



Western Cape
Government

Department of the Premier

Whistle-blowing Policy

December 2021

FOREWORD BY THE PREMIER AND WHISTLE-BLOWING POLICY STATEMENT

Whistle-blowers are often unjustifiably labelled as *menaces*, *iphela*, *impimpi* and *moeilikheidmakers*. The truth is that whistle-blowers often risk victimisation and reproach, rather than being recognised for doing the right thing by reporting criminality and improprieties. It is an important tool in pursuit of good governance, exposing corruption and ensuring accountability, provided that whistle-blowing takes place responsibly and within the parameters of the law.

The Protected Disclosures Act, No. 26 of 2000, which is applicable to whistle-blowing, was amended in 2017 to extend the protection offered by the Act to current and former employees, 'workers' defined as contractors, consultants, agents or persons who render services while being employed by a temporary employment service. The Act also places a duty on any person to whom a protected disclosure has been made to decide whether to investigate or refer the matter to another and to inform the whistle-blower accordingly. It also criminalises the intentional disclosure of false information in certain circumstances.

In September 2018 regulations relating to the Protected Disclosures Act were promulgated which expanded the list of persons and bodies to whom a protected disclosure can be made. The regulations also introduced new obligations on employers and make provisions for employees or workers that must be adhered to in order to avoid duplicate investigations by persons or bodies.

The Western Cape Government is committed to the fight against crime and improprieties, whether committed by employees or external persons. Our employees need to be aware of the existence of the various channels available to them to make disclosures. They need to know how these channels work, what their own responsibilities are when making disclosures and understand the remedies available to them. Finally, the Western Cape Government must facilitate and safeguard responsible whistle-blowing and duly consider the information reported by whistle-blowers for investigation or other action.

This policy is part of our resolve to promote good governance and to create an environment of zero tolerance towards corruption, criminality and improprieties.

Alan Winde

Premier of the Western Cape

CONTENTS

Glossary and Definitions

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1. Purpose of this Policy	6
2. Scope of the Policy.....	6
3. Who can make a disclosure?.....	7
4. Culture of Transparency.....	8
5. Requirements and how to make a disclosure.....	9
6. Duty to report / make disclosures.....	13
7. Duty to inform employee or worker.....	14
8. Confidentiality.....	15
9. Protection of whistle-blowers.....	16
10. Maintenance.....	19

GLOSSARY AND DEFINITIONS

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

Term	Meaning
Code of Conduct	Code of Conduct for Public Servants contained in the latest Public Service Regulations, issued in terms of the Public Service Act of 1994
Corruption	The offering or accepting of gratification as an inducement or reward for certain improper actions. A detailed definition is included in Annexure "A" to this document.
Employee	Any person, excluding an independent contractor, who works or worked for the WCG and who receives or received, or is entitled to receive, any remuneration; and any other person who in any manner assists or assisted in carrying on or conducting or conducted the business of the WCG.
Fraud	The act of intentionally and unlawfully making a misrepresentation to the actual or potential prejudice of another. A detailed definition is included in Annexure "A" to this document.
Good faith	The deployment of an honest intention with an absence of malice or some other ulterior purpose or motive.
HOD	Head of Department
NACH	National Anti-Corruption Hotline
PRECCA	Prevention and Combating of Corrupt Activities Act, No 12 of 2004
PFS	Provincial Forensic Services of the Western Cape Government
Protected disclosure	A disclosure made to a legal adviser, an employer, a member of Cabinet or of the Executive Council of a province, the Public Protector, the South African Human Rights Commission, the Commission for Gender Equality, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Public Service Commission, the Auditor-General or a person or body prescribed in terms of the Act; and which is made in accordance with the requirements explained in paragraph 5 of this policy. It does not include a disclosure in respect of which the

Term	Meaning
	employee concerned commits an offence by making that disclosure or made by a legal adviser to whom the information concerned was disclosed in the course of obtaining legal advice.
Regulations	Regulations made by the Minister of Justice and Correctional Services relating to Protected Disclosures, 2018
Strategy	Anti-Fraud and Corruption Strategy of the Western Cape Government
Substantially true	It is sufficient that the employee believes that the available evidence suggests that wrongdoing occurred and does not require the belief that it has actually or definitely occurred.
The Act	Protected Disclosures Act, No 26 of 2000 as amended.
Theft	The unlawful, intentional appropriation of property with the intention to permanently deprive the rightful owner of such property. A more detailed definition is included in Annexure "A" to this document.
WCG	Western Cape Government
Worker	Any person who works or worked for the WCG; or any person who in any manner assists or assisted in carrying on or conducting or conducted the business of the WCG as an independent contractor, consultant, agent; or any person who renders services to the WCG while being employed by a temporary employment service.

1. PURPOSE OF THE POLICY

- 1.1 Whistle-blowing is regulated by the Protected Disclosures Act, No 26 of 2000 (**the Act**), as amended by the Protected Disclosures Amendment Act, No 5 of 2017 (**the Amendment Act**) which came into effect in August 2017. The Act provides for procedures in terms of which employees or workers may disclose information about unlawful conduct (as listed in paragraph 2.2 below) by their employers or other employees or workers. It also provides protection to employees or workers who make disclosures in defined circumstances.
- 1.2 Regulations relating to Protected Disclosures (**the Regulations**) were promulgated on 14 September 2018. The Regulations provide an expanded list of persons and bodies to whom a protected disclosure can be made, it has introduced new obligations on employers, and makes provisions for employees or workers that have to be adhered to in order to avoid duplicate investigations. This policy therefore replaces the Whistle-blowing Policy that was adopted by Cabinet on 18 July 2018.
- 1.3 The purpose of this policy is to provide guidelines to employees or workers on how to raise concerns with the appropriate line management, specific designated persons in the WCG or external institutions, where they have reasonable grounds for believing that offences or improprieties have been or are being perpetrated affecting the WCG. It also seeks to explain the remedies that might be available to whistle-blowers.
- 1.4 The WCG encourages employees or workers to raise matters of concern responsibly through the procedures laid down in this policy and commits to giving due consideration to the information disclosed for investigation or other action. The WCG further commits to ensuring, as far as possible, that proper support is provided to these employees and workers to safeguard them from being subjected to occupational detriment.

2. SCOPE OF THE POLICY

- 2.1 The policy deals with concerns raised by whistle-blowers relating to unlawful or wrongful conduct in the WCG (see paragraph 2.2 below). The policy will not apply to personal grievances, which will be dealt with under existing procedures on grievance, discipline and misconduct. Details of these procedures are obtainable from the relevant People Management Unit. If, in the course of assessment or investigation, any concern raised appears to relate more appropriately to grievance

or discipline, those procedures will be evoked by referral to the appropriate functionary.

- 2.2 The policy covers disclosures by an employee or worker having reason to believe that the following occurred, which applies to concerns relating to past, present or future acts or omissions:
 - 2.2.1 Crime (e.g. fraud, theft, corruption, assault);
 - 2.2.2 Failure to comply with any legal duty (e.g. negligence, breach of contract, breach of administrative law);
 - 2.2.3 Miscarriage of justice (e.g. wrongful conviction);
 - 2.2.4 Danger to health and safety (e.g. defective equipment which may cause harm);
 - 2.2.5 Damage to the environment (e.g. hazardous substances, incorrect land use, pollution);
 - 2.2.6 Unfair discrimination as defined in national laws (e.g. discrimination based on race, gender, age, religion); or
 - 2.2.7 Deliberate cover-up of any of the matters referred to in paragraph 2.2.1 to 2.2.6 (e.g. concealment of documents, prohibition on free speech).
- 2.3 Annexure C provides guidelines of the minimum information required when making a disclosure.

3. WHO CAN MAKE A DISCLOSURE?

- 3.1 Current or former employees and current or former workers (e.g. consultants who work for WCG – see definition above).
- 3.2 Any other person (e.g. members of the public) may blow the whistle to the WCG, and such concerns would be considered for investigation, however such persons do not fall within the scope of protection of the Act.
- 3.3 An employee or worker, who has a reasonable belief that there is an act relating to any of the matters mentioned in paragraph 2.2 above, may raise a concern under the procedure explained in paragraph 5. The issues raised may relate to an action of a manager, another employee, a group of employees, the employee's own

section or a different section of the employee's department or a system or procedure in use, which may cause the WCG to transgress legal obligations.

- 3.4 Disclosures must be raised in good faith (i.e. the deployment of an honest intention with an absence of malice or some other ulterior purpose or motive.). In this respect, it is important to note that in terms of section 9B of the Act an employee or worker who intentionally and knowingly discloses false information (or who ought reasonably to have known that the information is false) intending to cause harm and the affected party suffered harm, is guilty of an offence.

4. CULTURE OF TRANSPARENCY

The WCG commits itself to encouraging a culture that promotes openness. This will be achieved by:

- 4.1 Involving employees, listening to their concerns and encouraging the appropriate use of this policy on whistle-blowing. This will be promoted by Senior Management and expressly committed to by management in the WCG. This policy will be issued to all existing employees and workers and to each new employee or worker.
- 4.2 All levels of management ensuring that an open and ethical culture of whistle-blowing is embedded within their organisations.
- 4.3 Promoting awareness of standards of appropriate and accepted employee conduct and establishing a common understanding of what is acceptable and what is unacceptable behaviour.
- 4.4 Encouraging unions to endorse and support this approach.
- 4.5 Having an anti-fraud and anti-corruption strategy and response plan.
- 4.6 Disseminating information to employees (in general terms) regarding occurrences of fraud/corruption and actions that were taken.

5. REQUIREMENTS AND HOW TO MAKE A DISCLOSURE

The Act provides for more than one option to make a disclosure. It must be noted that each option has certain requirements which must be complied with in order for a disclosure to be protected. The following options are available:

5.1 OPTION 1: AN INTERNAL DISCLOSURE TO THE EMPLOYER (PREFERRED FIRST STEP)

5.1.1 It is preferable that concerns about matters referred to in paragraph 2.2 are raised internally to the employer of the employee or worker. It is in the best interest of both the employee or worker and the employer to raise concerns internally, where they might easily be resolved.

5.1.2 Requirements: a disclosure made internally is considered protected if:

5.1.2.1 the whistle-blower acts in good faith; and

5.1.2.2 the procedure set out by the employer for making disclosures is followed.

5.1.3 The WCG procedure for making disclosures is as follows:

5.1.3.1 Report to management

Should an employee or worker wish to report a suspicion or knowledge, as mentioned in paragraph 2.2 above, verbally or in writing, then this report should be made to his or her supervisor or a member of management of his / her department. If the employee is unable to raise the matter with a manager for whatever reason, he/she may raise it with the Head of Department (HOD).

If the matter falls within the mandate of the Provincial Forensic Services (PFS) (i.e. the commission of common – and/or statutory law economic offences including theft, fraud and corruption), the supervisor, manager or HOD will be required to notify the PFS and provide all relevant information regarding the reporting of the incident.

The supervisor, manager, HOD or PFS will consider the contents of the disclosure and determine whether or not the matter should be investigated or referred to another person or body if that disclosure could be more appropriately dealt with by the latter.

5.1.3.2 Report directly to the PFS

Every employee or worker has the right to report suspicion or knowledge of theft, fraud and corruption directly to the PFS. This can be facilitated in a number of ways including the following:

- Telephonically to the PFS: (021) 483 0931
- Personally, by meeting with the PFS representatives by appointment which can be arranged telephonically: (021) 483 0931
- E-mail correspondence to the PFS: Tip.Offs@westerncape.gov.za
- Postal correspondence to the PFS: Private Bag 659, Cape Town, 8000.

5.1.3.3 Report to internal assurance providers

Every employee or worker has the right to report a suspicion or knowledge, as mentioned in paragraph 2.2 above, verbally or in writing, directly to their department's Internal Control unit, Directorate: Employee Relations or the Chief Directorate: Internal Audit (in the Department of the Premier) or departmental Ethics Officer. The respective Employee Relations departments and the Chief Directorate: Internal Audit may be contacted telephonically via the following contact numbers:

Department	Unit	Contact number
Health	Employee Relations	021 831 5852 021 831 5866 021 831 5870
Education	Employee Relations	021 467 2846 021 467 2847 021 467 9295
Premier	Employee Relations	021 483 5118
Premier	Internal Audit	021 483 6837

5.1.3.4 Reporting to the National Anti-Corruption Hotline (NACH)

The NACH is a national hotline and is available 24 hours a day, 7 days a week, and 365 days a year in all official languages. The hotline is not managed by the WCG, but forms part of the Public Service Commission's drive to root out corruption. As such this hotline ensures anonymity for any individual wishing to make an anonymous report.

Callers are not required to provide their names or contact particulars when making a report to the NACH. The NACH can be contacted on 0800 701 701.

5.2 OPTION 2: A DISCLOSURE TO A LEGAL ADVISER

5.2.1 Requirement: any disclosure made to a legal practitioner for the purpose of obtaining legal advice is a protected disclosure. (Note that good faith is not required in such instance).

5.2.2 This would include the employee's or worker's attorney or a person whose occupation involves the giving of legal advice.

5.3 OPTION 3: A DISCLOSURE TO A MEMBER OF CABINET (NATIONAL MINISTER) OR EXECUTIVE COUNCIL (PROVINCIAL MINISTER)

5.3.1 Employees or workers are also protected under the Act if they make disclosures to these Ministers if they meet the following requirements:

5.3.1.1 The disclosure must be made in good faith; and

5.3.1.2 The employee's or worker's employer (e.g. Head of Provincial Department) must be:

- An individual appointed in terms of legislation by a member of Cabinet or of the Executive Council of a province (e.g. Premier of the Western Cape);
- A body, the members of which are appointed in terms of legislation by a member of Cabinet or of the Executive Council of a province; or
- An organ of the state falling in the area of responsibility of the member (Minister) concerned.

5.3.2 Therefore, an employee or worker of a provincial department may make a disclosure to the Provincial Minister of his / her department.

5.4 OPTION 4: REGULATORY DISCLOSURES

5.4.1 The Act reinforces and strengthens the employee's or worker's right to make disclosures to specified regulatory bodies. The Regulation expanded the list of regulatory bodies and these bodies now include:

1. The Public Protector	14. Financial and Fiscal Commission	28. National Prosecuting Authority
2. The South African Human Rights Commission	15. Financial Intelligence Centre	29. Office of the Chief Justice
		30. Pension Fund Adjudicator

3. The Commission for Gender Equality	16. Financial Sector Conduct Authority and the Prudential Authority	31. Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit
4. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities	17. Independent Communications Authority of South Africa	32. Special Investigating Unit
5. The Public Service Commission	18. Independent Police Investigative Directorate	33. South African Board for Sheriffs
6. The Auditor-General	19. Independent Regulatory Board of Auditors	34. South African Council for Educators
7. Anti-Intimidation and Ethical Practices Forum	20. Information Regulator	35. South African Health Professions Council
8. Chairpersons of Municipal Councils	21. International Trade Administration Commission of South Africa	36. South African Legal Practice Council
9. Competition Commission	22. Judicial Inspectorate for Correctional Services	37. South African Nuclear Energy Corporation Ltd/National Nuclear Regulator
10. Council for Debt Collectors	23. Judicial Service Commission	38. South African Qualifications Authority
11. Electoral Commission of South Africa	24. Magistrates Commission	39. South African Revenue Service
12. Estate Agency Affairs Board	25. National Consumer Commission	
13. Executive Authority, as contemplated in the Financial Management of Parliament and Provincial Legislatures Act, 2009	26. National Energy Regulator of South Africa	
	27. National Gambling Board	

5.4.2 Requirements: in order for a disclosure to such regulatory bodies to be protected, the following requirements must be met:

5.4.2.1 The disclosure must be made in good faith;

5.4.2.2 There must be a reasonable belief that the concern the employee or worker wants to disclose relates to matters that falls within the mandate or scope of work of these bodies;

5.4.2.3 The information and allegations must be substantially true in that the employee or worker must believe that the available evidence suggests that wrongdoing occurred and does not require the belief that it has actually or definitely occurred; and

5.4.2.4 If an employee or worker intends to make a disclosure of an impropriety which is based upon the same facts to two or more persons or bodies referred in paragraph 5.4.1 above, he or she must inform each person or body to whom such a disclosure is made of that fact.

5.4.3 Further details regarding the mandates of these regulatory bodies are provided in **Annexure B**.

5.5 OPTION 5: GENERAL PROTECTED DISCLOSURES

5.5.1 A disclosure will also be considered protected under the Act if it is made wider than to the avenues discussed above, for instance to the South African Police Service or to the media. This type of disclosure is called a general protected disclosure. Before going wider, it is critical that there must be a good cause for doing so.

5.5.2 Requirements: the following requirements must be met by an employee or worker before such a disclosure is considered protected:

- The disclosure must be made in good faith;
- There must be a reasonable belief that the information disclosed and allegations are substantially true;
- The allegations must not be made for personal gain (although this excludes rewards payable in terms of the law, e.g. by the South African Police Service and South African Revenue Services);
- It must be reasonable under the circumstances to make a general disclosure;
- And in addition, one or more of the following conditions must be met:
 - The matter must be of an exceptionally serious nature;
 - The disclosure has previously been made to the employer or regulatory body (e.g. Public Protector or Auditor-General), but no action was taken within a reasonable period;
 - The employee or worker making the disclosure must have reason to believe that the evidence will be concealed or destroyed if the disclosure is made to the employer and there is no regulatory body prescribed in respect of the matter; or
 - The employee or worker making the disclosure must have reason to believe that he/she will be subjected to occupational detriment if he/she makes a disclosure to his/her employer.

6. DUTY TO REPORT OR MAKE DISCLOSURES

6.1 In addition to the WCG's plea to employees and workers to voluntarily blow the whistle on suspected or actual activities which they reasonably believe should be disclosed, there are mandatory reporting requirements created by the PRECCA, the Code of Conduct for Public Servants and the WCG Anti-fraud and Corruption Strategy.

6.2 SECTION 34 OF THE PRECCA

6.2.1 Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed an offence under the PRECCA (corruption, theft, fraud, extortion, forgery or uttering a forged document involving an amount of R100 000 or more), must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to a police official in the Directorate for Priority Crime Investigation (the Hawks). Any person who fails to comply with this duty to report is guilty of an offence.

6.2.2 A person who holds a position of authority includes but is not limited to the Director-General or the head of department (HOD) of a national or provincial department, or any public officer in the Senior Management Service of a public body.

6.3 CODE OF CONDUCT FOR PUBLIC SERVANTS

6.3.1 The Code of Conduct contained in the Public Service Regulations issued in terms of the Public Service Act, 1994 specifies (regulation 13(e)) that an employee must immediately report to the relevant authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes a contravention of any law (including, but not limited to, a criminal offence) or which is prejudicial to the interest of the public, which comes to his or her attention during the course of his or her employment in the public service.

6.4 WCG ANTI-CORRUPTION STRATEGY

6.4.1 It is the duty of every employee regardless of rank or position to report instances and/or suspicions of fraud, theft and corruption immediately upon becoming aware thereof, because any actual or potential financial loss or reputational impact may be prevented or minimised if such instances are detected in a timely manner.

6.4.2 The Anti-fraud and Corruption Strategy of the WCG warns that should it be found that an employee participated in acts involving fraud, theft or corruption, they will be

subjected to a disciplinary hearing. The WCG representative initiating the disciplinary proceedings will be required to recommend dismissal of the employee concerned.

- 6.4.3 The same principles will apply to employees who fail to report such. Should it be determined through prima facie evidence that an employee became aware of, or received information regarding an alleged economic offence and failed to report such, the employee concerned will be subjected to a disciplinary hearing with a recommended sanction of dismissal.

7. DUTY TO INFORM EMPLOYEE OR WORKER

- 7.1 There is a duty on the employer or recipient of a protected disclosure to inform an employee or worker, who has made a protected disclosure, with written feedback of the steps taken. This must be done as soon as reasonably possible, but within 21 days after the protected disclosure has been made. The employer or recipient of a protected disclosure is required to:

- decide on whether to investigate the matter or refer the disclosure to another person or body if that disclosure could be investigated or dealt with more appropriately by that person or body;
- ascertain from the employee or worker making the disclosure whether a disclosure based on the same facts has been made to any other person or body. In instances where there has been dual reporting to persons or bodies concerned, the recipient persons or bodies must take all reasonable steps to ascertain which of them will conduct the investigation and inform the worker or employee of their decision, where possible;
- acknowledge receipt of the disclosure in writing by informing the employee or worker of its decision to investigate the matter and where possible the timeframe or to refer it to another person or body; and
- Should it be decided not to investigate the matter disclosed, reasons for such decision should be given to the employee or worker in writing.

(In the event the disclosure is referred to any other person or body, the new authority becomes the receiving body and assumes the aforementioned obligation to inform the employee or worker).

- 7.2 Should an employer or recipient be unable to make a decision within the above-mentioned 21-day time period, s/he must inform the employee or worker in writing that they are unable to take a decision within the specified timeframe and must on a regular basis, at intervals of not more than two months at a time, inform the employee or worker that the decision is still pending. The ultimate decision in this regard to investigate or reasons for not investigating, must be provided in writing within six months after the protected disclosure has been made or referral thereof. The employer or recipient of a disclosure must inform the employee or worker of the outcome of the investigation undertaken at the conclusion of the investigation.
- 7.3 It must be noted that the employer or recipient need not comply with the above duty to advise an employee or worker if the identity and contact details of the whistle-blower is unknown (the recipient must inform the whistle-blower of this exception, should the whistle-blower want to remain anonymous), or if it will negatively impact the investigation of a criminal offence.

8. CONFIDENTIALITY

- 8.1 All employees or workers, departmental governance structures, consultants, contractors and service providers (and their employees) to the WCG have the opportunity to report concerns anonymously. This is facilitated through mechanisms such as the National Anti-Corruption Hotline (NACH) or PFS who are more suited to deal with anonymous disclosures.
- 8.2 If an employee or worker raises a concern, it is preferable to provide his/her name because it is often necessary to clarify information afterwards in order to investigate the matter. However, should any employee come forward to report theft, fraud or corruption to a member of the PFS, they will be afforded the opportunity to do so confidentially and for their identities to be kept confidential by the PFS staff member to whom they are reporting.
- 8.3 All information received as part of a protected disclosure by the PFS will be treated as confidential and the information associated with such a report will only be discussed with those persons who have a legitimate right to such information, unless

the PFS is duty-bound in terms of the law to provide access to such information. This process of maintaining confidentiality is also aimed at endeavouring to protect the reputation of the individual(s) against whom allegations are made from unnecessary reputational damage should it be found that there is no substance to the allegation or if the suspected perpetrator is cleared of the alleged conduct.

9. PROTECTION OF WHISTLE-BLOWERS

9.1 AGAINST OCCUPATIONAL DETRIMENT

9.1.1 Employees or workers who blow the whistle on matters in accordance with the law as explained above (i.e. makes a protected disclosure) are protected in terms of the provisions of the Act. The Act as amended stipulates that no employee or worker may be subjected to occupational detriment by his / her employer as a result of having made a protected disclosure.

9.1.2 Therefore, if an employee's disclosure fulfils all the requirements for protection, the employee must be protected against occupational detriment by the employer. Occupational detriment (as defined in the Act) in terms of the working environment of an employee or worker means:

- being subjected to any disciplinary action;
- being dismissed, suspended, demoted, harassed or intimidated;
- being transferred against his or her will;
- being refused transfer or promotion;
- being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
- being refused a reference, or being provided with an adverse reference, from his or her employer;
- being denied appointment to any employment, profession or office;
- being subjected to a civil claim for the alleged breach of a duty of confidentiality or a confidentiality agreement arising out of the disclosure of a criminal offence or information which shows or tends to show that a substantial

contravention or failure to comply with the law has occurred, is occurring or is likely to occur.

- being threatened with any of the actions referred to above; or
- being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security and the retention or acquisition of contracts to perform work or render services.

9.1.3 This assurance is not provided to employees who maliciously raise matters – such employees may be subjected to disciplinary proceedings or even criminal action as explained in paragraph 3.4.

9.2 REMEDIES

9.2.1 An employee or worker who believes that he/she has been subjected to occupational detriment or anyone acting on behalf of an employee or worker who is not able to act in his or her name, may approach any court which has jurisdiction for appropriate relief. In the case of an employee, this includes the labour court or pursuing any other process allowed by law. Such employee or worker may also pursue any other process allowed or prescribed by any law, for instance lodging a complaint with the Public Protector or the South African Human Rights Commission.

9.2.2 An employee or worker of an organ of state who makes a protected disclosure and who reasonably believes that he or she may be subjected to occupational detriment must, at his or her request and if reasonably possible or practicable, be transferred to another position or post in the same division, or a different division, or another organ of state in the same post or position that they held at the time of making the disclosure. Such transfer may not, without his or her written consent, be under terms and conditions of employment which are less favourable than those applicable to him or her immediately before his or her transfer.

9.3 EXCLUSION OF CIVIL AND CRIMINAL LIABILITY

9.3.1 The Act provides that a court may find that an employee or worker, who makes a protected disclosure of information of the commission of a criminal offence or a substantial contravention of, or failure to comply with the law, shall not be liable to any civil, criminal or disciplinary proceedings by reason of having made the disclosure if such disclosure is prohibited by any other law, oath, contract, practice or agreement requiring him or her to maintain confidentiality or otherwise restricting the disclosure of the information with respect to a matter. However, this exclusion of

liability does not extend to the civil or criminal liability of the employee or worker for his or her participation in the disclosed impropriety.

10. MAINTENANCE AND REVIEW OF POLICY

10.1.1 This policy will be reviewed regularly and updated as required.

Agreed to by Provincial Top Management on 22 November 2021

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DR H MALILA

DIRECTOR-GENERAL

Adopted by Cabinet on 8 December 2021.

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MR ALAN WINDE

PREMIER OF THE WESTERN CAPE

11. DEFINITIONS

11.1 Theft

A person commits theft when he/she unlawfully and intentionally appropriates movable corporeal property which belongs to another (or who has a right to possess) with the intention to permanently deprive the other person of such property.¹

11.2 Fraud

Fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.² The elements of fraud are as follows:

11.2.1 Misrepresentation

There must be a misrepresentation or deception by means of a falsehood. The perpetrator therefore represents to the victim that a set of facts exists which in truth does not exist.

11.2.2 Intention

Intention requires that the party making the representation had an intention to deceive and to defraud the victim. In other words, the representation must have been made knowing that it was false or foreseeing that it might be false and nevertheless decides to make it.

11.2.3 Prejudice

Prejudice requires that the action must have caused harm or have the potential or possibility to cause harm to the victim.

11.3 Corruption

The abbreviated definition of corruption is: anybody who (a) accepts any gratification (which could consist of money, a loan or other benefit) from another, or (b) gives any gratification to another, in order to influence the receiver thereof to conduct himself / herself in a way which amounts to the unlawful exercise of any

¹Snyman C R, Criminal Law, sixth edition p 475.

² Snyman C R, p 523.

duties, commits corruption.³ An example could be the receiving of gifts or money from a supplier in return for awarding work to that supplier.

The offence of corruption is criminalised under the PRECCA. Section 3 of this Act states the following:

“Any person who, directly or indirectly:

- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or*
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-*
 - (i) that amounts to the:*
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or*
 - (bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;*
 - (ii) that amounts to the:*
 - (aa) the abuse of a position of authority;*
 - (bb) a breach of trust, or*
 - (cc) the violation of a legal duty or a set of rules*
 - (iii) designed to achieve an unjust result; or*
 - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything*

is guilty of the offence of corruption.”

³ Snyman C R, p 403.