NSW GOVERNMENT | Education

FRAUD AND CORRUPTION CONTROL PROCEDURES

Implementation document for the Fraud and Corruption Control policy

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Contents

1   Policy statement

The Department of Education (the department) does not tolerate any form of fraud or corruption, and is vigilant in the prevention, deterrence, detection and investigation of fraud and corruption.

All employees of the department are required to act at all times ethically and with integrity in accordance with the Code of Conduct and related procedures.

All employees need to be aware of the risks of fraud and corruption in their workplace. Employees must take practical steps to avoid or manage those risks, and must report all suspected cases of fraud and corruption. Employees reporting suspected fraud and corruption are afforded the protections under the *Public Interest Disclosures Act 1994* (PID Act).

2   Purpose of these procedures

The purpose of these procedures is to:

- Detail the framework for detecting, preventing and controlling fraud and corruption risks in the department;

- Outline the behaviour expected of employees in relation to any suspicion or detection of fraud or corrupt conduct related to the department; and

- Demonstrate compliance with Treasury Circular TC18-02 NSW Fraud and Corruption Control Policy which sets out the key minimum requirements of fraud and corruption control.

2.1   Scope and application

These procedures apply to all employees of the department including any person, whether remunerated or not, employed on a permanent, temporary or casual basis, contractors, consultants, volunteers and committee members working with the department.

Employees must be aware of and comply with these procedures. If engaging or managing external consultants, contractors, volunteers or committee members, employees must make them aware of the department's expectations around fraud and corruption control during the period of their engagement.

3   Legal and policy framework

These procedures are part of a broader legal and policy framework constituted by:

- The *Independent Commission Against Corruption Act 1988* (ICAC Act) which defines corrupt conduct

- The *Crimes Act 1900* which establishes fraud offences

- The *Public Interest Disclosures Act 1994* (PID Act) which provides protections for public servants who report fraud and corruption

- The department's Code of Conduct which clarifies the standards of behaviour expected of employees in the performance of their duties

- The Public Service Commission's Behaving Ethically Guidelines 2014 which provides a guide to assist employees to demonstrate ethical conduct

- Treasury Circular TC18-02 NSW Fraud and Corruption Control Policy which sets out the key minimum requirements necessary to establish and maintain an appropriate system of fraud and corruption control.

4 Definitions of fraud and corruption

4.1 Fraud

The department adopts the NSW Fraud and Corruption Control Policy definition of **fraud** as dishonestly obtaining a benefit, or causing a loss, by deception or other means.

Fraud and related offences are established in *Part 4AA of the Crimes Act 1900*. The offence of fraud is set out in section 192E:

> A person who, by any deception, dishonestly--
>
> (a) obtains property belonging to another, or
> (b) obtains any financial advantage or causes any financial disadvantage,
> is guilty of the offence of fraud.
>
> Maximum penalty--Imprisonment for 10 years.

Fraud requires dishonesty, which is proven by intent or recklessness, not simply an accident or error.

The fraud offence provisions are framed wide and accordingly fraud against the department may include but is not limited to:

- theft
- accounting fraud (e.g. submitting false invoices, misappropriation)
- misuse of department purchase cards
- unlawful use of, or unlawfully obtaining of property, equipment, material or services
- causing a loss, or avoiding and/or creating a liability
- providing false information or failing to provide information when obliged to do so
- misuse of departmental assets, equipment or facilities
- making or using false documents
- wrongfully using department information or intellectual property

Internal fraud is where the fraud is committed by employees or other persons internal to the department and commonly arises from serious or continued breaches of the various conduct policies and procedures and/or non-compliance with statutory obligations.

External fraud is where the party or parties complicit in the fraud are external to the department including suppliers, the public or organised criminal groups.

A particular challenge for the department arises where the fraud is complex and involves collusion between employees and external parties and can include:

- external parties target particular employees by grooming, favours, promises and extortion, or
- internal parties initiating or soliciting the fraud

4.2 Corruption

Corruption involves a breach of trust in the performance of official duties.

Corrupt conduct is defined in the *ICAC Act* as deliberate or intentional wrongdoing, not negligence or a mistake. It must involve or affect a NSW public official or public sector organisation.

5 Roles and responsibilities

There is a clear accountability and responsibility structure for the implementation and monitoring of the department's fraud and corruption control strategies.

Employees must:

- Understand and follow the Fraud and Corruption Control Policy and these Procedures;
- Act lawfully, ethically and honestly and in accordance with the department's Code of Conduct;
- Act within their delegated authority;
- Comply with all departmental policies, procedures and guidelines; and
- Report instances of suspected fraud and corruption promptly – see section 8.1 below.

The **Audit and Risk Committee** is responsible for:

- Providing independent assistance to the Secretary by overseeing and monitoring governance, risk and control frameworks, and external accountability requirements;
- Reviewing the department's Fraud and Corruption Control Plan and satisfying itself that there are appropriate processes and systems in place to capture and effectively investigate fraud-related information; and
- Determining whether management has taken adequate steps to embed a culture which is committed to ethical and lawful behaviour.

The **Secretary** is responsible for:

- Setting the tone at the top, by demonstrating commitment to and compliance with the Fraud and Corruption Control Policy and these Procedures;
- Maintaining systems and processes to prevent, detect and respond to fraud and corruption in the department;
- Modelling and promoting an ethical working culture;
- Understanding the fraud and corruption risks facing the department; and
- Complying with mandatory reporting requirements on instances of fraud or corruption.

The department's **Executive** is responsible for:

- Setting the tone at the divisional level, by demonstrating commitment to and compliance with the Fraud and Corruption Control Policy and these Procedures;
- Modelling and promoting an ethical working culture;
- Understanding the fraud and corruption risks facing the department and their divisional area of responsibility; and
- Implementing the Fraud and Corruption Control Policy and these Procedures.

Executive Directors and **Directors** are responsible for:

- Maintaining a strong focus on, and culture of, prevention of fraud and corruption, aligned with risk assessments;
- Modelling and promoting an ethical working culture;
- Understanding current and emerging fraud and corruption risks within their area of responsibility;
- Preventing fraud and corruption within their area of responsibility by identifying risks and developing or modifying procedures or controls to reduce risks;
- Following departmental procedures including reporting, as outlined in section 8.1 below;
- Monitoring the continued operation of fraud risk controls; and
- Managing conflicts of interest.

School principals and workplace managers are required to:

- Maintain a strong focus on, and culture of, prevention of fraud and corruption;
- Model and promote an ethical working culture;
- Understand current and emerging fraud and corruption risks within their area of responsibility;
- Prevent fraud and corruption within their area of responsibility by identifying risks and developing or modifying procedures or controls to reduce risks; and
- Manage employee conduct by making prompt reports and taking appropriate action in response to suspected fraud and corruption.

The **Fraud Prevention team** supports employees in understanding and complying with their duties by:

- Maintaining a suite of ethical behaviour policies and procedures and assess their effectiveness;
- Providing practical advice to enable employees to identify and respond to suspected corrupt conduct;
- Providing training and education about fraud and corruption prevention;
- Supporting managers to implement controls and procedures for prevention and detection through risk assessment; and
- Implementing fraud and corruption prevention tools and processes to identify and manage risks; Testing the implementation and monitoring the effectiveness of controls.

The **Professional and Ethical Standards (PES) Directorate** is responsible for:

- Publishing the department's Code of Conduct which guides employees in their duties as public servants;
- Maintaining the department's Public Interest Disclosure (PID) system, which provides a framework to support and protect staff who report fraud and corruption and other serious wrongdoing. The Executive Director, PES is the department's PID Manager and the Director, Misconduct Investigations is the department's PID Coordinator; and
- Assessing and investigating allegations of fraud and corruption and taking related risk management and disciplinary action.

The responsibilities of the PID Coordinator and Disclosure Officers are outlined in the department's Public Interest Disclosures Management Guidelines (intranet only).

The **Internal Audit directorate** are responsible for:

- Examining the adequacy of internal controls over high risk processes; and
- Evaluating the potential for fraud and corruption to occur.

6   Fraud and Corruption Control Framework

The department's Fraud and Corruption Control Framework (the Framework) is informed by the Australian Standard AS 8001-2008. The framework incorporates the ten attributes of fraud control contained in the NSW Auditor-General Better Practice Guide Fraud Control Improvement Kit.

The ten attributes are within three general streams of prevention, detection and response, as set out in Table 1 below, and further detailed in these procedures at section 7 Preventing Fraud and Corruption, section 8 Detecting Fraud and Corruption, and section 9 Responding to Fraud and Corruption.

Table 1: Elements of fraud and corruption control

Planning & Resourcing	Prevention	Detection	Response
• Fraud and Corruption Control Framework • Responsibility structures	• Fraud and corruption risk assessment • Employee awareness • Customer, community and third party awareness	• Internal notification systems • External notification systems • Detection systems	• Investigation systems • Conduct and disciplinary systems

The Framework assigns responsibility under the Three Lines of Defence Model and is founded on:

- strong leadership and management commitment;
- establishing an ethical culture within the organisation;
- supporting fraud and corruption prevention efforts through a clearly defined policy and governance setting; and
- developing fraud and corruption control strategies which include prevention, detection, response, monitoring, evaluation and reporting.

The Framework ensures that all employees, contractors, consultants, volunteers and committee members are aware that the department has no tolerance for fraud or corrupt conduct. It supports the department to maintain a high level of service for its stakeholders, secures public money and property, and protects the integrity, security and reputation of the department.

7   Preventing fraud and corruption

The most effective way of mitigating risk of fraud and corruption is to prevent it from occurring. The department's fraud prevention strategies include implementing effective financial and operational controls that are underpinned by a strong culture of integrity and employee ownership of fraud risk management.

7.1   Fraud and corruption risk assessment

Managers, including principals, are required to manage fraud risks associated with their operations and are responsible for the effective operation of controls within their area.

Fraud risks are commonly found in the following operational areas or circumstances:

- Academic administration
- Changes in function or purpose of a business unit
- Exercise of regulatory authority
- Internal governance arrangements
- Payroll activities
- Policy or program development
- Procurement, including tendering and managing suppliers
- Provision of grants and funding agreements
- Provision of identification documents
- Revenue collection and administration of payments
- Student enrolments

The primary tool to manage fraud risk is a fraud risk assessment, which is a formal process that takes into account all significant factors likely to affect fraud risk exposure. A fraud risk assessment must be conducted at least every two years or when there is a substantial change in the structure, functions of activities in the workplace.

The Fraud and Corruption Risk Guide (intranet only) can assist managers conducting a fraud risk assessment to identify and manage fraud and corruption risks. This process is consistent with the risk management process contained in ISO 31000:2009 Risk Management – Principles and Guidelines.

The Fraud Prevention team assists management to identify fraud and corruption risks and assess the effectiveness of controls. A Fraud and Corruption Control Management Plan that outlines the department's actions in implementing and monitoring fraud and corruption prevention, detection and response initiatives is reported annually to the department's Executive and the Audit and Risk Committee.

7.2 Employee awareness

All employees should be aware of the types of fraud and corruption risk confronting the department in their workplace, and if it is within their area of responsibility, put in place appropriate internal controls. All employees must also adhere to internal controls designed to prevent fraud and corruption risks occurring.

The department's Code of Conduct assists employees to understand expected standards of ethical conduct.

The department also provides training and resources to its employees on fraud and corruption prevention. This includes a mandatory corruption prevention eLearning course (via MyPL) to be completed when employees commence their employment with the department and refreshed annually. The eLearning course covers identification of fraud and corruption risks faced by employees in their workplace, the fraud and corruption control accountabilities of line management and how to respond if fraud or corruption is suspected. Other fraud and corruption prevention resources are available on the Fraud and Corruption Prevention webpage (intranet only).

Employees who have responsibilities for resources, decision making or information need to be aware of the behaviours that could result in actual or perceived fraud or corrupt conduct. All supervisors need to be aware of the fraud and corruption risks in the activities they supervise.

All employees should further develop their understanding of fraud and corruption control through:

- Mandatory corruption prevention training available via MyPL;
- Keeping updated by visiting the department's Fraud and Corruption Prevention intranet site, particularly relevant conduct standards issued by the department, including the Code of Conduct;
- Use of the Fraud and Corruption Risk Guide (intranet only) to identify fraud and corruption risks inherent in work activities and the controls to address them;
- Involve their team in risk assessment activities with the Fraud Prevention team;
- Reference the Fraud and Corruption Control policy and these procedures in employee induction resources;
- Including fraud and corruption prevention strategies in performance agreements where applicable.

7.3   Customer, community and third party awareness

Employees who engage contractors and consultants must ensure they are informed of their requirements to meet the department's standards for behaving ethically. This includes awareness of these Procedures and other department policies and guidelines, including:

- the Fraud and Corruption Control Policy
- the Code of Conduct (including the conflicts of interest factsheet)
- the Procurement Policy
- the Procurement Manual and Guidelines for Goods and Services
- the SINSW Construction Procurement Manual September 2020
- the Gifts, Benefits and Hospitality Procedures
- the Private and Secondary Employment Policy
- the Private and Secondary Employment Procedure.

Service providers, contractors, consultants and regular or large suppliers must formally be provided with a copy of the department's Statement of Business Ethics, which outlines the standards of behaviour expected by the department in business relationships with external parties.

The Simple Procurement Guide and the Procurement Governance Manual guides employees to implement procurement processes consistent with current NSW government policy. These resources ensure employees remain aware of the fraud risks and complexities for procurement services.

8   Detecting fraud and corruption

The department takes allegations of fraud and corruption seriously and has internal and external notification systems.

These systems encourage and support all employees to notify the department of suspected fraud or corrupt conduct without fear of reprisal. They also facilitate the department to meet their statutory reporting obligations to external agencies including the NSW Police Force, ICAC and the NSW Ombudsman.

8.1   Internal notification systems

Reporting suspected fraud and corruption ensures cases are promptly investigated and drives improvement to fraud and corruption risk management practices.

Fraud and corruption allegations are handled in a confidential, prompt and professional manner. Reports are assessed and investigated as appropriate, which may require reporting to and involvement of external parties such as the ICAC or the NSW Police Force (see 8.2).

All employees must immediately report to their supervisor any suspected fraud, corrupt conduct, maladministration or serious and substantial waste, as defined in Appendix 1 of these procedures. If you are reluctant to make a report to your immediate supervisor, you can report it to a more senior manager or the PES Directorate.

These procedures and the following policies and procedures are in place to facilitate internal reporting of suspected fraud and corrupt conduct:

- The Code of Conduct
- The Public Interest Disclosures Management Guidelines (intranet only)
- The Complaints Handling Policy
- The Staff Complaint Procedure.

All public sector senior executive (PSSE) officers, principals and managers are to ensure that all cases of suspected corrupt conduct are reported to the PES Directorate. Senior officers may also have additional responsibilities as Public Interest Disclosure Officers (see section 8.1.1).

8.1.1 Public interest disclosures

The *Public Interest Disclosures Act 1994* (PID Act) sets up a scheme for public sector employees to come forward with information on serious wrongdoing. The department's Public Interests Disclosure Internal Reporting Policy gives the commitment and framework to support and protect employees who report wrongdoing under the PID Act.

The Public Interest Disclosures Management Guidelines (intranet only) set out the procedures to implement this policy and identifies the roles and responsibilities of all employees in making and/or receiving a Public Interest Disclosure (PID).

The department has identified disclosure officers to accept reports from employees who believe their report should be a PID. Disclosure officers must forward the PID to the Preliminary Investigation Team within the PES Directorate and act in accordance with the policy.

The PES Directorate maintain policy documents and provide information kits and training for disclosure officers on appointment and/or request. A list of disclosure officers is available in the Public Interest Disclosures Management Guidelines (intranet only).

Any employee who makes a report of suspected fraud or corrupt conduct is protected from reprisal by the department via the Code of Conduct and the protections afforded by the PID Act. To receive the protections of the PID Act, concerns must raise a public interest issue, i.e. raise serious and/or systemic concerns.

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If this is a printed document, refer to the department's Policy Library for the most recent version.

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8.2 External notification systems

The department has statutory obligations to report some instances of fraud and corruption to external organisations.

8.2.1 Criminal offences

Section 316 of the *Crimes Act 1900* requires employees to report serious crimes (punishable by five or more years in prison) to the NSW Police Force.

Where it is reasonably believed that an employee has committed a criminal offence, the matter must be referred to the PES Directorate who will ensure that it has been properly reported to the NSW Police Force. While the department may need to undertake some initial inquiries, care must be taken not to interfere with or jeopardise a potential criminal investigation and reports to police should be made promptly.

8.2.2 Corrupt conduct, maladministration and serious and substantial waste

If for any reason an employee does not wish to report internally they have a right to make the following reports externally:

- suspected corrupt conduct to the ICAC;
- alleged maladministration to the NSW Ombudsman; and
- suspected serious and/or substantial waste to the Audit Office of NSW.

The Secretary must refer allegations of corrupt conduct reported within the department to the ICAC, in accordance with section 11 of the *ICAC Act.* Within the department, this responsibility has been delegated to the PES Directorate.

8.2.3 Department financial statement discrepancies

The Secretary, with the assistance of the Audit Directorate, must report any serious discrepancies that might affect the department's annual financial audit and departmental Annual Financial Statements to the Audit Office of NSW.

The Director, Audit prepares this advice for the Secretary.

8.3 Detection systems

Systems and data access controls are in place and are regularly monitored to ensure that irregularities and early warning signals are identified at an early stage for investigation and monitoring. These include internal audit, external audit, systems to manage human resources, payroll, access control, procurement and financial transactions.

Managers are responsible for implementing control mechanisms that minimise the risk of fraudulent transactions and corrupt behaviour. The department's internal audit program reviews particular aspects of the department's financial and control systems and conducts regular monitoring and checks of medium and high risk operations to detect anomalies. Reports and actions are monitored by the executive committees and the Audit and Risk Committee.

9 Responding to fraud and corruption

9.1 Investigation systems

The PES Directorate manages investigations into allegations of misconduct and corrupt conduct, prepares investigation reports and makes disciplinary decisions. Most investigations are conducted under the *Guidelines for the Management of Conduct and Performance* or the *Government Sector Employment Act 2013,* however different rules may apply to persons employed on a probationary, temporary or casual basis.

PES investigations focus on employee conduct. Systems issues identified by PES during the course of an investigation are referred back to the manager responsible.

9.2 Conduct and disciplinary systems

9.2.1 Conduct Standards

The Code of Conduct sets the conduct standards for the department and is maintained by PES. All other conduct policies and procedures are complementary and supplementary to the Code of Conduct and are maintained by the directorate responsible and published in the department's Policy Library.

9.2.2 Disciplinary systems

All sustained allegations of fraud and corruption, or attempted fraud and corruption, will be actioned in accordance with legislative and policy requirements.

Disciplinary and/or remedial processes will apply in all cases where department employees have perpetrated or been involved with the perpetration of fraud or corruption, or have tolerated and not reported fraud or corruption.

Consequences for committing or attempting fraud and/or corruption may include, but are not limited to:

- Dismissal or direction to resign;
- Warnings;
- Repayment of misappropriated funds and other costs;
- Referral to the ICAC or prosecution agencies.

Legal action will be taken where necessary to recover department funds or resources improperly taken and prosecution of those involved in criminal actions will be pursued.

In addition to the Code of Conduct and related procedures, disciplinary standards for department employees are contained in various pieces of legislation which set out some of the behaviours that constitute a breach of discipline and how that breach will be dealt with. The relevant legislation includes:

- *Government Sector Employment Act 2013*
- Government Sector Employment (General) Rules 2014
- *Teaching Service Act 1980*
- Teaching Service Regulation 2017
- *Education (School Administrative and Support Staff) Act 1987*
- Education (School Administrative and Support Staff) Regulation 2018

10 Monitoring and review

All senior executives, principals, managers and supervisors are responsible for monitoring compliance with these procedures.

These procedures will be reviewed at least annually, taking into account legislative or organisational changes, risk factors and consistency with other supporting documents.

11 Training and support

Information regarding the application of these procedures is available from the Fraud Prevention team or by visiting the Fraud and corruption prevention intranet site. Training can be requested by contacting the Director, Fraud Prevention via corruption.prevention@det.nsw.edu.au.

Appendix 1 - Definitions

Term	Definition
Corrupt Conduct	The ICAC defines corrupt conduct as the conduct of any individual, whether a public official or not, that adversely affects (or could adversely affect), either directly or indirectly, the honest and impartial exercise of public official functions.
Corruption prevention	Corruption prevention includes all organisational features designed to resist or limit fraud and corrupt conduct. These features include accountability and effective and efficient administration. Corruption prevention focuses on improving systems and procedures, changing the attitudes of employees and improving the overall integrity and performance of the organisation. It involves management commitment, employee commitment, resources and networking.
Fraud	Dishonestly obtaining a benefit, or causing a loss, by deception or other means. Fraud is established as an offence in section 192E of the *Crimes Act 1900*.
Fraud and corruption risk assessment	The overall process of fraud and corruption risk identification, analysis, evaluation and treatment.
Internal control	A process that provides reasonable assurance of the achievement of the following: • Effectiveness and efficiency of operations including business objectives and safeguarding of resources • Reliability of financial reporting including operating information • Compliance with applicable laws, regulations, policies and procedures
Maladministration	Conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive, improperly discriminatory and based wholly or partly on improper motives.
Public Interest Disclosure	An allegation of corruption, serious maladministration, serious and substantial waste, or breach of the *Government Information (Public Access) Act 2009* (GIPA Act) made by a public official about a public official.
Public official	Defined under section 3 of the *ICAC Act* as an individual having public official functions or acting in a public official capacity, this includes all department employees.
Risk management	The coordinated activities to direct and control an organisation with regard to risk.
Serious and substantial waste	Uneconomical, inefficient or ineffective use of government resources, authorised or unauthorised, which results in significant loss or wastage of public funds or resources.
Serious crime	Defined in the NSW Crimes Act as a crime carrying a maximum penalty of five or more years in prison. In general, acts (including attempts whether successful or not) of criminal dishonesty including theft, fraud, and secret commissions.