



MINISTRY OF TRANSPORT

Level 21, 227 Elizabeth Street Sydney 2000
GPO Box 1620 Sydney 2001

Telephone 9268 2800 Facsimile 9268 2900
Internet www.transport.nsw.gov.au

ABN 25 765 807 817



ICAC COMMITTEE

1 8 DEC 2008

RECEIVED

1 6 DEC 2008

Mr Frank Terenzini MP
Member for Maitland
Chair
Committee on the Independent Commission Against Corruption
Parliament House
Macquarie Street
SYDNEY NSW 2000
Attn: Ms Helen Minnican, Committee Manager

Dear Mr Terenzini,

I refer to further correspondence from the Committee on the Independent Commission Against Corruption in respect of the Inquiry into the Protection of Public Sector Whistleblower Employees.

At the Hearing held 24 November 2008, I agreed to take a number of Questions on notice. My responses are detailed herein:

- (1) What procedures do you have in place to protect a contractor who makes a complaint against retribution? (Asked by the Hon Trevor Khan MLC)

A: All employees of the Ministry, including contractors, are subject to the Code of Conduct, in addition to all applicable law. This is similar to a contractor being protected by occupational health and safety laws while with the Ministry. Both the Ministry's Protected Disclosure Policy and the Ministry's Statement of Business Ethics are policies and procedures that clearly articulate that it is unacceptable to take reprisals against those that make reports of unacceptable conduct.

- (2) Are you aware if there is a policy and procedure in place to ensure that contractors who make a disclosure are not the subject of retribution? (Asked by the Hon Trevor Khan MLC)

A: See answer to Q1 above.

(3) We have a number of policies within the Ministry of Transport. We have a Protected Disclosures Policy, a Fraud and Corruption Policy and a Code of Conduct. I am happy to make copies of those available to the Committee following today's proceedings (evidence of Mr Jim Glasson at p57 of the proceedings).

A: Copies of these documents, as well as the Statement of Business Ethics, are enclosed.

I trust this response satisfactorily concludes the Ministry of Transport's participation in this Inquiry.

Thank you for the opportunity for the Ministry to participate in the important work of your Committee.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'J. Glasson', is written over the typed name.

Jim Glasson
Director General

DG08/06151

Protected Disclosure Policy

Purpose

Internal reporting procedure as relates to the Protected Disclosures Act, 1994.

Background

The Protected Disclosures Act, 1994 was proclaimed to commence on 1 March 1995. The Act covers protection for public officials who make disclosures concerning corrupt conduct, as defined in the ICAC Act, 1988; maladministration, defined as conduct which involves action of inaction of a serious nature that is either contrary to law, unreasonable, unjust, oppressive, improperly discriminatory, based wholly or partly on improper motives, and/or; serious and substantial waste of public money.

The Protected Disclosures Act makes it an offence to take detrimental action in reprisal against a person who makes a protected disclosure. The Public Sector Employment and Management Act, 2002 also makes it a breach of discipline to take detrimental action or disciplinary action in such circumstances.

Previous advice was provided when the Act was proclaimed and administrative procedures have been incorporated into Staff and Managers' Resource Folders and the Ministry's Fraud and Corruption Prevention policy.

Current Position

The following information summarises the main provisions of the legislation including reporting channels and Ministry policy on internal reporting. Matters covered by the protected disclosures guidelines should be read in conjunction with the Ministry's Fraud and Corruption policy.

The Director General is the primary contact for staff who wish to make a report regarding corrupt conduct, maladministration, or serious and substantial waste. Alternatively you may utilise any of the other available reporting channels described in the guidelines. Confidentiality will be maintained consistent with the provisions of the Act.

The Ministry's Code of Conduct incorporates policy with regard to protected disclosures. The policy will be outlined at induction training.

Protected Disclosures Guidelines

Ministry policy ensures that the commitment to an ethical workplace, free of corruption, maladministration and waste results in:

Staff reporting any suspected corruption, maladministration and serious and substantial waste, and staff not being disadvantaged or suffering detrimental action because of their reporting.

Definitions

"Corruption" occurs when a public official carries out public duties dishonestly or unfairly, anyone (including a public official) does something that could result in a public official carrying out public

duties dishonestly or unfairly, anyone (including a public official) does something that has a detrimental effect on official functions, and which involves any of a wide range of matters, including (for example) fraud, official misconduct, violence, a public official (or former public official) breaches public trust, or a public official (or former public official) misuses information or material obtained in the course of duty.

"Maladministration" is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives.

"Serious and substantial waste" refers to any uneconomic, inefficient or ineffective use of resources, authorised or unauthorised, which results in significant loss/waste of public funds/resources.

Our Commitment

The Ministry of Transport is committed to an ethical workplace, free of corruption, maladministration and waste.

It is the responsibility of all staff to prevent corruption, maladministration and waste. Additionally, managers and supervisors have a responsibility to establish systems of control to minimise corruption, maladministration and waste.

Responsibility to Report

Every person has a responsibility to report corrupt conduct, maladministration, or serious and substantial waste.

The Reporting Channels

Staff should utilise the following channels when reporting matters of corrupt conduct, maladministration, or serious and substantial waste directly to the following:

- Executive Director, Transport Services Group; or
- the Director General; or
- the Independent Commission Against Corruption for reports of corrupt conduct; or
- the NSW Ombudsman for reports of maladministration; or
- the Audit Office of New South Wales for reports of waste.

Substance of Reports

You do not need to have proof that corrupt conduct, maladministration or serious and substantial waste is occurring; you merely need to suspect on reasonable grounds.

While anonymous reports will be accepted, it is preferable that reports are not made anonymous in order that you can be contacted if further information is required or clarification is needed, and it will be easier for you to claim the protection of the Protected Disclosure Act.

Investigations

You have a responsibility to assist any person or organisation appointed by the Ministry of Transport

to conduct internal investigations, by disclosing all information related to corrupt conduct, maladministration or serious and substantial waste.

Duty to Pass on Reports

All people, to whom reports of corrupt conduct, maladministration or serious and substantial waste are made, have a duty to pass on the reports to the Ministry's Executive Director, Transport Services Group or the Director General.

Protected Reports

People who report corrupt conduct, maladministration or serious and substantial waste will not be disadvantaged in any way because of their reporting. All reports made in accordance with this policy will be protected under the Protected Disclosure Act, 1994, except for reports that are frivolous or vexatious, primarily question the merit of government policy, or are made solely or substantially with the motive of avoiding dismissal or disciplinary action.

Vexatious complaints are those initiated with insufficient grounds and serving only to cause annoyance.

Detrimental Action

It is unacceptable for anybody to take detrimental action against a person for making a report in accordance with this policy, other than official disciplinary procedures for vexatious reports. It is an offence under the Protected Disclosure Act 1994 to take detrimental action against another person that is substantially in reprisal for the other person making a protected disclosure.

Detrimental action means any action causing, comprising or involving any of the following injury, damage or loss, intimidation or harassment, discrimination, disadvantage or adverse treatment in relation to employment, dismissal from, or prejudice in, employment, disciplinary proceeding.

If you believe that you have been disadvantaged or that detrimental action has been taken against you for reporting in accordance with this policy, you should report this to any of the people in the reporting channels previously described. If necessary, the Ministry of Transport will take steps to protect you from all forms of intimidation.

Reports to be Investigated

All reports made under this policy will be investigated. The person making the report will be informed of the results of the investigation in a timely manner.

Confidentiality

The identity of people reporting in accordance with this policy will be kept confidential, wherever possible. However, an assurance of complete confidentiality cannot be given. Sometimes, for example, it may be necessary to reveal the source of a disclosure in order to investigate the matter fully or for reasons of natural justice.

The subject matter of the report is to be treated as confidential by supervisors who receive reports, other than to pass on the report to the Executive Director, Transport Services Group or the Director General.

Disclosure to a Member of Parliament or a Journalist

A disclosure to a Member of Parliament or a journalist is protected if all of the following apply:

- The person making the disclosure must already have made substantially the same disclosure in accordance with this policy;
- And the person making the disclosure must have reasonable grounds for believing that the disclosure is substantially true;
- And the disclosure must be substantially true;
- And the Ministry of Transport or the investigating authority to whom the report was made or referred must have decided not to investigate the matter, decided to investigate the matter but did not complete the investigation within 6 months of the original disclosure, investigated the matter but not recommended the taking of any action in respect of the matter, or must have failed to notify the person making the disclosure, within 6 months of the disclosure being made, of whether or not the matter is to be investigated.

Breach of this Policy

Breaches of this policy may result in disciplinary action and infringements of the Protected Disclosures Act 1994 may result in criminal action.

Summary of Related Legislation

The Protected Disclosures Act 1994 deals with protected disclosures. Sections 7 to 9 of the Independent Commission Against Corruption Act 1988 deal with the definition of corrupt conduct. Reports to the Ombudsman are dealt with in section 12 of the Ombudsman Act 1974.

Accountability and Responsibilities

Staff must report suspected corruption, maladministration or waste and must not disadvantage or engage in detrimental action against a person who has reported in accordance with this policy.

Supervisors and managers have a responsibility in instances where a protected disclosure has been reported to them, to forward reports in accordance with this reporting policy, must carefully document any report that is received orally, have a duty to maintain the confidentiality of a person making a report including the subject matter of the report and must take all reasonable steps to ensure that a person who has reported in accordance with the policy is not disadvantaged or will suffer detrimental action.

Managers have a responsibility to establish systems of control to minimise corruption, maladministration and waste.

The Executive Director, Transport Services Group, provides an internal reporting channel, acts as a clearing house for all reports, is responsible for making an initial assessment of each report and ensuring appropriate follow up action is taken and is responsible for providing feedback to the person who made the initial report.

ICAC Supporting Guidelines - Protected Disclosures

Under the Protected Disclosures Act 1994, public officials who report corrupt conduct, maladministration or serious and substantial waste are protected from reprisals. For a person to be

protected under the Act, the disclosure must be reported through a defined appropriate channel.

Expectations of what will be achieved by reporting corruption also influence the frequency of reporting. A study of public sector attitudes carried out by the ICAC in 1994, revealed a widespread belief that nothing useful would be achieved by reporting corruption.

A good internal reporting system is an important source of information. It will enable appropriate people within your organisation to receive and act upon reports of corruption, maladministration and serious and substantial waste and implement continuous organisational improvement. To be effective, the reporting system you set up must also address the attitudes, which deter staff from reporting corrupt conduct. A workplace culture needs to be established in which integrity is encouraged and reports of corruption are acted upon. Effective reporting channels will be of little value if people do not believe there is any point in using them or fear reprisals if they do.

Some important issues you need to consider when setting up an internal reporting system in your organisation are:

- Are all staff aware of the alternative ways of reporting corruption?
- Will staff feel comfortable using the alternative channels?
- Are staff's fears of reprisals taken seriously?
- Are managers aware that they are responsible for making sure that staff who make disclosures are not victimised?
- Will confidentiality be adequately maintained?
- Are disclosures adequately followed up and systems put in place to prevent similar situations from arising in the future?
- Are there adequate disciplinary measures in place to deal with staff found to be or have been engaged in corrupt practices?

Internal reporting systems should provide all staff with the full protection of the Protected Disclosures Act. When an internal reporting system is set up it must clearly state that the procedures were established for reporting corruption, maladministration, and serious and substantial waste under the Protected Disclosures Act. This will ensure that the protection of the Act is available to staff in the organisation.

The Act provides protection by imposing penalties on a person who takes detrimental action against another person in reprisal for a protected disclosure.

For a disclosure to be protected under the Act, it must be made by a public official to either the head of his or her organisation in accordance with established reporting procedures within the organisation direct to the ICAC, Ombudsman or Auditor-General or in certain circumstances to a journalist or Member of Parliament.

Disclosures made to a journalist or Member of Parliament are only protected if they have already been made to the appropriate authorities and these authorities have decided not to investigate decided to investigate but not completed the investigation within six months of the original disclosure investigated but not recommended any action failed to notify the person making the disclosure, within six months, of whether the matter is to be investigated.

Also, the person making a disclosure to a journalist or Member of Parliament must have reasonable grounds for believing the disclosure to be substantially true. To receive protection, the disclosure must actually be substantially true.

In local government, individual council's internal reporting systems may authorise staff to make protected disclosures directly to councillors or authorise councillors to make disclosures to the

Mayor or General Manager. Because of the limited jurisdiction of the Auditor-General over local government, disclosures concerning serious and substantial waste made directly to the Auditor-General may not be protected under the Protected Disclosures Act.

The protection of the Act does not cover disclosures that are frivolous or vexatious, that primarily question the merits of government policy or are made in an attempt to avoid dismissal or disciplinary action.

It is important that all staff in the organisation understand the provisions, requirements and obligations of the Act and the protection it provides.

The organisation's internal reporting policy must be clearly documented and communicated to all staff. If your internal reporting system is to be effective, staff need to know how it operates, whom they should contact with information and what will be done with it. They also need to understand the accepted definitions of key concepts such as; corruption, maladministration and serious and substantial waste, and what constitutes a frivolous, vexatious or insubstantial disclosure.

The policy should stress the important role of all staff in reporting suspected corruption, identifying areas where it might occur and supporting those who make legitimate disclosures. It should provide supervisors and others responsible for handling disclosures with a reference source detailing their responsibilities, including the need to ensure information received leads to organisational improvement. When responsibilities are documented, accountability is increased.

The policy should explain that detrimental action taken against a person in reprisal for making a protected disclosure is a punishable offence and a breach of discipline for staff employed under the Public Sector Management Act 1988. It could also include information about rights of appeal to the Government and Related Employees Appeal Tribunal or the Department of Local Government.

Making people aware of the policy is very important. The document must be in plain English and distributed to all staff. Summary brochures and posters can also be used to advertise the commitment to protecting those who make legitimate disclosures. Sessions on the internal reporting system should be included in induction and management training.

In local government, documented information about internal reporting systems and procedures should be made available to all councillors as well as staff.

Information about the internal reporting system should be included in the organisation's code of conduct. A code of conduct is a guide to ethical expectations and responsibilities in the workplace. It should refer to the internal reporting policy and cover an employee's responsibility to report corruption, how to make a report and where to get further information. The confidentiality accorded to disclosures should also be emphasised.

Organisations must provide at least one alternative channel for confidential internal reporting in case of a fear that the supervisor is corrupt or ignoring corruption by others.

The normal reporting channel is to the person's supervisor. The alternative channel may be direct to a designated unit within the organisation, to a nominated senior manager or to the chief executive.

Some organisations have disclosure coordinators who have similar responsibilities to supervisors and act as a clearing house for all disclosures.

Organisations that are spread over a wide geographical area may need different arrangements to a single-site agency. For example, an appropriate person within each regional office may be given responsibility for receiving and dealing with disclosures.

Organisations must make sure that all levels of management understand and comply with the internal reporting policy. Managers and supervisors who receive disclosures are responsible for either investigating or appropriately referring the disclosure and for making sure that follow up action is taken to ensure work systems are improved. Staff are more likely to report matters which concern them if they see improvements in the workplace as a result.

Managers are also responsible for making sure the person who made the disclosure is not disadvantaged and that no detrimental action such as unwarranted transfer, psychological tests or demotion is taken.

Chief executives and managers have an important role in positively influencing organisational culture and implementing reforms as the result of a disclosure. The principal officer (usually the CEO) has an obligation to report to an investigating authority, for example, the police or ICAC respectively if criminal or corrupt conduct is suspected.

Organisations must make sure that confidentiality is maintained unless it is unreasonable or impossible to do so. Confidentiality helps to protect both those who make disclosures and the subjects of the disclosures. Staff are more likely to come forward with information if they know a genuine disclosure will be treated confidentially.

However, an assurance of complete confidentiality cannot be given. Sometimes, for example, it may be necessary to reveal the source of a disclosure to the person who is the subject of the disclosure in order to investigate the matter fully or for reasons of natural justice and it is important that staff understand this limitation.

Your policy on internal reporting should explain the responsibilities of staff handling complaints and include disciplinary provisions if there is an unnecessary breach of confidentiality.

Information about the internal reporting system should be included in training sessions for all staff. Everyone in the organisation needs to know what they should report and the correct procedures to follow.

Induction training is the ideal time to explain the internal reporting system to new staff and segments on reporting system responsibilities should be incorporated into regular training programs for managers and supervisors.

Organisations should review the effectiveness of their internal reporting system on a regular basis. You should probably carry out an initial review after the first six months and then subsequent reviews every two years. The review should make sure that reporting channels are effective and appropriate, complainants are not being disadvantaged and any problems have been or are being rectified.

You need to look at the total number of disclosures, how many were inconclusive or insubstantial and what action was taken in respect of each.

The review should include a survey of staff attitudes towards, and experiences with, the internal reporting system and how credible they feel the whole process is. You might also want to analyse the cost-effectiveness of the system and how efficient it is, what organisational improvements have resulted from the system, plus any detrimental effects it has had.

After the review has been done, any recommended improvements to the internal reporting system should be agreed upon and implemented.

© Ministry of Transport 1998-2008 // Updated: 20 August 2008



MINISTRY OF TRANSPORT

FRAUD AND CORRUPTION PREVENTION STRATEGY

Updated: October 2007

FRAUD AND CORRUPTION PREVENTION STRATEGY

Summary

The Ministry of Transport has established fraud and corruption prevention plans and strategies which are based upon the principles promulgated by the Department of Premier & Cabinet and the Audit Office of New South Wales.

But what is "fraud and corruption". According to the Macquarie Dictionary, **fraud** involves "*deceit, trickery or breach of confidence by which it is sought to gain some unfair or dishonest advantage ... advantage gained by unfair means as by a false representation of fact made knowingly or without belief in its truth.*" **Corruption** includes the dishonest or partial exercise of official functions by a public official and conduct of a person when it adversely affects the impartial or honest exercise of official functions by a public official.

The scope of what comprises fraud and corruption is very broad. It may include elements of deceit or advantage gained by unfair means. It includes dishonest or partial exercise of official functions often influenced by the presence of inducements or bribes. In the environment in which the Ministry of Transport works, the opportunity for fraud and corruption is always present.

Fraud and corruption have the potential to divert scarce public monies and resources from their intended purposes. When it occurs, the reputation of the Ministry and the wellbeing of its staff are affected.

All staff within the Ministry of Transport are expected to detect and prevent fraud and corruption as far as it is possible in their daily work activities and to report it when they suspect it is occurring. The Ministry also expects those whom we regulate, those who supply services to the Ministry and transport scheme users to abide by the same principles.

In this regard, the Ministry conducts annual Risk Assessment Workshops and regular Fraud Control Health Checks to identify where improvements may be needed in fraud and corruption prevention and to assess the awareness of staff of fraud control.

Risk Assessment Workshops assess operational risk, identify the fraud risks to which the Ministry is exposed and rate aspects of our organisation's activities from a fraud risk perspective.

Fraud Control Health Checks are primarily used in the Ministry to assess staff awareness of fraud control, particularly in areas of identified risk.

The Ministry also ensures that its service providers and customers understand our stance on fraud and corruption. It has implemented mechanisms and procedures to encourage reporting of fraud and corruption ensuring the Protected Disclosures Act is adhered to, with notification to external bodies such as ICAC, Police and the Audit Office, where required.

The Protected Disclosures Act supports and protects people (commonly referred to as "whistleblowers") who volunteer information regarding acts of fraud or corruption. This information is always treated confidentially, with the identity of the informant not to be disclosed. However it should be noted that disclosures made to avoid disciplinary action; frivolously or vexatiously; or that question the merits of government will not be treated as a protected disclosure.

Contemporary fraud and corruption investigations standards have also been adopted by the Ministry, together with appropriate staff conduct and disciplinary standards.

The standards for staff conduct are found in the Employee Relations Folder which is available on the Ministry's Intranet, with standards for disciplinary action within the Ministry contained in Chapter 9 of the NSW Government Personnel Handbook.

The principal mechanism by which the Ministry articulates its standards for investigation is by means of Investigation Plans. Once a suspected fraud has been examined and a basis for further action has been established, a Fraud Investigation Plan is prepared outlining the scope, investigation resources and techniques, timeframe, reporting arrangements and investigation assessment milestones.

A proforma for the reporting of suspected fraud and corruption within the Ministry has been developed and is available to all staff via the Ministry's Intranet site.

If someone from outside the Ministry of Transport makes an allegation of fraud or corruption to you as a member of the Ministry's staff it is to be reported, in the first instance, to your manager or the Executive Director, Transport Services Group for further action.

CONTENTS

FRAUD AND CORRUPTION PREVENTION STRATEGY

Fraud and Corruption Policy

| | |
|--|----------|
| 1.0 Purpose of the Strategy | 1 |
| 2.0 Fraud and Corruption Context | 1 |
| 3.0 Basis of the Fraud and Corruption Prevention Strategy | 2 |
| 4.0 What is fraud and corruption | 3 |
| 5.0 Fraud Control Obligations | 4 |
| 6.0 Fraud Risk Assessment | 4 |
| 7.0 Fraud Control Health Check | 6 |
| 8.0 Fraud Risk Assessment and Fraud Control Improvement Workshops | 7 |
| 9.0 Responsibility structures and reporting | |
| 9.1 Responsibility Structures | 8 |
| 9.2 Internal Reporting | 9 |
| 9.3 Protected Disclosures | 11 |
| 9.4 External Reporting | 12 |
| 10.0 Fraud and Corruption Awareness | |
| 10.1 Employee Awareness | 13 |
| 10.2 Customer, Service Provider and Community Awareness | 13 |
| 11.0 Standards | |
| 11.1 Conduct standards | 14 |
| 11.2 Discipline standards | 14 |
| 11.3 Investigation standards | 15 |

Fraud and Corruption Prevention Policy

Fraud and corruption have the potential to divert scarce public monies and resources from their intended purposes. When it occurs, the reputation of the Ministry of Transport and the wellbeing of its staff are affected. This applies equally to matters that arise internally or that originate from those whom we regulate as well as to suppliers of services and users of the transport schemes we administer.

As part of implementing the Ministry's Fraud and Corruption Prevention Strategy, all staff within the Ministry of Transport are expected to detect and prevent fraud and corruption as far as it is possible in their daily work activities and to report it when they suspect it is occurring. The Ministry of Transport also expects those whom we regulate, those who supply services to the Ministry and transport scheme users to abide by the same principles.

The Ministry conducts annual Risk Assessment Workshops which facilitate the identification of new and existing fraud risks that need to be controlled.

The Ministry also conducts regular Fraud Control Health Checks to identify where the Fraud Control Strategy may need attention and improvement and in particular to assess the awareness of staff of fraud control.

If someone from outside the Ministry of Transport makes an allegation of fraud or corruption to you as a member of the Ministry's staff it is to be reported, in the first instance, to your manager or the Executive Director, Transport Services Group for further action.

1.0 Purpose of the Strategy

The purpose of the Ministry of Transport Fraud and Corruption Prevention Strategy is three fold:

- To articulate and make clear the stance the Ministry of Transport takes with regard to fraud and corruption;
- To educate, inform and increase staff awareness with regard to fraud and corruption;
- To outline the actions to be taken with regard to fraud and corruption.

2.0 Fraud and Corruption Context

The Ministry of Transport is a budget dependent New South Wales government department. It is involved in transport policy, regulating transport and funding various transport schemes. It expends over \$3 billion per annum.

From a fraud perspective, some key dimensions of the operations of the Ministry of Transport include:

- Administering bus, taxi and hire car driver applications – nearly 60,000 on record;
- Administering bus, taxi and hire car operator accreditations – over 12,500 in total;
- Regulating the operation of bus services – nearly 2,000 for all of New South Wales;
- Managing the School Student Transport Subsidy Scheme – over 650,000 students;
- Managing the Private Vehicle Conveyance Scheme;
- Managing the Home and Community Care and Community Transport Schemes;
- Managing the Taxi Transport Subsidy Scheme;
- Coordinating passenger transport security;
- Purchasing bus services; and
- Making payments to state transport agencies.

The Ministry of Transport has many and varied operations that directly involve and impact upon hundreds of thousands of New South Wales citizens. The amount of money transacted is large and the types of activities that the Ministry undertakes are extensive. Accordingly the opportunity for fraud and corruption are always present in such an undertaking.

3.0 Basis of our Fraud and Corruption Prevention Strategy

Our fraud and corruption prevention plans and strategies are based upon the principles promulgated by the Premier's Department and the Audit Office of New South Wales, arranged under the following headings:

- Integrated Macro Policy
- Responsibility Structures
- Fraud Risk Assessment
- Fraud Control Health Checks
- Employee Awareness
- Customer and Community Awareness
- Fraud Reporting Systems
- Protected Disclosures
- External Notification
- Investigation Standards
- Conduct and Disciplinary Standards

These headings that outline the Ministry's approach and are explained below:

| | |
|---|--|
| Integrated Macro Policy | Having a policy in place that outlines the organisation's stance on fraud and what it proposes to do about it |
| Responsibility Structures | Defining the responsibility and organisation structure for the detection, reporting and prevention of fraud |
| Fraud Risk Assessment | Identifying the fraud risks to which the organisation is exposed and rating aspects of the organisation's activities from a fraud risk perspective. |
| Fraud Control Health Check | Identifying specific work areas where exposure to fraud risks might have changed or developed and implementation of some elements of the organisation's fraud control strategy may need refreshing or improving and elements of fraud control strategy that may need attention across the entire organisation. The main focus is however to assess staff awareness of fraud control within the Ministry. |
| Employee Awareness | Ensuring that employees are aware of what fraud is and what their role is in detection, reporting and prevention. |
| Customer and Community Awareness | Ensuring that the customers of the Ministry of Transport (bus, taxi and hire car industries and transport scheme users) and the community, including service providers, understand our stance on fraud and what the Ministry expects of them. |
| Fraud Reporting Systems | Having mechanisms and procedures in place that encourage the appropriate reporting of fraud and corruption. |
| Protected Disclosures | Ensuring that the provisions of the Protected Disclosures Act 1994 are understood and adhered to |
| External Notification | Ensuring that the correct mechanisms are in place for the timely notification of fraud and corruption to external bodies such as ICAC, Police, Audit Office |
| Investigation Standards | Establishing standards for the Ministry of Transport for the investigation of fraud and corruption that are contemporary, relevant and effective |
| Conduct and Disciplinary Standards | Establishing standards for the conduct of staff and the arrangements for discipline, should it be required. |

The Ministry of Transport's fraud and corruption prevention strategies and actions are based upon the NSW Audit Office's "Better Practice Guide – Fraud Control Improvement Kit", NSW Treasury Risk Management Guide and authoritative advice of the New South Wales Premier's Department and the Independent Commission Against Corruption. Relevant legislation includes the Public Finance & Audit Act 1983, Independent Commission Against Corruption Act 1988 and the Protected Disclosures Act 1994

4.0 What is fraud and corruption

According to the Macquarie Dictionary, **fraud** involves “*deceit, trickery or breach of confidence by which it is sought to gain some unfair or dishonest advantage ... advantage gained by unfair means as by a false representation of fact made knowingly or without belief in its truth.*”

Consider the following examples in the light of the definition above:

- Payment for work not performed
- Forged endorsements
- Altering details on licences, accreditations and other documentation
- Collusive bidding
- Overcharging
- Writing off recoverable assets or debts
- Unauthorised transactions
- Selling licence, operator accreditation, TTSS & SSTs information
- Altering fixed assets register records
- Altering licence, accreditation and other fee receipts records
- Cheques made out to false persons
- False persons on the payroll
- Theft of official purchase order books
- Unrecorded transactions
- Cash, supplies or equipment stolen
- Misuse of Ministry credit cards
- IOU's used in petty cash
- Substituting old goods for new
- Licence and operator accreditation and other fee transactions not recorded
- False official identification used
- Damaging or destroying documentation
- Using copies of records and receipts
- Production of apparent original invoices
- Using facsimile or scanned signatures
- Stealing of discounts
- Delayed terminations from payroll
- Selling waste and scrap
- Over claiming expenses
- Skimming odd cents and rounding
- Running own business using Ministry assets
- False compensation and insurance claims
- Inappropriate use of TTSS vouchers

Corruption includes the dishonest or partial exercise of official functions by a public official and conduct of a person when it adversely affects the impartial or honest exercise of official functions by a public official. Corruption can take many forms – taking or offering bribes, public officials dishonestly using influence, fraud, blackmail, election bribery and illegal gambling are just some examples. The following examples all fall within the realm of corrupt behaviour:

- A company wants to do business with Government and pays or induces a public official to choose that company for the job;
- A driver authorised by the Ministry is ‘over the limit’ but police let him go because he is a well known sportsman;
- A public official uses public resources for private purposes.

The scope of what comprises fraud and corruption is very broad. It may include elements of deceit or advantage gained by unfair means. It includes dishonest or partial exercise of official functions often influenced by the presence of inducements or bribes. In the environment that the Ministry of Transport works in, the opportunity for fraud and corruption is always present.

5.0 Fraud Control Obligations

The Ministry recognises its fraud control obligations which will fall into three main categories;

| | |
|--------------------------------------|---|
| Legislation and mandatory directives | <ul style="list-style-type: none">• Public Finance & Audit Act 1983• Independent Commission Against Corruption Act 1988• Protected Disclosures Act 1994• Premier's Department 1990 fraud control policy directive. |
| Audit and regulatory requirements | <ul style="list-style-type: none">• In particular the Australian Audit Standard 210 |
| Best practice guidance | <ul style="list-style-type: none">• NSW Audit Office Fraud Control Guide• NSW Treasury Risk Management Guide• Standards Australia AS8000 series (on corporate governance, incl. fraud control) |

6.0 Fraud Risk Assessment

A Fraud Risk Assessment is used in the Ministry to initially identify areas of possible fraud and corruption. The Assessment is undertaken at least once each year in the annual Risk Assessment Workshop which involves representation from each of the Divisions within the Ministry and assesses the risks faced by the Ministry at a strategic level. This process identifies where the Ministry's Fraud Control Health Check program (which is outlined below) needs to be specifically focussed and applied.

A Fraud Risk Assessment will have regard to:

- The fraud risks that might occur to the Ministry or have occurred to similar agencies;
- The potential causes of those risks and how causes can be prevented and detected;
- The Ministry's Results and Services that would be impacted by fraud risks;
- The potential risk severity and how it might be treated;
- The effectiveness of the Ministry's existing control systems to prevent, detect and mitigate fraud risks;
- The comparative level of Impact and Likelihood of identified fraud risks, given the effectiveness of existing control, and as a result, determining the risk severity;
- The risk treatment actions needed to reduce fraud risks to acceptable levels;
- The level of materiality (ie. the value of the fraud in relation to overall expenditure);
- The presence and effectiveness of internal controls;
- The result of internal and external audits;
- The numbers and types of external customers;
- The degree and amount of technology involved;
- Staff stability, experience and expert knowledge of systems; and
- The degree of geographic distribution (centralisation) of administrative functions and external customers.

The assessment will cover business units and processes undertaken by the Ministry, as necessary to inform and complement the Fraud Control Health Check process, with the results of the Assessment presented in the form of a table listing the areas of risk and their ranking in accordance with the following impact and likelihood rating scales and then recorded in the risk severity table.

IMPACT LEVEL





| Impact Level | Description |
|----------------|--|
| 5 Catastrophic | Value greater than \$10 million |
| 4 Major | Value between \$5 million and \$10 million |
| 3 Moderate | Value between \$1 million and \$5 million |
| 2 Minor | Value between \$ 200,000 and \$1 million |
| 1 Negligible | Value less than \$ 200,000 |

LIKELIHOOD LEVEL

| Likelihood Level | Description |
|------------------|--|
| 5 Almost Certain | Likely to occur frequently; could happen sometime in the next month or so |
| 4 Probable | Likely to occur but not frequently; could happen sometime in the next year or so |
| 3 Possible | Could happen occasionally; has happened in the past and could recur |
| 2 Unlikely | Not likely but still possible; has happened in a similar situation in another transport agencies |
| 1 Rare | Highly unlikely but not impossible; has not happened in transport agencies in Australia |

RISK SEVERITY TABLE

| Impact ⇕ Likelihood ↓ | Negligible | Minor | Moderate | Major | Catastrophic |
|--------------------------|------------|--------|----------|---------|--------------|
| Almost Certain | Medium | Medium | High | Extreme | Extreme |
| Probable | Medium | Medium | High | High | Extreme |
| Possible | Low | Medium | Medium | High | High |
| Unlikely | Low | Low | Medium | High | High |
| Rare | Low | Low | Medium | Medium | Medium |

-  Manage through routine procedures
-  Responsibility assigned and decisions made regarding level of treatment warranted
-  Immediate attention
-  Immediate attention including the allocation of resources to prevent the risk occurring or remedy the situation

7.0 Fraud Control Health Check

The Ministry's Fraud Control Health Check program is being implemented on a three year rolling program basis to:

- complement the Fraud Risk Assessment process;
- assess the awareness of staff of fraud control;
- detect specific work areas where the implementation of some elements of the Ministry's fraud control strategy may need refreshing or improving.
- assist in identifying the elements of the fraud control strategy that may need attention across the organisation'

The results of the Fraud Control Health Check will be reported to the Ministry's Executive and the Audit Committee, particularly where areas of concern are identified.

The Fraud Control Health Check consists of ten statements against which Ministry staff assess their degree of affirmation:

1. Our fraud control policies and procedures tell us how to deal effectively with the fraud risks we face.
2. Most staff in my work area are aware of their responsibilities for minimising fraud in our workplace.
3. The functions of my work area are regularly assessed to identify and address the fraud risks we face.
4. Our organisation conducts regular training in fraud control.
5. I am confident that our customers/clients, suppliers and contractors would understand that our organisation will not accept fraudulent dealings/transactions.
6. Staff are encouraged to report alleged fraud or corruption in my organisation.
7. I am confident that my organisation systematically makes efforts to detect fraud and corruption.
8. I am confident that my organisation would report fraud and corruption to external organisations (eg. ICAC, Police) where it was required to do so.
9. I am confident that internal investigations of alleged fraud and corruption would be carried out to high standards in my organisation.
10. Most staff in my work area understand that staff will be disciplined for fraudulent or corrupt behaviour, and for breaches of our code of conduct/ethics.

A comprehensive guide to the process is available on the NSW Audit Office website at:

www.audit.nsw.gov.au/publications/better_practice/better_practice.htm

8.0 Fraud Risk Assessment and Fraud Control Improvement Workshops

The Risk Assessment Workshop identifies and evaluates risks and suggests where action is needed to treat unacceptable risks. The Risk Assessment Workshops, which occur on an annual basis, apply the fraud risk assessment procedures outlines in section 6 of this Strategy document.

The Fraud Control Health Check indicates areas where staff are not fully aware of the Ministry's fraud control strategies.

With these two activities as preparation, Fraud Control Improvement Workshops are to be undertaken for specific work areas that are identified as needing some attention. The Workshops are used to develop actions suited to the specific needs and actual situations occurring in individual work areas.

The Workshops provide:

- a considered assessment of the work situation;
- a determination of what action is required to improve the existing situation; and
- an assessment of who would undertake the actions required.

The outcomes of the Workshops are to be the subject of a formal report, including the recommendations for improvement actions; the Ministry staff responsible for those actions and a timeframe for implementation of the fraud control improvements.

Fraud Control Improvement Workshops occur only on an as required basis.

The NSW Audit Office website provides guidance in regard to the Fraud Control Improvement Workshops at:

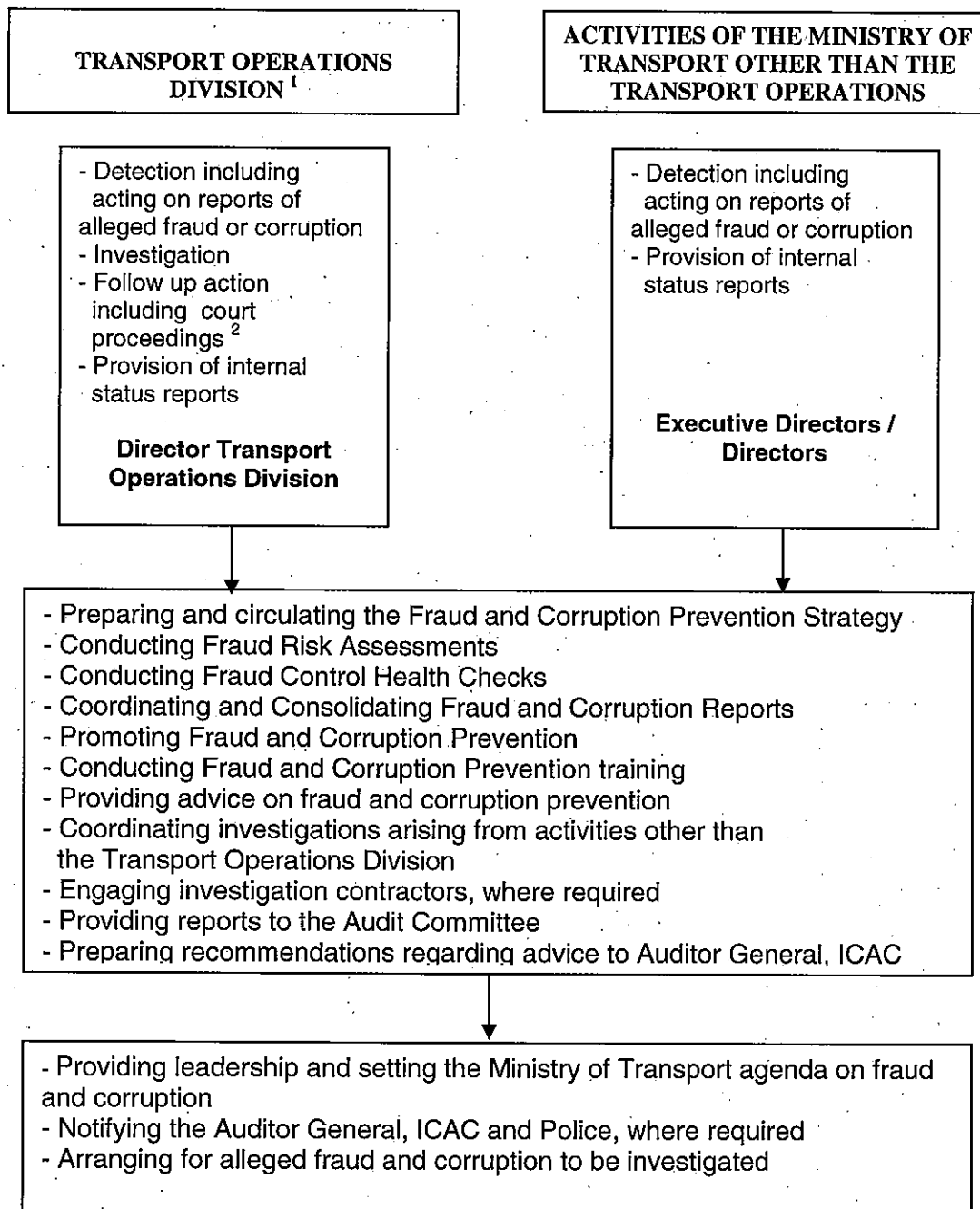
www.audit.nsw.gov.au/publications/better_practice/better_practice.htm

9.0 Responsibility Structures and Reporting

The responsibility for fraud and corruption reporting and the systems in place in support of the responsibilities are outlined in the following sub sections.

9.1 Responsibility Structures

The responsibility for fraud and corruption detection and prevention are outlined below, having regard for the unique role of the Operations Division.



Notes

¹ Includes bus operator accreditation and contracts, bus driver authorities, SSTS, HFCS, PVC, HACC, taxi, hire car and 4 wheel drive tour operator accreditation and taxi driver authorities.

² Corporate Counsel to be informed and involved depending on circumstances.

9.2 Internal Reporting

The fraud and corruption internal reporting system adopted for the Ministry of Transport have been tailored to take into account:

- its size
 - an organisation comprising less than 300 staff;
- the number of office locations:
 - Sydney, Parramatta, Newcastle, Wollongong and including local and community transport regional coordinators in regions across NSW.;
- internal corporate governance arrangements
 - organised into two operating groups – Policy and Strategic Coordination Group and the Transport Services Group each reporting to the Director General.

The Policy and Strategic Coordination Group has six divisions:

- Transport Policy
- Transport Planning
- Centre for Transport Planning and Product Development
- Transport Data Centre
- Rail and Freight Policy and
- Ministerial Coordination;

The Transport Services Group has two divisions:

- Finance and Corporate Services; including Local and Community Transport
- Transport Operations

With an Executive Committee chaired by the Director General and an Audit Committee chaired by an independent auditor and including representatives from the NSW Audit Office.

The elements of the Ministry of Transport internal reporting system comprise of:

- **Update reports from each Division to the Executive Committee** – this utilises a pro forma approach and is intended to keep the Executive informed of developments such new cases of alleged fraud and the progress of court cases etc.
- **Update reports to the Audit Committee** – this utilises an informal approach on a 'needs basis' and enables the Auditor General to be kept informed of developments by means of Audit Office of NSW representatives on the Committee.
- **Internal Audit Reports** – Internal Audit Reports are circulated to relevant Divisions and managers. The results of internal audits are also made available to the Executive Committee for their consideration and in addition, internal audit reports and progress on action arising are discussed at the Audit Committee.
- **Sign off statement for Annual Report** – Individual Executive Directors are required to make declarations with regard to any fraud and corruption matters of which they may be aware within their Divisions as part of the preparation of the annual accounts for the Ministry of Transport.

Proforma: A proforma for the reporting of fraud and corruption has been developed and is shown below.



MINISTRY OF TRANSPORT

To: Executive Director, Transport Services Group
From:
Date:

FRAUD INCIDENT REPORT

Division

Date case reported

How fraud was identified (including contact details if appropriate)

Incident Details

Estimated Funds involved

Action taken to date (including advice on any action to recover monies and notification to police)

Current status

Director

Ext.

NOTED

Instructions

1. Signed by relevant Director or equivalent
2. Sent to the Executive Director, Transport Services Group
3. The template may be used for initial notification and updating earlier advice
4. The information provided is to remain Confidential

This proforma is also available to all staff via the Ministry of Transport Intranet site (<http://intranet/>)

The cornerstone for the internal reporting system is the Divisional structure. Each Division is to report on fraud and corruption, in the first instance to the Executive Director, Transport Services Group. The information provided by the Divisions forms the basis of reports to the Executive Committee and Audit Committee.

9.3 Protected Disclosures

The intention of protected disclosures under the *Protected Disclosures Act 1994* is to support and protect people (commonly referred to as 'whistleblowers') who volunteer information that leads to the detection of fraud and corruption. The protected disclosures mechanism is intended to assist in overcoming any perceived reluctance to come forward with information. However, protected disclosures do not apply to the Heads of Departments or Agencies who have a statutory duty to report fraud and corruption.

Staff who make a protected disclosure can expect that:

- their information will be treated confidentially and that their identity will not be disclosed;
- they will be advised of any outcome including the reasons for not proceeding with a full investigation;
- the eligibility criteria and mechanism for protection will be explained to them; and
- any persons named in disclosures will not be permitted to victimise or take detrimental action against them and that any attempt to do so will lead to charges of misconduct being made.

For a disclosure to be protected it must:

- Be made voluntarily;
- Be made by a public official (ie a staff member of the Ministry of Transport);
- Be made to a principal officer or to a nominated internal person (ie. the Director General or Executive Director, Transport Services Group)
- Show or tend to show (not merely allege) fraud or corruption

Disclosures made:

- To avoid disciplinary action;
- Frivolously or vexatiously;
- That question the merits of government.

will not be treated as a protected disclosure.

It is desirable to get the disclosure in written form and signed to reduce the chance of subsequent dispute about the precise nature of the disclosure and whether it should have been treated as protected.

A staff member who reports fraud or corruption will be protected by the Protected Disclosures Act. This means that their report will be treated in confidence and acted upon, their identity will not be disclosed and they are protected at law from detrimental action.

9.4 External Reporting

External reporting is a statutory requirement, arising from *the Independent Commission Against Corruption Act 1990*, the *Crimes Act 1900* or the *Public Finance and Audit Act 1983*. Consequently, after examining the facts and depending on circumstances, it may be decided that external notification may be required to:

- the Independent Commission Against Corruption;
- the New South Wales Police Service;
- the Audit Office of New South Wales.

Notifying the Independent Commission Against Corruption (ICAC)

Imperative The Director General has a duty to report to ICAC any matters that on reasonable grounds may concern corrupt conduct or serious fraud. This duty cannot be delegated.

It is important that reports be made without advising the person(s) to whom the report relates and without publicity. Confidential handing of reports helps avoid prejudice to investigations and hurt or embarrassment to persons whose involvement is ultimately not established or is benign. Matters should be reported promptly and in writing, including a short history and relevant documentation, details of action already taken and intended further action. If no further action is to be taken, the reasons for this and details of any other bodies to which the matter has been or will be referred. Where further action is taken, ICAC should be kept informed of significant developments as they occur.

Notifying the New South Wales Police Service

Imperative Agencies have an obligation to inform Police of a crime. Fraud is a crime.

"Where a department reasonably believes that an officer has committed a criminal offence, the matter should be referred to the police" (Chapter 9.9.2, NSW Government Personnel Handbook)

"Anyone who knows or believes that the (an) offence has been committed ... and without reasonable excuse fails to bring that information to the attention of a member of the Police Force or other appropriate authority ... is liable for imprisonment for two years" (Section 316 Crimes Act 1900)

In the context of corruption and fraud reporting, the Director General (or nominated delegate), where circumstance warrant it, will report the matter to the Police.

Notifying the Audit Office of New South Wales

Imperative All public sector agencies subject to the requirements of the *Public Finance and Audit Act 1983* have an obligation to report discrepancies of serious proportions to the Auditor General as they may affect the annual audit and certification of the agency's financial statements.

Early notification will allow the auditor to re-appraise the audit. Late or no notification could result in an unfavourable audit result or delay signing of the financial statements. Normally done by the Executive Director, Transport Services Group and raised at Audit Committee.

After checking the facts and reporting internally, external reports may be required to be prepared for the Police, ICAC and the Auditor General.

10.0 Fraud and Corruption Awareness

Creating awareness of the stance the Ministry of Transport takes with regard to preventing fraud and corruption involves creating awareness in:

- Employees - those who work within the Ministry of Transport;
- Customers - those who directly use or benefit from the services provided by the Ministry of Transport;
- Service Providers – those providing goods and/or services to the Ministry of Transport; and
- The broader community – those who may read, see or hear about the Ministry of Transport.

10.1 Employee Awareness

The methods the Ministry of Transport will use to ensure that its employees are aware of what our fraud and corruption prevention strategy is will include:

- Conducting Fraud Control Health Checks
- Posting relevant information on the Ministry of Transport Intranet Site;
- Ensuring Fraud and Corruption Prevention is included in the Staff Resources Folder;
- Including Fraud and Corruption Prevention in staff Induction Courses;
- Conducting Fraud and Corruption Prevention Awareness Sessions for staff;
- Specialist and targeted training for those who work in areas where the opportunity for fraud and corruption is highest and where investigation is required;

10.2 Customer, Service Provider and Community Awareness

The Ministry of Transport will ensure that its customers, service providers and the community are aware of its stance on fraud and corruption by means of:

- Notices at Customer Counters that highlight our Fraud and Corruption Prevention Policy. The customer counters are located in Parramatta, Newcastle and Wollongong.
- Inclusion of a Fraud and Corruption Prevention Policy Brochure or Statement in our information and mail outs for Operator Accreditations and Driver Authorities.
- Inclusion of our Fraud and Corruption Prevention Policy on our publicly accessible Web Site.

Employees, service providers and customers need to be aware that fraud and corruption will not be tolerated. Staff particularly need to be aware of the policies, procedures and practices adopted by the Ministry of Transport for the purpose of fraud and corruption prevention.

11.0 Standards

Integral to preventing fraud and corruption are standards relating to *conduct* (what is expected of staff), *discipline* (what happens if conduct is compromised) and *investigation* (the steps undertaken to investigate any allegation of fraud or corruption). These are outlined in the following sections.

11.1 Conduct Standards

Standards for conduct exist for Ministry of Transport staff and are found in the Employee Relations Folder, available on the Intranet. The standards for conduct that are expected of Ministry of Transport staff fall under the following headings:

- Responsibility to the government of the day
- Respect for people
- Responsive service
- Ethical decision making
- Acceptance of gifts or benefits
- Fairness and Equity
- Protecting Confidential Information
- Secondary employment
- Criminal charges
- Responsibilities of managers and supervisors
- Reporting corrupt conduct, maladministration and serious and substantial waste of resources
- Travel Pass
- Integrity and the public interest
- Economy and efficiency
- Conflicts of Interest
- Discrimination and harassment
- Public comment on the work of the Ministry
- Use of official facilities and equipment
- Political and Community participation
- Compliance and disciplinary action
- Post separation employment
- Responsibility to report

11.2 Discipline Standards

Where fraud and / or corruption has been found to occur then disciplinary action will need to be considered. The Ministry of Transport is part of the New South Wales Public Service and as a consequence the standards for discipline are those applicable in the NSW Government Personnel Handbook. Chapter 9 of the NSW Government Personnel Handbook covers matters such as:

- Procedures for dealing with allegations of misconduct requiring disciplinary action
- Conducting disciplinary interviews
- Punishment for breaches of discipline and serious offences

In terms of disciplinary policy and practice the following extract from the Personnel Handbook is particularly pertinent:

Disciplinary actionis relevant in the following circumstances:

- *when the Department Head is of the opinion that the officer has engaged in misconduct, and it is appropriate*
- *in dealing with unsatisfactory performance, where the performance is still unsatisfactory after remedial action has been taken and the officer has been given a reasonable opportunity to improve his or her performance*
- *cases where an officer has been convicted of a serious offence, where it is appropriate.*

The standards of conduct are expected to be upheld and practised by all Ministry of Transport staff. Where fraud or corruption is found to have occurred, then discipline will be in accordance with that applicable to the New South Wales Public Service.

11.3 Investigation Standards

Investigation may be required where fraud or corruption is suspected. Accordingly, investigation in this context and as applicable to the Ministry of Transport does not include routine regulatory compliance audits or inspections or special transport safety investigations or inquiries.

The starting point for an investigation is the concept that fraud is a criminal offence and must be treated as such from the outset. Suspected fraud must not be left unexplored nor should investigation be unreasonably deferred. Time lost may later prove to be critical. For example considerable damage may be done to the Ministry of Transport by the perpetrator during any elapsed time.

The principal mechanism by which the Ministry of Transport articulates its standards for investigation is by means of Investigation Plans. It then follows that once a suspected fraud has been examined and a basis for further action has been established, then a Fraud Investigation Plan should be prepared.

Investigation Plan

Fraud Investigation Plans are to address the following matters:

- IP 1 Scope of the investigation
- IP 2 Whether internal or external resources are to be used
- IP 3 Type of resources and skills of personnel including technological resources
- IP 4 Investigation techniques to be used
- IP 5 Maintenance of confidentiality and consideration of FOI issues
- IP 6 Timeframe for the investigation
- IP 7 Arrangements for liaison with management and other professions such a legal
- IP 8 Reporting arrangements for interim and final reports including external notification
- IP 9 Evidence gathering, recording, preservation and management
- IP 10 Review milestones to allow the investigation to be assessed

Reporting

Reporting is an integral part of investigation. Regular reports enable managers to determine whether an investigation, upon review, is worth continuing or what the next steps should be.

Irrespective of what stage the investigation reaches, a final report should be prepared that summarises items IP 1 – 10 and contains the conclusions reached and recommendations including means of disclosure, current employment status of those involved, restitution, disciplinary matters, internal control, the results of any Police action or prosecution.

Sign Off

Prior to commencing an investigation the Investigation Plan should be approved by a Director. This would include sign off to any budget that is required to conduct the investigation.

All investigations must have an investigation plan in accordance with requirements IP 1 to 10 above, be signed off by a Director and have a final report.



MINISTRY OF TRANSPORT

Code of Conduct

Introduction

The Ministry of Transport's vision is to increase the use of public transport by delivering efficient, reliable, safe and cost effective transport solutions that meet the community's passenger and freight transport needs.

Within this context, the work we do carries with it an obligation to the public interest. It requires standards of professional behaviour from staff that ensure our mission's success and promote and maintain public confidence and trust in our work.

At the same time, staff should not be subject to unnecessary restrictions simply because they work in the public sector. Staff have all the normal rights of employees under common and statute law, and when given clear objectives, appropriate freedom to take decisions, and the requirement to perform at a high standard, they achieve the desired outcomes.

Although no one set of rules can answer all ethical questions, this Code of Conduct provides staff with a framework for decisions, actions and appropriate behaviour. In this regard, it explains the principles covering appropriate conduct in a variety of contexts and outlines the minimum standard of behaviour expected of all people employed by the Ministry of Transport.

This includes permanent, temporary, casual and contract staff as well as consultants. This Code also applies to staff on secondment from other Agencies.

General principles

The community is entitled to expect the business of the Ministry to be conducted with efficiency, economy, fairness, impartiality, and integrity. To meet this expectation, all staff need to follow these principles when doing their work:

Responsibility to the government of the day

Staff are to implement the policies and decisions of the Government of the day in an impartial manner. In particular, staff must comply with any relevant legislative, industrial, and administrative requirements, and ministerial policies. With regard to ministerial policies, this includes the requirement to obtain approval for all absences and ensure the health and safety of staff and clients is not endangered. Staff can do this by reporting unsafe practices, equipment, or facilities to their Manager.

Respect for people

Staff are to treat members of the public and their colleagues fairly and consistently, in a non-discriminatory manner, and with proper regard for their rights and obligations. In this regard, they should perform their duties in a

professional and responsible manner. They should also ensure that their decisions and actions are reasonable, fair, and appropriate to the circumstances, based on a consideration of all the relevant facts, and supported by adequate documentation.

Integrity and public interest

Staff are to promote confidence in the integrity of public administration, and always act in the public interest and not in their private interest. If staff have a delegation to make decisions on behalf of the Ministry, adequate records of decisions and actions must be kept, in addition to the reasons for those decisions. When staff are spending on the Ministry's behalf, they should make sure to get value for money, avoiding waste and extravagance. Staff should protect the reputation of the Ministry. They should not engage in activities, at work or outside work, that would bring the Ministry into disrepute.

Responsive service

Staff are to provide a relevant and responsive service to their clients and customers, providing all necessary and appropriate assistance to fulfil the Ministry's service performance standards.

They should provide information promptly and in an appropriate format that is easy for the recipient to understand. The information should be clear, accurate, current and complete.

Economy and efficiency

Staff members, contract staff, and consultants are responsible for understanding the procedural and operational responsibilities of their jobs.

Staff should keep up to date with advances and changes in their area of expertise, and look for ways to improve performance and achieve high standards of public administration. They should use their authority, available resources, and information only for the work-related purpose intended.

When reporting for duty, staff should be free from the influence of alcohol or any other drug which may have a negative effect on their ability to perform their duties well. If staff are taking prescribed medication which will negatively affect their ability to perform their duties, they should seek approval for sick leave.

Guide to ethical decision making

To assist in fostering a climate of ethical awareness, conduct and decision-making in public agencies, staff may find it useful to refer to or consider, either by themselves or in consultation with others such as their peers or supervisor, the following five points:

1. Is the decision or conduct lawful?
2. Is the decision or conduct consistent with government policy and in line with the Ministry's objectives and Code of Conduct?
3. What will the outcome be for the staff member; work colleagues, the Ministry, and other parties?

4. Do these outcomes raise a conflict of interest or lead to private gain at public expense?
5. Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

Conflicts of interest

Conflicts of interest exist when it is likely that a staff member could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their public duty. Conflicts of interest that lead to partial decision-making may constitute corrupt conduct.

Some related interests that may give rise to a conflict of interest include:

- financial interests in a matter that the Ministry deals with, or having friends or relatives with such an interest that the staff member is aware of;
- personal relationships with the people the Ministry is dealing with or investigating, that go beyond the level of a professional working relationship;
- secondary employment that compromises the integrity of the staff member and the Ministry; and
- party political activities or making adverse political comments that relate to the Ministry's work. (However, see Public Comment on the Work of the Ministry on p6, and Political and Community Participation p8).

An individual staff member may often be the only person aware of the potential for conflict. It is therefore their responsibility to avoid any financial or other interest that could compromise the impartial performance of their duties, and disclose any potential or actual conflicts of interest to their Manager or Director.

If staff are uncertain whether a conflict exists, they should discuss the related interest matter with their manager and attempt to resolve any conflicts of interest that may exist.

To resolve any conflicts of interest that occur, or could occur, a range of options is available depending on the significance of the conflict. These options include:

- recording the details of the disclosure and taking no further action because the potential for conflict is minimal or can be eliminated by disclosure or effective supervision;
- the staff member relinquishing the personal interest; or when required to, or authorised, do so by law, or
- the staff member transferring (at no disadvantage in their terms and conditions of employment) from the area of work or particular task where the conflict arises.

Disputes over alleged conflicts of interest may be resolved through the Ministry's grievance handling procedures.

Acceptance of gifts or benefits

Staff should not accept a gift, invitation or benefit that is intended to, or is likely to, cause them to act in a partial manner in the course of their duties.

Directors or Managers may approve the acceptance of token gifts or benefits under certain circumstances provided that there is no possibility that the recipient might be, or might appear to be, compromised in the process.

Staff should advise their Director or Manager if they believe they have been offered a bribe, or if they have been offered or received a favour, gift, invitation or benefit.

Staff dealing with, or having access to, sensitive investigations or commercially sensitive information, should be particularly alert to inappropriate attempts to influence them.

Where the Director or Manager deems that the gift or benefit is substantial it must be forwarded to Executive for consideration or noting.

Following the Executive's decision, details of the gift or benefit whether accepted, declined or returned should be reported to Belinda Millerick, Finance and Corporate Services, in writing, advising the following by the relevant Director or Manager;

- Date
- Name of Employee
- Person / Company offered benefit
- Nature of benefit
- Estimated value of benefit
- Date Executive notified
- Executive decision

Where a gift, invitation or benefit is determined as a minor incidental item (for example, refreshments, chocolates etc) these need not be recorded but where possible be shared amongst staff within the branch.

Discrimination and harassment

Staff must not harass, or discriminate against, their colleagues or members of the public on the grounds of sex, marital status, pregnancy, age, race, ethnic or national origin, physical or intellectual impairment, or sexual preference. Such harassment or discrimination may constitute an offence under the Anti-Discrimination Act 1977. In addition, staff must not harass or discriminate on the grounds of political or religious conviction.

Managers must make sure that the workplace is free from all forms of harassment and discrimination. For a copy of the Ministry's policy on maintaining a Harassment Free Workplace, Managers should also understand and apply the principles of equal employment opportunity and ensure that the staff they supervise are informed of these principles.

Managers should also take all necessary steps, such as training and other active measures, to prevent and eliminate harassment and discrimination in their work area.

Fairness and equity

Issues or cases being considered by staff should be dealt with consistently, promptly, and fairly. This involves dealing with matters in accordance with approved procedures, in a non-discriminatory manner, and in conformity with natural justice.

When using any discretionary powers, staff should ensure that they take all relevant facts into consideration, have regard to the particular merits of each case, and not take irrelevant matters or circumstances into consideration.

Public comment on the work of the Ministry

Public comment by staff includes public speaking engagements, comments on radio and television or in letters to newspapers, expressing views in books, journals, notices or any other medium where it is expected that the comments will spread to the community at large.

Staff, as individual members of the community, have the right to make public comment and enter into public debate on political and social issues. However, there are some circumstances in which this is inappropriate. For example, situations where the public comment, although made in a private capacity, may appear to be an official comment on behalf of the Ministry. In such circumstances, staff should preface their remarks with a comment that they are made in a private capacity and do not represent the official view of the Ministry. Media enquiries must ultimately be referred to the Ministry's Communication Division.

As a general rule, staff can disclose official information that is normally given to members of the public seeking that information, but should only disclose other official information or documents:

- in the course of their duties;
- when proper authority has been given;
- when required to, or authorised, do so by law, or
- when called to give evidence in court.

In these cases, comments made by staff should be confined to factual information and should not, as far as possible, express an opinion on official policy or practice unless required to do so by the circumstances of the particular situation (eg. asked to do so in court).

If a person from another organisation or the media asks a staff member to comment on Ministry of Transport business, administration, or policies, they are to be referred to the manager or Director unless the staff member has specific

authority to speak on behalf of the Ministry. Media inquiries must ultimately be referred to the Ministry's Communications Division.

Comments made on matters relating to union business by members of unions in their capacity as a local delegate within the organisation, or by union office holders employed by the organisation, are acceptable under this Code.

Protecting confidential information

Official information must only be used for the work-related purpose intended and not for personal benefit. Unless authorised to do so by legislation, staff must make sure that they do not disclose or use any confidential information without official approval. Unauthorised disclosures may cause harm to individuals or give an individual or an organisation an improper advantage.

Unauthorised disclosures may cause harm to individuals or give an individual or an organisation an improper advantage. The integrity and credibility of the Ministry may also be damaged if it appears unable to keep its information secure.

Ministry of Transport staff may have access to confidential or private information about other people or Ministerial business. Examples include: client details such as records relating to authorisation and accreditation of private transport operators, students, and travel subsidy beneficiaries; financial information such as business plans, budgets, and tenders; medical reports; selection committee notes; and discipline reports. Staff may only discuss such information with other staff of the Ministry where they have a specified need to know or are appropriately authorised to have access to the information.

Likewise staff may only discuss such information with staff of other Ministries where specific authorisation exists (eg Police, Roads and Traffic Authority) unless staff:

- are asked to provide information as evidence in court; or
- have appropriate authority or the Manager has authorised the staff member to disclose the information.

Even in these cases, staff must only provide facts, not personal opinion about official policy and practices. If information is requested under the Freedom of Information Act, the request is to be referred to the Manager. Staff may have to prepare the information, but it must not be released directly by that staff member.

Even in these cases, staff must only provide facts, not personal opinion about official policy and practices. If information is requested under the Freedom of Information Act, the request is to be referred to the Manager. Staff may have to prepare the information, but it must not be released directly by that staff member.

As a general rule, only provide information to the public or other organisations if it is a specific requirement of the job. Staff should check with their Manager first if there is any doubt.

If there is any reason to believe that another staff member is using ministerial information improperly this should be raised with the Manager or Director.

Use of official facilities and equipment

Staff are expected to be efficient and economical in their use and management of public resources, including their own work time. They should be scrupulous in their use of public property and services.

When driving Ministerial vehicles, staff must have a current NSW driver's licence and under normal circumstances will have to pay for any traffic and/or parking infringements they commit.

Official facilities and equipment should only be used for private purposes when official permission has been given. This may include short private local telephone calls and limited private use of facsimile equipment and e-mail that does not disrupt official work. Use of the Internet must be in keeping with the Ministry's Internet Policy.

Managers may also approve the use of facilities, such as meeting rooms and equipment, by non-profit professional and community organisations in which staff are volunteers as long as there is no significant cost to the Ministry.

Secondary employment

Staff must obtain written approval from their relevant Director prior to accepting a position in addition to their ministerial position. Similarly, a written approval is required to operate a business or a private practice in any trade or profession, or obtain a public passenger vehicle accreditation or authority while employed with the Ministry.

Staff must declare to the relevant Director if they hold any public passenger vehicle licence and any commercial interest which they may have in provision of public transport (eg ownership of a taxi or bus run) so that any potential for conflict of interest may be assessed and appropriate action can be taken to resolve this conflict.

Approval may be given for employment outside the Ministry when no conflict of interest is likely to occur or when the other employment is not likely to adversely impact on a staff member's ability to perform their duties with the Ministry. Staff must not use ministerial equipment in their work for another employer or for their own business. In the hours for which a staff member is paid by the Ministry the staff member must do only Ministerial work. Staff must not give their Ministerial telephone number as a contact point for private business or practice.

Political and community participation

Staff must make sure that any participation in party political activities does not conflict with their primary duty as a public employee to serve the government of the day in a politically neutral manner.

This is important because of the need to maintain Ministerial and public confidence in the impartiality of the actions taken and advice given by public staff. What is considered appropriate by the Director-General in any particular case will depend on the nature of the issue, the position held by the staff member, the extent of the staff member's participation, and their public prominence.

If staff become aware that a potential conflict of interest has arisen or might arise, they should inform their manager or Director immediately and may have to stop the political activity or withdraw from the areas of their work where the conflict is occurring.

Special arrangements apply to public employees who are contesting State or Federal elections. Details of these arrangements are in the Premier's Ministry Circular No. 95-4 and PEO Circular 96-7.

Within the context of the requirements of this Code, staff are free to fully participate as volunteers in community organisations and charities, and in professional associations.

Reporting corrupt conduct, maladministration and serious and substantial waste of public resources

The Ministry of Transport is committed to an ethical workplace, free of corruption, maladministration and waste.

It is the responsibility of all staff to prevent corruption, maladministration and waste and the responsibility of Managers and supervisors to establish systems of control to minimise their occurrence.

Responsibility to Report

Every person has a responsibility to report corrupt conduct, maladministration, or serious and substantial waste. The Protected Disclosures Act 1994 provides certain protection against reprisals for staff who voluntarily report such matters. (Such protection does not apply in cases of vexatious or malicious allegations.)

Managers must ensure that all staff have information about the Ministry's internal reporting procedures. For more information about protected disclosures and full details of our internal reporting procedures please refer to the Employee Relations intranet site.

Travel passes

Staff are responsible for their Ministry of Transport travel pass and may not lend or sell it. Notify your Manager immediately if it is lost or stolen. It must be returned when ceasing employment with the Ministry.

Criminal charges

If there is sound evidence that a staff member has committed a criminal offence at work or related to work, the Ministry may take disciplinary action against that staff member as well as notifying the police. If a staff member is charged with a

criminal offence which is not related to their work, the staff member must notify their Manager.

The Ministry may take disciplinary action if the staff member is convicted of a criminal offence.

Compliance and disciplinary action

Staff must perform all of the duties of their position well and comply with any reasonable instruction from their Manager, whether or not the staff member agrees with them.

If a staff member disagrees with any policies or instructions, the problem should be discussed between the staff member and with the Manager in the first instance, or with the Director if necessary. Even then, the staff member must comply until the policy or instruction changes.

If staff breach any policies or instructions, the Ministry of Transport may take disciplinary action against the staff member. Penalties include formal written warnings to improve conduct and, for very serious breaches, dismissal.

Responsibilities of managers and supervisors

Managers are responsible for the conduct of their subordinates as well as themselves. Managers/supervisors have additional responsibilities for:

- communicating standards of conduct in the workplace;
- advising staff of their duties and the outcomes expected;
- setting examples for other staff members by working safely, efficiently and ethically;
- identifying and closing off opportunities for corrupt conduct;
- taking corrective action where unacceptable practices are identified; and
- ensuring equity in employment and ensuring the workplace is free from discrimination and harassment.

Post separation employment

Staff should not allow their work to be influenced by plans for, or offers of, employment outside the Ministry. If they do, there is a conflict of interest and the integrity of the staff member and the Ministry is at risk.

Former staff should not use, or take advantage of, confidential information that may lead to gain or profit obtained in the course of their official duties, until it has become publicly available. All staff should be careful in their dealings with former staff of the Ministry and make sure that they do not give them, or appear to give them, favourable treatment or access to privileged information.

Relevant legislation and policies

The main legislation that applies to State government employees is the Public Sector Management Act 1988. The following legislation and policies may also be relevant:

- Anti-Discrimination Act 1977
- Crimes Act 1900 Freedom of Information Act 1989
- Independent Commission Against Corruption Act 1988
- Industrial Relations Act 1996
- Ombudsman Act 1974
- Protected Disclosures Act 1994
- Public Finance and Audit Act 1983
- State Records Act 1998
- Ministry of Transport Records Management Policy Statement

SIGNATURE:

NAME:
(Block letters)

DATE:

Statement of Business Ethics

June 2007

Prepared by Business Strategy and Reporting Branch

Introduction by Director General

Dealings between the Ministry of Transport and the private sector must be undertaken with the highest ethical standards so as to enhance public confidence in doing business with the NSW Government. These ethical standards are an integral part of sound commercial practices.

The Statement of Business Ethics sets out the appropriate standards for conducting business arrangements with the Ministry of Transport. It provides guidelines on what to expect from the Ministry of Transport and explains the mutual obligations, roles and constraints of all parties involved in the business partnership.

All individuals and organisations that deal with the Ministry of Transport are required to adopt these standards of ethical behaviour. The standards comply with NSW Government guidelines for procurement, contracting and market testing. All contractors must also ensure that sub-contractors adhere to the principles set out in this Statement.

I encourage staff, public, private sector and community agency business partners to support and uphold this Statement.

The Ministry of Transport is committed to promoting fairness, ethical conduct and accountability in all areas of our operations.

Jim Glasson
Director General
21 June 2007

Our business principles

The key business principles that form the basis of Ministry of Transport business agreements include:

- **Best value for public money;**
- **Impartiality;**
- **Fairness; and**
- **Ethical communication.**

These key business principles enable suppliers to promote their interests effectively but avoid unproductive and potentially questionable activities. All potential providers of goods and services are subject to the same ethical operating environment and must comply with this Statement. These key business principles are discussed below.

Best value for money

Best value for money is determined by considering the impact of factors such as quality, reliability, timeliness, service, initial and ongoing costs. It does not necessarily mean 'lowest price'.

Impartiality

Impartiality means being objective and even-handed. For example, an impartial person will objectively establish the criteria for determining best value for money and then assess each bid against these criteria.

Fairness

Fairness overlaps with impartiality in the sense of being even-handed. In some circumstances fairness can also entail taking into account the effects of actions on others. Conditions of tendering must be the same for each tenderer on any particular tender. All requirements must be clearly specified in the tender documents and criteria for evaluation must be clearly indicated.

Ethical communication

All communication should be clear, direct and accountable and all parties must adhere to relevant intellectual property and confidentiality requirements.

Code of conduct

The Ministry of Transport's Code of Conduct also sets out the following key principles, with which all staff are expected to comply, including:

1. Responsibility to the Government of the day;
2. Respect for people;
3. Integrity and public interest;
4. Responsive service;
5. Economy and efficiency;
6. Ethical decision making;
7. Awareness of conflicts of interest;
8. Fairness and equity; and
9. Confidential information.

The Ministry of Transport requires its staff and contractors to:

- Comply with government policies and procedures (link to the Department of Premier and Cabinet website).
- Act at all times with due care and diligence.
- Conform to all legal obligations.
- Show fairness in their treatment of all individuals or organisations that supply goods or services, this includes conducting all tendering processes with honesty and fairness at all levels.
- Encourage fair and open competition while seeking value for money.
- Minimise costs to suppliers participating in the procurement process.
- Protect commercial-in-confidence information.
- Deal honestly with suppliers and pay accounts on time.
- Be accountable and act in the public interest.
- Avoid situations where private interests conflict with public duty and declare any conflict of interest as soon as it becomes known.
- Not solicit or accept financial or other benefits from a supplier for performing official duties.

- Respond to reasonable requests for advice and information without delay.
- Behave as a model litigant in the event that a genuine dispute and litigation arises.

What the Ministry of Transport expects of its business partners:

- Act ethically, fairly and honestly in all dealings with the Ministry of Transport.
- Respect the conditions and requirements stated in documents supplied by the Ministry of Transport.
- Present full and concise information.
- Comply with any codes of tendering and practice that apply.
- Respect the obligation of staff to comply with government policies, including the requirement to act in accordance with this statement.
- Act with integrity and in accordance with relevant legislation.
- Ensure privileged or confidential information, such as commercial-in-confidence information is not released without prior authorisation.
- Maintain confidentiality, including consulting with the Ministry of Transport prior to discussing business dealings with the media.
- Respond to reasonable requests for advice and information.
- Ensure that Ministry of Transport staff and contractors are not offered any financial or other inducements which may lead to, or be seen as leading to, gaining an unfair advantage in dealings with the Ministry of Transport.
- Comply with the Ministry of Transport's post separation employment guidelines.

Why is compliance important?

If all parties comply with this Statement good ethical practice can be achieved in daily business dealings leading to additional confidence in the Ministry of Transport.

This Statement also highlights that when engaged by the Ministry of Transport contractors and consultants are subject to ICAC's jurisdiction and are considered to be public officials for the purposes of the Independent Commission Against Corruption (ICAC) Act 1988.

Confidentiality and intellectual property rights

Confidential information is information disclosed by the Ministry of Transport during the term of the engagement or during contractual negotiations or of which the recipient becomes aware during the engagement. It does not include information that can be proved to be in the public domain.

Official information must only be used for the work-related purpose intended and not for personal benefit. Unless authorised to do so by legislation, staff must make sure that they do not disclose or use any confidential information without official approval.

Unauthorised disclosures may cause harm to individuals or give an individual or an organisation an improper advantage.

Staff must only provide facts, not personal opinion about official policy and practices. If information is requested under the Freedom of Information Act 1989, the request is to be referred to their Supervisor / Manager. Staff may have to prepare the information, but it must not be released directly by that staff member.

As a general rule, staff are to only provide information to the public or other organisations if it is a

specific requirement of the job.

Incentives

Ministry of Transport staff should not accept a gift, invitation or benefit that is intended to, or is likely to, cause them to act in a partial manner in the course of their duties. If staff believe that they have been offered a bribe, favour, gift, invitation or benefit they must advise their Supervisor / Manager. If the Supervisor / Manager deems that it is substantial then it must be forwarded to the Executive for consideration.

Protected disclosures

Disclosures about corrupt conduct, maladministration or waste of public funds are protected under the Protected Disclosures Act 1994.

Persons who report unethical behaviour that is conduct covered by this Act can seek protection from any reprisal or detrimental action.

Further assistance

If you require any further information about this Statement or are concerned about a possible breach of this Statement please contact:

Manager, Business Strategy and Reporting
Ministry of Transport
Level 6, 16-18 Wentworth Street
Parramatta NSW 2150
Telephone: (02) 8836 3158
Fax: (02) 8836 3151

Email: wendy.barrett@transport.nsw.gov.au

© Ministry of Transport 1998-2008 // Updated: Friday, 22 June 2007