violation of duty.

**Forms of corruption**

Corruption takes various forms in the public service and elsewhere in society. The following are examples of different types of corruption:-

<b>Bribery</b>	Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of public servants
<b>Embezzlement</b>	This involves theft of resources by persons who control such resources
<b>Extortion</b>	Coercion of a person or entity to provide a benefit to a public servant, another person or an entity, in exchange for acting or failing to act in a particular manner
<b>Abuse of Power</b>	The use by a public servant of his or her vested authority to improperly benefit another public servant, person or entity or using vested authority to improperly discriminate against another public servant, person or entity
<b>Conflict of Interest</b>	The failure by a public servant to act or to consciously fail to act on a matter where the public servant has an interest or another person or entity that has some form of relationship with the public servant has an interest
<b>Abuse of Privileged Information</b>	This involves the use, by a public servant of privileged information and knowledge that a public servant possesses as a result of his/ her office to provide unfair advantage to another person or entity to obtain a benefit
<b>Favouritism</b>	The provision of services or resources according to personal affiliation (for example cultural or religious) of a public servant

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<b>Nepotism</b>	A public servant ensuring that family members are appointed to public service positions or that family members receive contracts from the state is regarded as nepotism. These manifestations are by no means exhaustive as corruption appears in many forms and it is virtually impossible to list all of these
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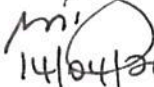
### GLOSSARY OF TERMS

*Throughout this document, unless otherwise stated, the words in the first column below have the meanings stated opposite them in the second column (and cognate expressions shall bear corresponding meanings):*

"Cabinet"	Parliamentary Cabinet of the Republic of South Africa
"CAE"	Chief Audit Executive / Chief Director: Internal Audit and Investigation Services
"Code"	Code of Conduct
"Department"	Department of Public Works
"DG"	Director-General
"SCM"	Supply Chain Management
"BSC"	Bid Steering Committee
"DPSA"	Department of Public Service and Administration
"Fraud Policy"	Fraud Policy and Response Plan
"MISS Policy"	Minimum Information and Security Standards Policy
"PFMA"	Public Finance Management Act, Act No. 1 of 1999
"Plan"	Fraud Prevention Plan effective 1 April 2004
"Protected Disclosures Act"	Protected Disclosures Act, Act 26 of 2000
"SAPS"	South African Police Service
"NPA"	National Prosecution Authority
"NIA"	National Intelligence Agency

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## **INTRODUCTION AND BACKGROUND**

### **BACKGROUND**

#### **1.1. REGULATORY FRAMEWORK**

The following legislations and policies, amongst others, deal with corruption in SA.

- Public Service Anti- Corruption Strategy;
- The code of conduct for the Public Service;
- PFMA and Treasury Regulations;
- Prevention and Combating of Corrupt Activities Act, 12 of 2004;
- Prevention of Organised Crime Act, 121 of 1998;
- Financial Intelligence Centre Act, 38 of 2001; and
- Protected Disclosure Act, 26 of 2000.

#### **1.2. CONSTITUTIONAL REQUIREMENTS**

The preamble of the South African Constitution envisages a society based on democratic values, social justice and fundamental human rights. Government is to be based on the will of the people; the quality of life of all citizens is to be improved and the potential of each person freed. Corruption is one of the greatest threats to the construction of such a society. Corruption is therefore an antithesis to democracy and the rule of law. Corruption diverts resources that are needed to improve the lives of citizens to enrich a few, at great cost to many. Corruption prevents the state from fulfilling its constitutional obligations, erodes the legitimacy of our democratic Government and subverts the rule of law. It gnaws away at the ethical fabric of our society, and stifles economic growth. It has powerful negative effect on foreign investment by destroying investor confidence "*Council of the Advancement of the South African Constitution*"

### **1.3. STATEMENT OF ATTITUDE**

Fraud and corruption represents a significant potential risk to the DPW's assets, service delivery efficiency and reputation. The DPW will not tolerate corrupt or fraudulent activities, whether internal or external to the DPW, and will vigorously pursue and prosecute any parties, by all legal means available, which engage in such practices or attempt to do so.

### **1.4. THE PUBLIC SERVICE ANTI-CORRUPTION STRATEGY**

During 1997, Government initiated a National Anti-Corruption campaign. This campaign progressed to a National Anti-corruption Summit held in April 1999 at which all sectors of society (public and private) committed themselves to establishing sectorial anti-corruption strategies. At the same time, they also committed to the co-responsibility for fighting corruption through the coordination of these sectorial strategies.

The Second National Anti-Corruption Summit was hosted by DPSA and the National Anti- Corruption Forum in 2005. It was attended by Senior Officials from all tiers of Government, Civil Society, Organized Labour and the business community.

In the opening address delivered by the former State President, he re-affirmed the National Government's stance on good governance and commitment to root out fraud and corruption at all levels in the country.

This Strategy is also guided and informed by these Second National Anti-Corruption Summit Resolutions of 2005.

- Promoting Ethics; Awareness and Prevention,
- Combating any likely acts of corruption,
- Strengthening all oversight structures and make them champions of transparency and accountability, and

- Maximizing the role of National Anti-Corruption Forum and implementing its Programme of Action.

### **1.5. THE DPW ANTI-FRAUD AND CORRUPTION STRATEGY**

This document is the latest updated version of DPW's first Fraud Prevention Strategy of 2001.

It is aligned to the Public Service Anti-Corruption Strategy, which is championed by the Department of Public Service and Administration.

The DPW Strategy is guided and informed by the Constitution, specific legislations, and resolutions from the National Anti-Corruption Summits and DPW Conference resolutions.

The Department has demonstrated its commitment to the eradication of fraud and corruption by hosting Anti-Fraud and Corruption conferences in the years 2000, 2001 and 2007. The conferences were attended by officials of National and Provincial Public Works departments.

#### **1.5.1. DPW Five point Anti-corruption Plan (2000)**

- Training of officials.
- Instituting stringent internal control measures.
- Proactive corruption busting investigations.
- Harsh action against officials and service providers involved in corrupt activities, and
- Strengthening financial and administrative capacity



**1.5.2. DPW Anti- Corruption Workshop ( 2001)**

During the 2001 Anti-Corruption Workshop the following resolutions were adopted by the conference as fraud and corruption combating measures

- Structured communication between the National Department of Public Works and the Provincial Departments to root out corruption.
- The implementation of the Fraud Prevention Strategy
- Departmental road shows and publications to promote a climate of fraud awareness and ethical business practices.
- The implementation of a “whistle blowing hotline” as a mechanism for reporting incidents of fraud and corruption.
- Continued investigations into all incidents of fraud and corruption
- Improved internal disciplinary procedures to ensure effective and appropriate action against perpetrators.
- Thorough forensic audits in all the offices of the Department

**1.5.3. DPW Zero Tolerance stance against Fraud and Corruption Conference (2007)**

- Corruptive and/or fraudulent behavior shall not be supported by decision makers.
- All officials in DPW shall perform their duties in a way that would make us proud as civil servants.
- The Department shall ensure that the Chief Directorate: Internal Audit and Investigations is well capacitated to assist the Department to deal with risks exposing the Department to fraud and corruption.
- The Department shall publish the names of individuals/entities involved in corrupt activities and fraudulent practices, including details of the nature of the transgressions and convictions.

## **DPW ANTI-FRAUD AND CORRUPTION STRATEGY**

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- The Department shall ensure that all officials are familiar with the Code of Conduct for the Public Service and other relevant policy documents as well as the obligation to adhere to these policies.
- Senior Management shall buy into the imperative to promote a culture of Corporate Governance.
- The Department shall ensure that preventative measures be integrated in the business processes of the Department.
- The Departments shall ensure that investigations into cases of fraud and corruption be concluded within reasonable time frames.
- The Department, as the custodian of State assets shall preserve such assets and not abuse them.

### **1.5.4. DPW TURNAROUND STRATEGY: PROJECT 5 (Anti-Fraud and Corruption)**

In assuming his role as the Minister of Public Works during October 2011, the Minister identified the fight against fraud and corruption as one of two critical elements (the other being improving operational efficiencies) upon which the DPW Turn-Around Intervention would be founded.

Subsequently, the Minister identified a number of key focus areas as part of the Turn-Around intervention, including fighting fraud and corruption which became known as Project No. Five (5).

The following were established as the key objectives of Project Five (5) initiatives:

- To eradicate incidences of fraud and corruption;
- To raise the profile of fraud and corruption in the DPW;
- To enlist wide-ranging support for anti-corruption measures within the Department;
- To act as a point of consolidation for issues of fraud and corruption across the DPW; and

- To create appropriate Governance and Reporting structures for anti-fraud and corruption

### **1.6. STRATEGY OBJECTIVES**

This strategy incorporates Policy on Anti- Fraud and Corruption. The Strategy policy is intended to set down the stance of the Department on fraud and corruption and to reinforce existing systems, policies, procedures, rules and regulations of the Department aimed at deterring, preventing, detecting, reacting and reducing the likelihood of fraud and corruption.

Furthermore, the purpose of the policy is to confirm the Department's commitment to a culture of zero tolerance to fraud and corruption in all its activities (**Annexure A**).

### **1.7. SCOPE OF APPLICATION**

This Fraud Prevention Strategy covers all areas of business activities executed at all offices by all the officials and service providers of the Department.

**DPW ANTI-FRAUD AND CORRUPTION STRATEGY**

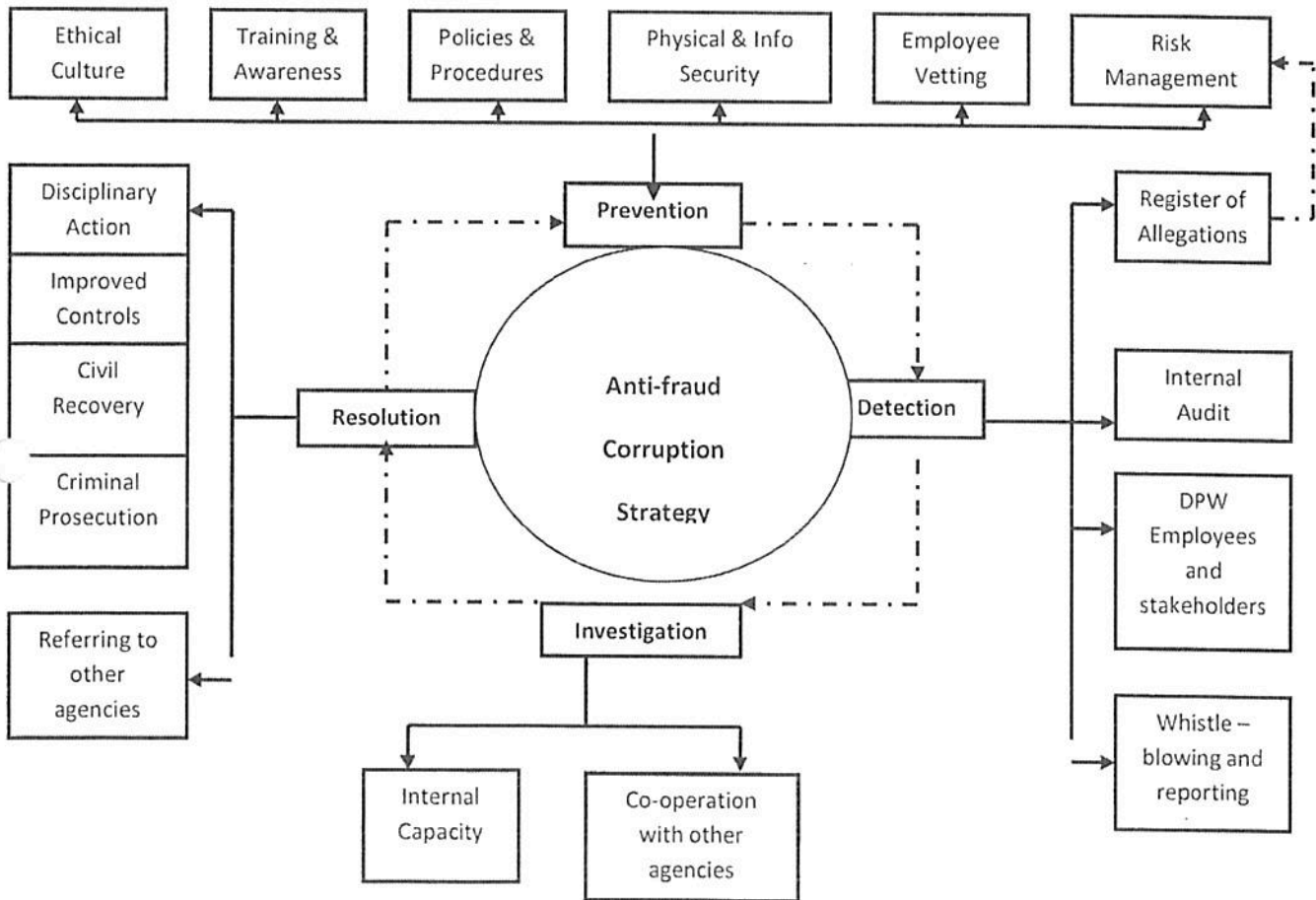
**DPW ANTI-FRAUD AND CORRUPTION STRATEGY**

The anti-fraud and corruption strategy of DPW consists of the following elements:

- Prevention
- Detection
- Investigation
- Resolutions

An illustration of the Strategy is contained in the figure below:

**INTEGRATED ANTI-FRAUD AND CORRUPTION STRATEGY**



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**1. PREVENTION**

**Ethical Culture**

Encourage a culture where all employees, the public and stakeholders behave ethically in their dealings with, or on behalf of DPW.

**Training and Awareness**

Officials shall be trained when they are appointed in the Department in understanding the elements of fraud and corruption in their areas of performance for detection and prevention.

**Policies and Procedures**

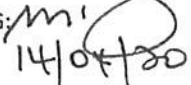
- Officials shall follow policies and procedures of DPW when conducting their functions;
- Improve the application of systems, policies, procedures and regulations; and
- Improve internal control systems that ensure prevention and reduction of the impact of fraud and corruption in the Department.

**Physical and Information Security**

All officials shall be informed about confidentiality of information within the department, for example, in SCM; officials shall not disclose confidential information to the bidders or external parties without proper authorization.

**Employee Vetting**

Vetting shall be done on SMS members within the department in line with the DPWSA and National Treasury requirements, in particular officials working in SCM (BSC) processes.

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**Risk Management**

- o Risk assessment shall be done on an on-going basis to identify and implement corrective actions to prevent fraud and corruption within the Department (**Annexure B**);
- o The Department shall Promote leadership that is committed to the creation of a culture of integrity and restoring confidence in detection against fraud and corruption; and
- o Improve accountability, transparency, efficiency and effective administration within DPW.

**2. DETECTION**

**DPW Register of Allegations**


All reported allegations of fraud and corruption shall be recorded on the fraud register maintained within Internal Audit and Investigation Unit and other functions responsible for registration of fraud and corruption incidents.

**Internal Audit**

Internal Auditors shall report any suspicious activities of fraud and corruption that occurred that might be uncovered during the execution of an audit.

**DPW Employees and Stakeholders**

All officials and stakeholders must report any fraud and corruption occurring within the department.

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### **Whistle-Blowing & Reporting Mechanisms**

Officials shall be encouraged to report incidence of fraud and corruption, by assuring them protection, in accordance with The Protected Disclosure Act.

Officials should be informed that they have a right to remain anonymous; and Feedback shall be given to whistle blowers, to encourage them in reporting any allegation on fraud and corruption activities that is occurring or that might occurred (**Annexure C**).

### **3. INVESTIGATION**

The allegations reported will be screened and evaluated; depending on the outcome, they may subsequently:

- Be regarded as closed (Should no substance be found to support the allegation made, a submission will be made to the Accounting Officer to regard the matter as closed);
- Be investigated internally; and/or
- Referred to National Treasury, SIU, the South African Police Service (SAPS) or any other appropriate law enforcement agency (**Annexure D**).

### **Internal Capacity**

The Department shall maintain the minimum capacity as required by Cabinet memorandum to all State Departments

- The Department shall appoint competent forensic auditors/ investigators;
- Where there is inadequate internal capacity, the Department shall co-source the pro-active and reactive investigations; and
- Forensic specialists shall be involved, where there are skills limitations.

**Co-operation with other agencies**

The Department shall liaise with other agencies where necessary, for example with NT, SAPS, NPA, NIA and other law enforcement agencies.

**4. RESOLUTION**

Any fraud and corruption committed by an employee or any other person in relation to the Department will be pursued to the full extent of the law, including but not limited to:

- disciplinary action within a reasonable period of time after the incident in the case of employees;
- Instituting civil action to recover losses;
- Initiating criminal prosecution by reporting the matter to the SAPS or any other relevant law enforcement agency; and
- Any other appropriate and legal remedy available.

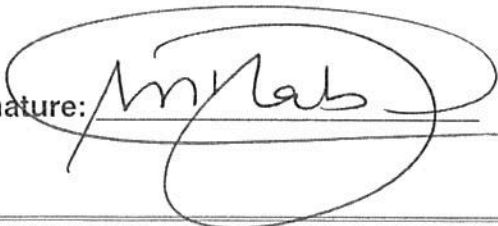
**STRATEGY REVIEW**

The DPW will conduct a review of the Anti-Fraud and Corruption Strategy for every three (years) to determine the effectiveness thereof.

**APPROVAL AND ADOPTION**

Approved by the Director General of the National Department of Public Works,

Mr. M. Dlabantu on this 14<sup>th</sup> day of April 2014

Signature: 





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Department:  
Public Works  
**REPUBLIC OF SOUTH AFRICA**

**ANNEXURE A**

**CODE OF CONDUCT FOR PUBLIC  
SERVANTS**

# Code of Conduct for Public Servants

## DEFINITION

In this document (Chapter 2 of the new Public Service Regulations, July 01 1999), any word or expression to which a meaning has been assigned in the Act, bears the meaning so assigned thereto, and "this Act" means the Public Service Act, 1994, and the regulations issued in terms thereof.

## 1. PURPOSE

In order to give practical effect to the relevant constitutional provisions relating to the Public Service, all employees are expected to comply with the Code of Conduct ('the Code') provided for in this Chapter.

The Code should act as a guideline to employees as to what is expected of them from an ethical point of view, both in their individual conduct and in their relationship with others. Compliance with the Code can be expected to enhance professionalism and help to ensure confidence in the Public Service.

## 2. INTRODUCTION

The need exists to provide guidelines to employees with regard to their relationship with the legislature, political and executive office-bearers, other employees and the public and to indicate the spirit in which employees should perform their duties, what should be done to avoid conflicts of interests and what is expected of them in terms of their personal conduct in public and private life.

Although the Code of Conduct was drafted to be as comprehensive as possible, it does not provide a detailed standard of conduct. Heads of department are, in terms of section 7(3)(b) of the Act, *inter alia* responsible for the efficient management and administration of their departments and the maintenance of discipline. They may therefore, after the matter has been consulted in the appropriate Chamber of the Public Service Bargaining Council, and without derogating from it, supplement the Code of Conduct provided for in this Chapter in order to provide for their unique circumstances. Heads of department should also ensure that their staff are acquainted with these measures, and that they accept and abide by them.

The primary purpose of the Code is a positive one, *viz.* to promote exemplary conduct. Notwithstanding this, an employee shall be guilty of misconduct in terms of Section 20 (t) of the Public Service Act, 1994, and may be dealt with in accordance with the relevant sections of the Act if he or she contravenes any provision of the Code of Conduct or fails to comply with any provision thereof.

## 3. THE CODE OF CONDUCT

### 1. Relationship with the Legislature and the Executive

An employee -

- is faithful to the Republic and honours the Constitution and abides thereby in the execution of his or her daily tasks;
- puts the public interest first in the execution of his or her duties;
- loyally executes the policies of the Government of the day in the performance of his or her official duties as contained in all statutory and other prescripts;
- strives to be familiar with and abides by all statutory and other instructions applicable to his or her conduct and duties; and
- co-operates with public institutions established under legislation and the Constitution in promoting the public interest.

## **2. Relationship with the Public**

An employee -

- promotes the unity and well-being of the South African nation in performing his or her official duties;
- will serve the public in an unbiased and impartial manner in order to create confidence in the Public Service;
- is polite, helpful and reasonably accessible in his or her dealings with the public, at all times treating members of the public as customers who are entitled to receive high standards of service;
- has regard for the circumstances and concerns of the public in performing his or her official duties and in the making of decisions affecting them;
- is committed through timely service to the development and upliftment of all South Africans;
- does not unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language;
- does not abuse his or her position in the Public Service to promote or prejudice the interest of any political party or interest group;
- respects and protects every person's dignity and his or her rights as contained in the constitution; and
- recognises the public's right of access to information, excluding information that is specifically protected by law.

## **3. Relationship among Employee**

An employee -

- co-operates fully with other employees to advance the public interest;
- executes all reasonable instructions by persons officially assigned to give them, provided these are not contrary to the provisions of the Constitution and/or any other law;
- refrains from favouring relatives and friends in work-related activities and never abuses his or her authority or influences another employee, nor is influenced to abuse his or her authority;
- uses the appropriate channels to air his or her grievances or to direct representations;
- is committed to the optimal development, motivation and utilisation of his or her staff and the promotion of sound labour and interpersonal relations;
- deals fairly, professionally and equitably with other employees, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language; and
- refrains from party political activities in the workplace.

## **4. Performance of Duties**

An employee -

- strives to achieve the objectives of his or her institution cost-effectively and in the public's interest;
- is creative in thought and in the execution of his or her duties, seeks innovative ways to solve problems and enhances effectiveness and efficiency within the context of the law;
- is punctual in the execution of his or her duties;
- executes his or her duties in a professional and competent manner;
- does not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties;
- will recuse himself or herself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee;
- accepts the responsibility to avail himself or herself of ongoing training and self-development throughout his or her career;

- is honest and accountable in dealing with public funds and uses the Public services property and other resources effectively, efficiently, and only for authorised official purposes;
- promotes sound, efficient, effective, transparent and accountable administration;
- in the course of his or her official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, mal-administration and any other act which constitutes an offence, or which is prejudicial to the public interest;
- gives honest and impartial advice, based on all available relevant information, to higher authority when asked for assistance of this kind; and
- honours the confidentiality of matters, documents and discussions, classified or implied as being confidential or secret.

#### 5. Personal Conduct and Private Interests

An employee -

- during official duties, dresses and behaves in a manner that enhances the reputation of the Public Service;
- acts responsibly as far as the use of alcoholic beverages or any other substance with an intoxicating effect is concerned;
- does not use his or her official position to obtain private gifts or benefits for himself or herself during the performance of his or her official duties nor does he or she accept any gifts or benefits when offered as these may be construed as bribes.
- does not use or disclose any official information for personal gain or the gain of others; and
- does not, without approval, undertake remunerative work outside his or her official duties or use office equipment for such work.

This document was prepared and developed by the Public Service Commission, and was initially issued as a GOVERNMENT NOTICE/GAZETTE: Regulation Gazette 5947, No. R. 825, on June 10 1997.



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## **ANNEXURE B**

# **BATHO PELE PRINCIPLES**



# EIGHT BATHO PECE PRINCIPLES TO KICKSTART THE TRANSFORMATION OF SERVICE DELIVERY

The Public Service will put the following "People First" principles into practice without delay. And we will step up implementation to arrive at acceptable service levels and quality as soon as possible.

## CONSULTATION

You can tell us what you want from us.

You will be asked for your views on existing public services and may also tell us what new basic services you would like. All levels of society will be consulted and your feelings will be conveyed to Ministers, MECs and legislators.

**THE PRINCIPLE:** You should be consulted about the level and quality of the public services you receive and, wherever possible, should be given a choice about the services that are offered.

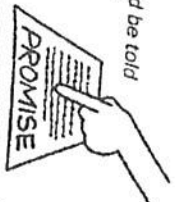


## SERVICE STANDARDS

Insist that our promises are kept.

All national and provincial government departments will be required to publish service standards for existing and new services. Standards may not be lowered! They will be monitored at least once a year and be raised progressively.

**THE PRINCIPLE:** You should be told what level and quality of public services you will receive so that you are aware of what to expect.

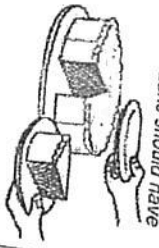


## ACCESS

One and all should get their fair share.

Departments will have to set targets for extending access to public servants and public services. They should implement special programmes for improved service delivery to physically, socially and culturally disadvantaged persons.

**THE PRINCIPLE:** You and all citizens should have equal access to the services to which you are entitled.



## COURTESY

Don't accept insensitive treatment.

All departments must set standards for the treatment of the public and incorporate these into their Codes of Conduct. Values and training programmes. Staff performance will be regularly monitored, and discourtesy will not be tolerated.

**THE PRINCIPLE:** You should be treated with courtesy and consideration.



## INFORMATION

You're entitled to full particulars.

You will get full, accurate and up-to-date facts about services you are entitled to. Information should be provided at service points and in local media and languages. Contact numbers and names should appear in all departmental communications.

**THE PRINCIPLE:** You should be given full, accurate information about the public services you are entitled to receive.

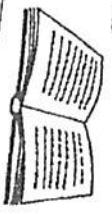


## OPENNESS AND TRANSPARENCY

Administration must be an open book.

You'll have the right to know. Departmental staff numbers, particulars of senior officials, expenditure and performance against standards will not be secret. Reports to citizens will be widely published and submitted to legislatures.

**THE PRINCIPLE:** You should be told how national and provincial departments are run, how much they cost, and who is in charge.



## REDRESS

Your complaints must spark positive action.

Mechanisms for recording any public dissatisfaction will be established and all staff will be trained to handle your complaints fast and efficiently. You will receive regular feedback on the outcomes.

**THE PRINCIPLE:** If the promised standard of service is not delivered, you should be offered an apology, a full explanation and a speedy and effective remedy. When complaints are made, you should receive a sympathetic, positive response.



## VALUE FOR MONEY

Your money should be employed wisely.

You pay income, VAT and other taxes to finance the administration of the country. You have the right to insist that your money should be used properly. Departments owe you proof that efficiency savings and improved service delivery are on the agenda.

**THE PRINCIPLE:** Public services should be provided economically and efficiently in order to give you the best possible value for money.





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Department:  
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**REPUBLIC OF SOUTH AFRICA**

**ANNEXURE C**

**DISCIPLINARY CODE AND PROCEDURES**

**FOR THE PUBLIC SERVICE**

RESOLUTION NO 1 OF 2003

AMENDMENTS TO RESOLUTION 2 OF 1999: DISCIPLINARY  
CODE AND PROCEDURES FOR THE PUBLIC SERVICE

1. SCOPE:

1.1 This agreement applies to the employer and employees –

- (a) who are employed by the State; and
- (b) who fall within the registered scope of the PSCBC.

1.2. This agreement does not apply to the employer and employees covered by a disciplinary code and procedure –

- (a) concluded in a sectoral council and approved by the PSCBC; or
- (b) contained in legislation or regulations.

2. NOTING that the Disciplinary Code and Procedures for the Public Service has been in existence since 1 July 1999 and that there is a necessity to streamline the Code, remove certain ambiguities and effect certain technical changes.

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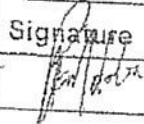
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260 Basden Ave,  
Lytelton, Centurion,  
Pretoria, 0176  
P.O. Box 3123  
Lytelton South, 0175  
Tel: (012) 644-8100  
Fax: (012) 604-8950  
E-mail: [pscbe@mweb.co.za](mailto:pscbe@mweb.co.za)  
Website: <http://www.pscbc.org.za>

All correspondence must be addressed to the Secretary of Council



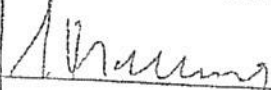



THIS DONE AND SIGNED AT Centurion OF THIS  
28 DAY OF February 2003.

ON BEHALF OF THE EMPLOYER PARTY

	Name	Signature
State as Employer	KHUMBULA NDABA	

ON BEHALF OF TRADE UNION PARTIES

Trade Union	Name	Signature
DENOSA		
HOSPERSA		
NAPTOSA	H. HENDRICKS	
NUPSAW		
NEHAWU	THEMBEKILE SIMO	
POPCRU		
PSA	AN DE CLERCK	
SADTU	T. W. NRESA	
SAPU		

SCHEDULE 1

DISCIPLINARY CODE AND PROCEDURES

1. Parties to the PSCBC adopt the attached Disciplinary Code and Procedures for the public service.

2. Date of implementation

This agreement comes into effect on the date on which the *Public Service Laws Amendment Act 1998 (Act No 86 of 1998)* comes into effect and replaces in total the provisions of the deemed collective agreement referred to in section 18(b) of the Act.

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DISCIPLINARY CODE AND PROCEDURES  
FOR THE PUBLIC SERVICE

1. PURPOSE AND SCOPE

1 The purpose of this Code and Procedures is:

- 1.1 to support constructive labour relations in the public service;
- 1.2 to promote mutual respect between employees and between employees and employer;
- 1.3 to ensure that managers and employees share a common understanding of misconduct and discipline;
- 1.4 to promote acceptable conduct;
- 1.5 to provide employees and the employer with a quick and easy reference for the application of discipline;
- 1.6 to avert and correct unacceptable conduct; and
- 1.7 to prevent arbitrary or discriminatory actions by managers toward employees.

2. PRINCIPLES

2 The following principles inform the Code and Procedure and must inform any decision to discipline an employee.

- 2.1 Discipline is a corrective measure and not a punitive one.
- 2.2 Discipline must be applied in a prompt, fair, consistent and progressive manner.
- 2.3 Discipline is a management function.
- 2.4 A disciplinary code is necessary for the efficient delivery of service and the fair treatment of public servants, and ensures that employees:
  - a. have a fair hearing in a formal or informal setting;
  - b. are timeously informed of allegations of misconduct made against them;
  - c. receive written reasons for a decision taken; and
  - d. have the right to appeal against any decision.
- 2.5 As far as possible, disciplinary procedures shall take place in the place of work and be understandable to all employees.

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- 2.6 If an employee commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings.
- 2.7 Disciplinary proceedings do not replace or seek to imitate court proceedings.
- 2.8 The Disciplinary Code and Procedures constitutes a framework within which departmental policies may be developed to address appropriate circumstances, provided such policies do not deviate from the provisions of the framework.

### 3. SCOPE OF APPLICATION

This Code and Procedure apply to the employer and all employees falling within the registered scope of the Public Service Co-ordinating Bargaining Council. It does not, however, apply to the employer and employees covered by a disciplinary code and procedure,

- 3.1 concluded in a sectoral council and approved by the PSCBC to ensure uniformity of procedures across the public service, or
- 3.2 contained in legislation or regulations.

### 4. CODES, RULES AND STANDARDS

4.1 The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995, insofar as it relates to discipline, constitutes part of this Code and Procedure.

4.2 Employee conduct that may warrant a disciplinary action is listed in Annexure A. This list is not exhaustive. Management may discipline an employee in respect of other conduct, if the employee knew, or ought to have known, that the conduct constituted grounds for disciplinary action.

4.3 In applying Annexure A, management must assess the seriousness of the alleged misconduct by considering:

- a. the actual or potential impact of the alleged misconduct on the work of the public service, the employee's component and colleagues, and the public;
- b. the nature of the employee's work and responsibilities; and
- c. the circumstances in which the alleged misconduct took place.

### 5. PROCEDURES: DISCIPLINARY ACTIONS

5.1 Corrective counselling. In cases where the seriousness of the misconduct warrants counselling, the manager of the employee must:

- a. bring the misconduct to the employee's attention;
- b. determine the reasons for the misconduct and give the employee an opportunity to respond to the allegations;
- c. seek to get agreement on how to remedy the conduct; and
- d. take steps to implement the agreed course of action.

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- 5.2 Verbal warnings. In cases where the seriousness of the misconduct warrants a verbal warning, the manager of the employee may give a verbal warning. The manager must inform the employee that further misconduct may result in more serious disciplinary action, and record the warning.
- 5.3 Written warnings. In cases where the seriousness of the misconduct warrants a written warning, the manager may give the employee a written warning. The following provisions apply to written warnings:
- The written warning may use the form of Annexure B.
  - The manager must give a copy of the written warning to the employee, who must sign receipt of it. If the employee refuses to sign receipt, the manager must hand the warning to the employee in the presence of another employee, and sign in confirmation that the written warning was conveyed to the employee.
  - The written warning must be filed in the employee's personal file.
  - A written warning remains valid for six months. At the expiry of the six months, the written warning must be removed from the employee's personal file and destroyed.
  - If during the six-month period, the employee is subject to disciplinary action on a same or related offence, the written warning may be taken into account in deciding an appropriate sanction.
- 5.4 Final written warnings. In cases where the seriousness of the misconduct warrants a final written warning, the manager may give the employee a final written warning. The following provisions apply to final written warnings:
- The final written warning may use the form of Annexure C.
  - The manager must give a copy of the final written warning to the employee, who must sign receipt of it. If the employee refuses to sign receipt, the manager must hand the warning to the employee in the presence of another employee, and sign in confirmation that the final written warning was conveyed to the employee.
  - The final written warning must be filed in the employee's personal file.
  - A final written warning remains valid for six months. At the expiry of the six months, the final written warning must be removed from the employee's personal file and destroyed.
  - If during the six-month period, the employee is subject to disciplinary action on a same or related offence, the final written warning may be taken into account in deciding an appropriate sanction.
- 5.5 For less serious forms of misconduct, no formal enquiry shall be held.
- 5.6 For the purpose of determining appropriate disciplinary actions, valid warnings for similar offences by the employee shall be taken into account.

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6. SERIOUS MISCONDUCT

If the alleged misconduct justifies a more serious form of disciplinary action than provided in paragraph 5, the employer may initiate a disciplinary enquiry. The employer must appoint an employee as a representative, who as far as possible should be the manager for the employee, to initiate the enquiry.

7. DISCIPLINARY ENQUIRY

7.1 Notice of enquiry

- a. The employee must be given notice at least five working days before the date of the hearing.
- b. The employee must sign receipt of the notice. If the employee refuses to sign receipt of the notice, it must be given to the employee in the presence of a fellow employee who shall sign in confirmation that the notice was conveyed to the employee.
- c. The written notice of the disciplinary meeting must use the form of Annexure D, and provide:
  - i. a description of the allegations of misconduct and the main evidence on which the employer will rely;
  - ii. details of the time, place and venue of the hearing; and
  - iii. information on the rights of the employee to representation by a fellow employee or a representative or official of a recognised trade union, and to bring witnesses to the hearing.

7.2 Precautionary suspension

- a. The employer may suspend an employee on full pay or transfer the employee if
  - i. the employee is alleged to have committed a serious offence; and
  - ii. the employer believes that the presence of an employee at the workplace might jeopardise any investigation into the alleged misconduct, or endanger the well being or safety of any person or state property.
- b. A suspension of this kind is a precautionary measure that does not constitute a judgement, and must be on full pay.
- c. If an employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within a month or 60 days, depending on the complexity of the matter and the length of the investigation. The chair of the hearing must then decide on any further postponement.

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7.3 Conducting the disciplinary hearing

- a. The disciplinary hearing must be held within ten working days after the notice referred to in paragraph 7.1(a) is delivered to the employee.
- b. The chair of the hearing must be appointed by the employer and be an employee on a higher grade than the representative of the employer.
- c. The employer and the employee charged with misconduct may agree that the disciplinary hearing will be chaired by an arbitrator from the relevant sectoral bargaining council appointed by the council. The decision of the arbitrator will be final and binding and only open to review in terms of the *Labour Relations Act, 1995*. All the provisions applicable to disciplinary hearings in terms of this Code will apply for purposes of these hearings. The employer will be responsible to pay the costs of the arbitrator.
- d. If the employee wishes, she or he may be represented in the hearing by a fellow employee or a representative of a recognised trade union.
- e. If necessary, an interpreter may attend the hearing.
- f. In a disciplinary hearing, neither the employer nor the employee may be represented by a legal practitioner, unless –
  - (i) the employee is a legal practitioner or the representative of the employer is a legal practitioner and the direct supervisor of the employee charged with misconduct; or
  - (ii) the disciplinary hearing is conducted in terms of paragraph 7.3.c.

For the purposes of this agreement, a legal practitioner is defined as a person who is admitted to practice as an advocate or an attorney in South Africa.

- g. If the employee fails to attend the hearing and the chair concludes that the employee did not have a valid reason, the hearing may continue in the employee's absence.
- h. The chair must keep a record of the notice of the disciplinary hearing and the proceedings of the meeting.
- i. The chair will read the notice for the record and start the hearing. ✓
- j. The representative of the employer will lead evidence on the conduct giving rise to the hearing. The employee or the employee's representative may question any witness introduced by the representative of the employer.
- k. The employee will be given an opportunity to lead evidence. The representative of the employer may question the witnesses.

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- l. The chair may ask any witness questions for clarification.
- m. If the chair decides the employee has committed misconduct, the chair must inform the employee of the finding and the reasons for it.
- n. Before deciding on a sanction, the chair must give the employee an opportunity to present relevant circumstances in mitigation. The representative of the employer may also present aggravating circumstances.
- o. The chair must communicate the final outcome of the hearing to the employee within five working days after the conclusion of the disciplinary enquiry, and the outcome must be recorded on the employee's personal file.

#### 7.4 Sanctions

- a. If the chair finds an employee has committed misconduct, the chair must pronounce a sanction (within the period referred to in clause 7.3.o), depending on the nature of the case and the seriousness of the misconduct, the employee's previous record and any mitigating or aggravating circumstances. Sanctions consist of:
  - i. counselling;
  - ii. a written warning valid for six months;
  - iii. a final written warning valid for six months;
  - iv. suspension without pay, for no longer than three months;
  - v. demotion;
  - vi. a combination of the above; or
  - vii. dismissal.
- b. If an employee is demoted, she/he may only, after a year, apply for promotion to a higher advertised post without prejudice.
- c. The employer shall not implement the sanction during an appeal by the employee.

#### 8. Appeal

- 8.1 An employee may appeal a finding or sanction by completing Annexure E.
- 8.2 The employee must, within five working days of the receiving notice of the final outcome of a hearing or other disciplinary procedure, submit the appeal form to her or his executing authority, or to her or his manager, who shall then forward it to the appeal authority.

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- 8.3 The appeal authority may, on good cause shown, condone the late lodging of an appeal.
- 8.4 The appeal authority, who shall consider the appeal, shall be:
- a. the executing authority of the employee, or
  - b. an employee appointed by the executing authority, who
    - i. was not involved in the decision to institute the disciplinary proceeding, and
    - ii. who has a higher grade than the chair of the disciplinary hearing.
- 8.5 If the person referred to in paragraph 8.4 requires a hearing, she or he shall notify the employee of the date and place.
- 8.6 The appeal authority may
- a. uphold the appeal, and/or
  - b. reduce the sanction to any lesser sanction allowed in terms of clause 7.4.a of the Code, or
  - c. confirm the outcome of the disciplinary proceeding.
- 8.7 The employer shall immediately implement the decision of the appeal authority. Where the appeal authority decides to reduce the sanction or to confirm the outcome of the disciplinary proceedings (e.g. dismissal cases), the sanctions will be implemented by the employer from a current date.
- 8.8 Departments must finalise appeals within 30 days, failing which, in cases where the employee is on precautionary suspension, he/she must resume duties immediately and await the outcome of the appeal while on duty.

Note: The employee retains the right to utilise dispute-settlement mechanisms provided under the Labour Relations Act.

#### DEFINITIONS

"employer" means the head of department or any member of his/her department designated to perform the specific action, unless the context indicates otherwise.

"fellow employee" means an employee from the same office/institution than the employee charged with misconduct, except full-time shop stewards.

"recognised trade union" means all the unions admitted to the PSCBC as well as any other union that enjoys organisational rights from a particular department (the latter union is recognised for the particular department only).

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3. THEREFORE the parties resolve –

- (a) to amend Resolution 2 of 1999 as indicated in the attached ~~Annex~~ <sup>Schedule 1</sup> ~~ure A~~
- (b) that the provisions of the amended disciplinary procedure remain applicable to members of the Senior Management Service of the public service until such time as the Minister for the Public Service and Administration issues a directive to cover the disciplinary matters of this group of employees; and
- (c) that for purposes of paragraph 3(b), if the employee charged with misconduct is a head of department –
- (i) the presiding officer must be an executing authority or another person with appropriate knowledge designated by the Cabinet or the Provincial Executive Council.
  - (ii) the relevant Premier (in respect of a provincial head of department) or the President (in respect of a head of a national department or organisational component) must consider the appeal. If either the Premier or President is involved in the initial disciplinary proceedings against the head of department, the appeal must be dealt with by a panelist of the relevant sectoral bargaining council in the public service.
  - (iii) the definition of "employer" means the relevant executing authority.

4. DISPUTE RESOLUTION

Any dispute arising from the provisions of this resolution will be dealt with in terms of the PSCBC dispute resolution procedure, unless the Act provides otherwise.

5. IMPLEMENTATION

This agreement comes into effect from the date of signing.

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## ACTS OF MISCONDUCT

- An employee will be guilty of misconduct if she or he, among other things (this list is not exhaustive):*
- Fails to comply with, or contravenes an Act, regulation or legal obligation.
  - Wilfully or negligently mismanages the finances of the State.
  - Without permission possesses or wrongfully uses the property of the State, another employees and/or a visitor.
  - Wilfully, intentionally or negligently damages and or causes loss of state property.
  - Endangers the lives of self or others by disregarding safety rules or regulations.
  - Prejudices the administration, discipline or efficiency of a department, office or institution of the State.
  - Misuses his or her position in the public service to promote or to prejudice the interest of any political party.
  - Steals, bribes or commits fraud.
  - Accepts any compensation in cash or otherwise from a member of the public or another employee for performing her or his duties without written approval from the department.
  - Fails to carry out a lawful order or routine instruction without just or reasonable cause.
  - Absents or repeatedly absents him/herself from work without reason or permission.
  - Commits an act of sexual harassment.
  - Discriminates against others on the basis of race, gender, disability, sexuality or other grounds outlawed by the Constitution.
  - Performs poorly or inadequately for reasons other than incapacity.
  - Without written approval from her or his department, performs work for compensation in a private capacity for another person or organisation either during or outside working hours.
  - Without authorisation, sleeps on duty.
  - While on duty, is under the influence of an intoxicating, illegal, unauthorised, habit-forming and/or stupefying drug, including alcohol.
  - While on duty, conducts herself or himself in an improper, disgraceful and unacceptable manner.
  - Contravenes any prescribed Code of Conduct for the public service.
  - Assaults, or attempts or threatens to assault, another employee or person while on duty.
  - Incites other personnel to unprocedural and unlawful conduct.
  - Displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour.
  - Intimidates or victimises fellow employees.
  - Prevents other employees from belonging to any trade union or body.
  - Operates any money lending scheme for employees for own benefit during working hours or from the premises of the public service.
  - Carries or keeps firearms or other dangerous weapons on state premises, without the written authorisation of the employer.
  - Refuses to obey security regulations.
  - Gives false statements or evidence in the execution of his or her duties.
  - Falsifies records or any other documentation.
  - Participates in unprocedural, unprotected and/or unlawful industrial action.
  - Commits a common law or statutory offence while on state premises.

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Department:  
Public Works  
**REPUBLIC OF SOUTH AFRICA**

## **ANNEXURE D**

# **INVESTIGATION PROCESS FLOW**



public works

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Department:  
Public Works  
REPUBLIC OF SOUTH AFRICA

**DPW FRAUD PREVENTION STRATEGY**

**8<sup>TH</sup> Revision, December 2013**

**DPW INVESTIGATION PROCESS FLOW**

## **DPW – INVESTIGATIVE PROCESS FLOW**

The following are the phases of an investigation process when a suspicion of fraud and corruption is reported:

### **1. REPORTING**

As a first step, employees should normally raise allegations of fraud, corruption and maladministration with their immediate Manager or their Superior. This depends, however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice.

All employees and stakeholders are encouraged to utilise other reporting mechanisms available to report incidents of fraud, corruption and maladministration, the following avenues are available for reporting within the Department:-

- Chief Audit Executive – 012 406 1335;
- Director: Fraud Awareness and Investigation – 012 406 1328;
- Talk to DG, talk to Deputy Minister, talk to Minister on the DPW website; and
- Anonymously on the National Anti-Corruption Hotline 0800 701 701.

The National Anti- Corruption Hotline managed by the Public Service Commission, shall then refer the matter to the DG who shall refer it to the Chief Audit Executive.

### **2. EXIMINATION / SCREENING**

The Directorate: Fraud Awareness and Investigations shall perform an examination to determine whether the matter shall be subjected to a forensic investigation.

Should a matter not be referred for investigation, a preliminary report with findings and recommendations shall be submitted to the Director General to consider the matter as closed.

### **3. INVESTIGATION**

All serious and material cases shall be investigated by the Directorate Fraud Awareness and Investigations.

During the investigation, the Directorate shall involve where necessary other role players i.e. Specialists/ Consultants, South African Police Service, National Prosecuting Authority and Security Services.

### **4. CONSIDERATION OF FINDINGS AND RECOMMENDATIONS**

After each investigation the Chief Audit Executive shall submit a detailed report with findings and recommendations to the Director General for his noting, approval of recommendations contained in the report and secure implementation of the recommendations.

### **5. MONITORING AND FEEDBACK**

The Chief Audit Executive will monitor progress on actions taken and provide feedback to the Director General and the Audit and Risk Management Committee.

DPW INVESTIGATION PROCESS FLOW

ILLUSTRATION 5.1

