

Fraud and Corruption Control Policy

October 2018

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1. Objectives

The objectives of the Fraud and Corruption Control Policy are to:

- promote ethical, professional conduct and risk-aware decision making by EPA staff
- protect the reputation of the EPA as an honest and credible regulator
- prevent, detect and respond appropriately to allegations and incidents of fraud or corruption
- assign accountability and responsibility for implementation of fraud and corruption control arrangements
- ensure public finances and public assets, including government information, are protected.

2. Definitions

2.1 Fraud

Fraud is both a civil wrong and a criminal offence. Fraud involves obtaining an unjust advantage or causing a disadvantage, through deception or dishonesty. Fraud is a serious indictable offence and it is a criminal offence if a person who knows or believes that fraud has been committed, and has information that might be of assistance, fails to report fraud to the NSW Police Force without a reasonable excuse.

Fraud also constitutes corrupt conduct where the conduct could adversely affect the exercise of official functions by a public official or public authority.

2.2 Corrupt conduct

Part 3 of the *Independent Commission Against Corruption Act 1988* (the Act) defines corrupt conduct. Corrupt conduct can take many forms and is not always easy to recognise. Broadly, the NSW statutory definition of corrupt conduct involves the conduct of any person (whether or not a public official) that:

- could adversely affect the honest and impartial exercise of official functions by a public official or
- impairs, or could impair, public confidence in public administration.

Corrupt conduct also involves any conduct of a public official that constitutes or involves:

- the dishonest or partial exercise of their official functions
- a breach of public trust or
- misuse of information they have acquired in the course of their official functions.

Conduct is not corrupt conduct unless it could constitute or involve:

- a criminal offence
- grounds for disciplinary action or
- reasonable grounds for dismissing a public official.

The Act imposes a duty on the EPA Chair and CEO to report to the Independent Commission Against Corruption (ICAC) any matter suspected on reasonable grounds to concern, or which may concern, corrupt conduct.

3. Factors conducive to fraud and corruption

Fraud and corruption are influenced by:

- the predispositions and motivations of individuals
- ethical, cultural and group norms
- the value (to other parties) of assets held by an organisation
- exposures to criminal networks
- organisational and individual awareness of fraud and corruption opportunities/risks and
- the selection and effectiveness of organisational control mechanisms.

The EPA's fraud and corruption risks, given its context as an environmental regulator and a public sector agency, and the EPA's mechanisms for prevention and detection are dealt with in the EPA's Fraud and Corruption Control Plan (forthcoming).

4. Scope

This policy applies to all EPA staff, including ongoing, temporary or casual employees; labour hire (contractors who are working as though they were EPA staff); and seconded staff. It does not apply to contractors who are not representing the EPA but are providing professional services to the EPA.

Compliance with this policy is mandatory and forms part of the contract of employment for employees. Failure to comply with this policy may lead to disciplinary action.

5. Responsibilities

The EPA has no tolerance for any form of fraud or corruption.

The public have a right to expect that EPA staff at all levels perform their duties in the public interest, avoid conflicts of interests and carry out their work in a fair and impartial way. While a conflict of interests is not by itself corrupt conduct, corrupt conduct usually involves a conflict of interests.

All staff are responsible for:

- understanding and following this policy
- acting lawfully, ethically and honestly
- acting only within their expressly delegated authority
- complying with EPA policies, procedures and guidelines
- declaring relationships or associations with licensees, staff of regulated entities and persons of interest
- declaring conflicts of interests
- assisting with the identification and assessment of fraud and corruption risks
- promptly reporting instances of suspected fraud or corrupt conduct and
- helping with investigations.

The Chair and CEO is responsible for:

- setting the tone at the top, by demonstrating commitment to this policy
- promoting an ethical culture
- understanding the fraud and corruption risks facing the EPA and
- complying with mandatory reporting requirements about any matter suspected to concern corrupt conduct.

Senior Executives are responsible for:

- setting the tone at branch level, by demonstrating commitment to this policy
- promoting an ethical culture
- ensuring all declared relationships, associations and conflicts of interests are severed if not manageable and otherwise are appropriately managed
- ensuring all branch staff are aware of this policy and related policies (see section 6)
- understanding the fraud and corruption risks facing the EPA and relevant branch
- implementing this policy and
- implementing the Fraud and Corruption Control Plan.

The **Corporate Services Branch**, including the Chief Audit Executive and the Chief Risk Officer, are responsible for supporting staff in understanding and complying with their responsibilities by:

- developing and maintaining a suite of ethical conduct policies and procedures
- providing practical advice to assist staff to identify and respond to suspected fraud or corrupt conduct
- assisting Senior Executives in developing a Fraud and Corruption Control Plan and
- advising and assisting Senior Executives in implementing the Fraud and Corruption Control Plan.

The **Finance, Audit and Risk Committee** responsibilities, set out in its Charter, include reviewing:

- whether management has taken steps to embed a culture that is committed to ethical and lawful behaviour
- risk-management plans and providing advice to the agency head
- whether management's approach to maintaining an effective internal control framework, including over external parties (such as contractors and advisors), is sound and effective and
- the EPA's Fraud and Corruption Control Plan and being satisfied that the EPA has appropriate processes and systems in place to capture and effectively investigate fraud-related information.

6. Reporting

Reporting actual or suspected fraud or corruption is in the public interest. All employees have an obligation to report suspected or detected instances of fraud or corruption. It is better to report suspicions than not report a matter that may amount to fraud or corruption.

Employees may make a report to:

- their supervisor or manager
- a Senior Executive
- the Director, Corporate Services; the Manager, Finance, Risk and Governance/Chief Audit Executive; or the Senior Governance Officer/Chief Risk Officer
- the Chair and CEO
- ICAC (for corrupt conduct)
- the Audit Office of NSW (for serious and substantial waste)
- the NSW Ombudsman (for maladministration)
- the NSW Police Force (for fraud).

Reports may be made orally or in writing. Anonymous reports will also be accepted (contact Environment Line).

Employees may also make a public interest declaration to nominated Disclosure Officers (see the EPA Addendum to the Public Interest Disclosures Policy).

EPA staff receiving a report or complaint of suspected fraud or corruption should promptly refer the matter on a confidential basis to the Director, Corporate Services, for appropriate review and referral.

The Chair and CEO, or delegate, will determine responses to reports of suspected fraud or corruption, including external reporting, preliminary inquiry, investigation, disciplinary action and recovery action as appropriate in each instance.

The Chair and CEO or the Chief Audit Executive reports regularly on probity issues to the Finance, Audit and Risk Committee.

7. How the EPA deals with allegations

The EPA reports allegations of corrupt conduct or which may concern corrupt conduct to ICAC.

In some cases, an employee about whom an allegation has been received may have some work matters reallocated to other staff or the employee may be reallocated to another team or workplace. This does not reflect a presumption by the EPA of employee wrongdoing; it is precautionary.

The EPA is also aware that individuals who are subject to EPA compliance and enforcement action, or whose environmental issue has not been resolved to their satisfaction, may sometimes respond by making allegations of corrupt conduct. The EPA does not allow such allegations to prevent or disrupt appropriate regulatory actions.

Allegations need to be dealt with confidentially and it is generally inappropriate to make staff aware of an allegation or how it is being dealt with.

ICAC assesses all reports it receives to decide what action to take. ICAC may decide to commence an investigation, or ask the EPA to investigate the matter and report back, or refer to the EPA an allegation that ICAC has received from another source. If the EPA decides to investigate, it may conduct an internal review or engage an external investigator.

The EPA provides a status report to each meeting of the Finance, Audit and Risk Committee of the Board.

8. Related documents

This policy contributes to meeting the requirements of Treasury's Circular TC18-02 for all NSW public sector agencies to develop, implement and maintain a fraud and corruption control framework to prevent, detect and manage fraud and corruption.

In addition to this policy, the EPA has a number of policies and procedures with provisions designed to promote ethical conduct:

- Cluster Shared Services Records Management Policy
- EPA Code of Ethics and Conduct
- EPA Complaint Handling Policy
- EPA Compliance Management Framework
- EPA Delegations
- EPA Gifts and Benefits Policy
- EPA Grants Management Policy
- EPA Sponsorship Policy
- EPA Sponsorship Procedures

- EPA Statement of Business Ethics
- Managing Misconduct and Serious Misconduct Policy
- OEH Public Interest Disclosure Policy and EPA Addendum
- Privacy Management Plan
- Private and Secondary Employment Policy.

9. Legislation and guidance

9.1 Legislation

Relevant legislation, including subordinate legislation, includes the:

- *Crimes Act 1900*
- *Government Sector Employment Act 2013*
- *Government Sector Employment Regulation 2014*
- *Government Sector Employment Rules 2014*
- *Independent Commission Against Corruption Act 1988*
- *Lobbying of Government Officials Act 2011*
- *Ombudsman Act 1974*
- *Privacy and Personal Information Protection Act 1998*
- *Protection of the Environment Administration Act 1991*
- *Protection of the Environment Operations Act 1997*
- *Public Finance and Audit Act 1983*
- *Public Interest Disclosures Act 1994*
- *State Records Act 1998*
- Treasurer's Directions
- Premier's Memorandum M2014 – 13 NSW Lobbyists Code of Conduct.

9.2 Guidance

Guidance on fraud and corruption control is available from the following sources.

- <https://www.icac.nsw.gov.au/>
- <http://www.ccc.qld.gov.au/>
- <http://www.ibac.vic.gov.au/>

10. Monitoring and review

The EPA will review this policy every two years and will review and update its risk-based Fraud and Corruption Control Plan in 2018 and subsequently at least every two years.

11. Support and advice

For further advice and information on fraud and corruption issues, including how to report, you should contact one of the following.

- Senior Governance Officer 9995 5404
- Manager, Finance, Risk and Governance 9995 6177
- Director, Corporate Services 9585 6822

For external advice and information on fraud and corruption issues you may wish to contact one of the following.

- ICAC – 02 8281 5999
- Audit Office – 02 9275 7100
- Public Service Commission – 02 9272 6000
- NSW Police Force – Crime Stoppers – 1800 333 000