

**PROVINCE OF THE EASTERN CAPE
DEPARTMENT OF EDUCATION**



WHISTLE BLOWING POLICY

Effective from: 2020

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**EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY**

CONTENT

	Page
VISION	3
MISSION	3
1. BACKGROUND	4
2. THE OBJECTIVES AND APPLICATION OF THE ACT –	4
2.1. Objectives	4
2.2. Application	5
3. POLICY STATEMENT	6
4. PURPOSE AND SCOPE OF THE POLICY	7
4.1. Purpose	7
4.2. Scope	7
5. WHAT IS WHISTLE-BLOWING?	7
5.1. Who is a Whistle-blower?	8
6. WHAT IS DISCLOSURE?	8
6.1. What is not a disclosure?	9
7. CULTURE OF OPENNESS	10
8. GOVERNMENT’S ASSURANCES TO EMPLOYEES	10
8.1. Employee Safety	10
8.2. Employee confidence	11
9. IMPLEMENTATION PLAN	11
9.1. How the matter will be handled	11
9.2. How to raise a concern internally	12
9.3. Security assurance to whistle-blower	13
10. EXTERNAL CONTACTS	14
11. INDEPENDENT ADVICE	15
12. DISSATISFACTION WITH RESPONSE	15
13. REVIEW AND APPROVAL:	15



2



**EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY**

VISION

An Eastern Cape Government that is corrupt-free and geared towards accelerated service delivery.

MISSION

- To promote a culture of integrity and to restore confidence in the fight against corruption.
- To foster and promote professional ethical standard through training.
- To encourage whistle-blowing and reporting and strengthen measure to protect all persons from victimization when they expose corrupt and unethical practices.
- Ensuring effective implementation of the Public Service Anti-Corruption Strategy.



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**EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY**

1. BACKGROUND

The Protected Disclosures Act, Act 26 of 2000, which became effective in February 2001, provides protection to employees for disclosures made without malice and in good faith, undefined circumstances.

2. THE OBJECTIVES AND APPLICATION OF THE ACT –

2.1. Objectives

The objectives of the Protected Disclosures Act of 2000 are as follows:

- To protect an employee, in the Department administration, from being subjected to an occupational detriment on account of having made a protected disclosure;
- To provide for certain remedies in connection with any occupational detriment suffered on account of having made a protected disclosure; and
- To provide for procedures in terms of which an employee can in a responsible manner, disclose information regarding improprieties by his or her employer.



7.)



**EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY**

2.2. Application

The Protected Disclosure Act 2000, the provisions of which are incorporated into this policy, applies to any protected disclosure made after the date on which this Directorate came into operation, irrespective of whether or not the impropriety concerned has occurred before or after the date.

Any provision in a contract of employment or other agreement between an employer and an employee is void in so far as it –

- (a) Purports to exclude any provision of the Act, including an agreement to refrain from instituting or continuing any proceeding under this Act or any proceeding for the breach of contract; or
- (i) Purports to preclude the employee; or
 - (ii) Has the effect of discouraging the employee, from making a protected disclosure.

In terms of this act, employees are therefore encouraged to blow the whistle on all irregularities and misconduct in the working environment without the fear of suffering an occupational detriment as defined by the Act.

This policy has therefore been written with several purposes in mind:

- To explain what whistle-blowing means;
- To express the commitment of the Department Administration in supporting employees who blow the whistle in the interest of protecting the public and government assets;
- To provide an operational framework for dealing with cases of whistle-blowing;
- Finally, to reassure employees that concerns will be dealt with seriously and investigated fully with appropriate action being taken when necessary.



2



**EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY**

3. POLICY STATEMENT

The Eastern Cape Department of Education Administration (hereafter referred to as the "Department Administration") recognises that employees are often the first to realise that something seriously wrong may be happening within Directorate. However, they may not express their concerns for fear of being disloyal to their colleagues or because they fear harassment or victimization. In such circumstances, it is normally easier to ignore the concern than to report what may be just a suspicion of malpractice. The Department Administration is committed to achieving the highest possible standards of service, openness, accountability and the highest possible ethical standards in all its practices. In line with that commitment, it encourages staff to raise matters of concern responsibly through the procedures laid down in this policy document. The Department Administration recognises that certain cases will have to proceed on a confidential basis.

To endorse this commitment, the Department Administration has designed procedures for dealing with cases of whistle-blowing that protect the individual and ensure that the matter is fully and vigorously investigated.

This Policy was widely circulated for discussion and input from Management, Employees and Organised Labour. The Department Administration recognises that an employee may wish to seek advice and be represented by his or her Trade Union when using this policy and endorses the role which trade unions and their officers play in this process.



**EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY**

4. PURPOSE AND SCOPE OF THE POLICY

4.1. Purpose

The purpose of this policy is to provide a means by which employees can raise concerns with the appropriate line management, or specific appointed persons within the Directorate, where they have reasonable grounds for believing that there is fraud and corruption taking place. This is an overarching policy affecting and binding to all Directorate in the Department. The policy is designed to deal with concerns raised in relation to issues relating to fraud, corruption, misconduct and malpractice within Directorate. The policy will not apply to personal grievances, which will be dealt with under existing procedures on grievance, discipline and misconduct. Details of these procedures are obtainable from the Directorate: Human Resources.

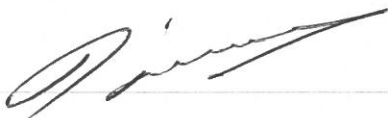
4.2. Scope

The policy covers all genuine concerns raised including:

- Financial & non-financial misconduct (e.g. theft, fraud, breach of contract, etc.)
- Corruption and Fraud
- Attempts to suppress or conceal any information relating to any of the above
- If in the course of investigation any concern raised in relation to the above matters appears to the investigator to relate more appropriately to grievance or discipline, those procedures will be evoked.

5. WHAT IS WHISTLE-BLOWING?

The term whistle-blowing is generally used to describe the process of disclosing information relating to some kind of malpractice or mistreatment which members of staff may have come across during their work and which they feel would put the interests of the public, Directorate and the department administration at risk.



3



**EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY**

5.1. Who is a Whistle-blower?

Any member of staff who has a reasonable belief that there is corruption or misconduct relating to any of the matters specified above may raise a concern under the procedures as detailed.

For the purpose of this policy, an employee or member of staff is someone who is:

- Employed on a permanent basis;
- On a fixed term or temporary contract of employment;
- On secondment to the Directorate.

Concerns must be raised without malice, in good faith and not for personal gain and the individual must reasonably believe that the information disclosed, and any allegations contained in it, are substantial true.

The issues raised may relate to a manager, another member of staff, and a group within staff, the employee's own Directorate or a different Directorate/division within the Department. The perpetrator can be an outsider, an employee, a manager, a customer or an ex-employee. This may include awareness of a system or procedures in use, which may cause Directorate to transgress legal obligations.

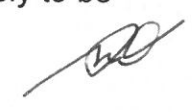
6. WHAT IS DISCLOSURE?

The Act, in its definition of "disclosure" and "protected disclosure" in Directorate 1, read with Directorate 6 sets out what disclosures, made by an employee to an employer, are protected in terms of the Act. "Disclosure" is therefore defined as "any disclosure of information regarding any conduct of an employer, or an employee of that employer, made by any employee who has reasons to believe that the information concerned shows one or more of the following:

- (a) That a criminal offence has been committed, is being committed or is likely to be committed;



3)



**EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY**

- (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- (c) That a miscarriage of justice has occurred or is likely to be endangered;
- (d) That the environment has been, is being or is likely to be damaged;
- (e) Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No.4 of 2000); or
- (f) That any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed”.

As set out in the definition quoted above, a further requirement is that the employee must have “reason to believe that the information concerned shows or tend to show one or more” of the matters set in the definition.

6.1. What is not a disclosure?

Officials are urged to report responsibly:

- A disclosure that is made mala-fide i.e. in bad faith is not a disclosure,
- The Department Code of Ethics also prohibits unauthorized disclosure of official information to e.g. newspapers,
- Malicious or reckless disclosure or reporting of information should be avoided.

An employee who does not act in good faith or who makes an allegation without having reasonable grounds for believing it to be substantially true, or who makes it maliciously or veraciously, may be subject to disciplinary proceedings.



**EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY**

7. CULTURE OF OPENNESS

The Department Administration commits itself to encouraging a culture that promotes openness. This will be done by:

- Involving employees, listening to their concerns and encouraging the appropriate use of this policy/process on whistle-blowing promoted by Senior Management. This policy will be issued to all existing employees and to each new employee.
- Educating/training/informing/explaining to employees what constitutes fraud, corruption and malpractice and its effect on service delivery. Promoting professional ethics, code of conduct and establishing a common understanding of what is acceptable and what is unacceptable behaviour. This training should be co-ordinated and promoted by the Office of the Superintendent-General – Ethics and Awareness Training Unit.
- Encouraging unions to endorse and support this approach.
- Having a policy to combat fraud.

8. GOVERNMENT'S ASSURANCES TO EMPLOYEES

8.1. Employee Safety

The Department Administration is committed to this policy. The Administration will ensure that an employee who makes a disclosure in the above-mentioned circumstances will not be penalized or suffer any occupational detriment for doing so.

Occupational detriment as defined by the Act includes being dismissed, suspended, demoted, transferred against his/her will, harassed or intimidated, refused a reference or being provided with an adverse reference, as a result of his/her disclosure.

If a concern is raised in good faith in terms of this policy, an employee will not be at risk of losing his/her job or suffering any form of retribution as a result.



**EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY**

This assurance is not extended to employees who maliciously raise matters they know to be untrue.

8.2. Employee confidence

In view of the protection offered to an employee raising a bona fide concern, it is preferable that the individual puts his/her name to the disclosure. The Department Administration will not tolerate the harassment or victimization of anyone raising a genuine concern.

However, an employee may nonetheless wish to raise a concern in confidence under this policy. If he/she wishes that his/her identity must not be divulged, it will not be disclosed without consent. However, management expects the same confidentiality regarding the matter from employees. If the situation arises where the matter could not be resolved without revealing an employee's identity (for example where his/her evidence is needed in court), it will be discussed with him/her on how and whether it can be proceeded with.

Accordingly, while anonymous reports will be considered, this policy is not appropriate for concerns raised anonymously.

9. IMPLEMENTATION PLAN

9.1. How the matter will be handled

Once a concern is raised, it will be assessed to decide what action should be taken. This may involve an internal inquiry or a more formal investigation.

The issue raised will be acknowledged within 7 working days. If it is requested, an indication of how of how matter will be dealt with and a likely time scale could be provided. If the decision is made not to investigate the matter, reasons will be given.



EASTERN CAPE DEPARTMENT OF EDUCATION WHISTLE BLOWING POLICY

The whistle-blower will be informed of who will be handling the matter, how to contact him/her and whether further assistance may or will be needed.

When a concern is raised, the whistle-blower may be asked how he/she thinks the matter might best be resolved. If the whistle-blower has any personal interest in the matter, it should be made known from the outset. If the concern falls more properly within the Grievance Procedure, he/she will be informed accordingly.

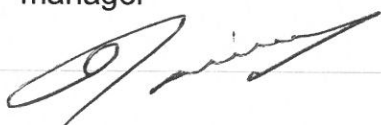
While the purpose of this policy is to enable Directorate to investigate possible malpractice and take appropriate steps on deal with it, whistle-blowers will be given as much feedback as possible, full information may not always be given on the precise action taken where this could infringe a duty or confidence owed to someone else.

9.2. How to raise a concern internally

If an employee has a concern about malpractice, it is hoped he/she will feel able to raise it first with his/her supervisor/manager. This may be done verbally or in writing. It must be stated whether he/she wishes to raise the matter in confidence so that they can make appropriate arrangements.

Each Directorate will set out processes to be followed and this might differ from one Directorate to the other, but the following are the guidelines.

- Step one – employee to report to his/her immediate supervisor verbally or in writing
- Step two – if the manager or supervisor feels the matter needs to be reported to higher authorities, he/she must so advise the employee. Employee must indicate if he/she wants to raise the matter in confidence so that necessary arrangements will be made
- Step three – if employee feels he cannot discuss the matter with any of the above people due to certain reasons, he/she may raise the matter with integrity officer / manager



**EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY**

- Step four – if the employee feels that it is not safe to report internally for one reason or another or circumstances forces him/her to report externally, that is allowed – Attorney, SAPS, MP.

If these channels have been followed and the employee still has concerns or feels that the matter is so serious that it cannot be discussed with the Anti-Corruption Unit with in the Office of the Premier (OTP) in the course of their investigations into fraud and corruption.

9.3. Security assurance to whistle-blower

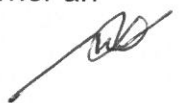
Directorate must assure the employee that he/she is safe after blowing the whistle and that he/she will not be penalized for making such disclosure

- That he/she will not lose his/her job or suffer any occupational detriment or reprisal, only if the disclosure is made in good faith
- Maintenance of confidentiality of disclosure and contents must be confidential – this assist when the matter goes for hearing both internal and in court

To ensure that allegations are considered consistently, the OTP Anti-Corruption Unit will ensure that the concern is properly investigated and that any such investigation is properly monitored. The earlier a concern is expressed, the easier it is to take action. Concerns must be recorded in writing at an early stage to ensure that all the details are correctly understood. A written allegation should set out the following:

- the background of the concern
- history of the concern (giving names, dates and places where possible)
- and the reason why the employee is particularly concerned about the situation.

It is preferable for that employee to record this in writing him-/herself. However, where the person to whom the concerns are voiced writes these down, a copy will be sent to the employee's home address or via his/her representative to give him/her an opportunity to agree to this as a correct record.



**EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY**

Although it is not expected of the whistle-blower to prove the truth of an allegation, he/she will need to demonstrate to the person contacted that there are sufficient grounds for concern.

If the above resources have been exhausted or it is felt that the complaint is about something seriously wrong occurring at a Senior Management level within the Directorate or where substantial reason to believe exists that there would be a cover-up or that evidence will be destroyed or that the matter will not be handled properly, an employee may prefer to approach either the Head of the Department as the Accounting Officer and / or the MEC as the Executive Authority.

10. EXTERNAL CONTACTS

While it is trusted that this policy reassures employees to raise such matters internally, it is preferable to raise a matter with an appropriate external regulator than not at all. Provided employees are acting in good faith, concerns can also be raised with:

The Office of the Public Protector

P. O. Box 424

BHISHO

5605

Tel: (040) 635 1286

Fax: (040) 635 1291

The Auditor-General's Office

P. O. Box 13252

Vincent

EAST LONDON

5217

Tel: (043) 709 7200

Fax: (043) 709 7300



**EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY**

11. INDEPENDENT ADVICE

Employee who are unsure whether to use this procedure or who want independent advice at any stage, may seek advice from his/her personal legal advisor (Attorney) or labour organisation (Shop Steward).

The Open Democracy Advice Centre (ODAC) can also be contacted at the following address:

**2nd Floor, The Armoury, Buchanan Square, 160 Sir Lowry Road, Woodstock,
CAPE TOWN, 8000.**

P. O. Box 1739, CAPE TOWN, 8001

Telephone: +27-21-4617211

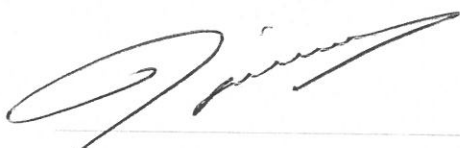
There are legally trained staff that can give free confidential advice at any stage about how to raise a concern about serious malpractice at work.

12. DISSATISFACTION WITH RESPONSE

If an employee is at any stage unhappy with the response, he/she can go to the other levels and bodies detailed in this policy. While it cannot be guaranteed that the response will in all instances be the way that he/she might wish, the Department is committed to handle the matter fairly and properly. By using this policy, employees will help to achieve this.

13. REVIEW AND APPROVAL:

This Policy shall be reviewed when a need arises in order to reflect new developments in existing legislation.

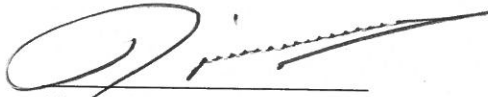


EASTERN CAPE DEPARTMENT OF EDUCATION
WHISTLE BLOWING POLICY

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19/06/2020
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2

