

# Commonwealth Fraud Control Policy

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## Purpose

- i. The Commonwealth Fraud Control Policy (the policy) has been developed to support the accountable authorities of non-corporate Commonwealth entities (entities) to effectively discharge their responsibilities under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and section 10 of the *Public Governance, Performance and Accountability Rule 2014* (the fraud rule). Under section 21 of the PGPA Act, the accountable authority of a non-corporate Commonwealth entity must govern the entity in a way that is not inconsistent with the policies of the Australian Government.
- ii. The policy sets out the key procedural requirements that the Government views as necessary for accountable authorities to establish and maintain an appropriate system of fraud control for their entity. The procedures are directed toward fraud control activities where there is a high risk of significant impact to the entity if those activities are not appropriately maintained. Consistent with the fraud rule, the objectives of the requirements are to:
  - protect public resources, including money, information and property
  - protect the integrity and good reputation of entities and the Commonwealth, and
  - provide for accountability in entities' implementation of fraud control arrangements.

## Scope

- iii. Consistent with the Commonwealth Risk Management Policy, corporate Commonwealth entities are not required to comply with this policy, but are encouraged to review and align their fraud control frameworks and systems with this policy as a matter of good practice.
- iv. Non-corporate Commonwealth entities must comply with this policy.
- v. Non-corporate Commonwealth entities must ensure that their fraud control arrangements are developed in the context of the entity's overarching risk management framework as described in the Commonwealth Risk Management Policy.

## Introduction

- vi. The fraud rule sets out the key principles of fraud control with which all accountable authorities must comply, but allows entities flexibility to develop measures which are adapted to the risks of that entity's own arrangements.
- vii. Additional information on implementing the requirements in this policy are set out in guidance issued by the Attorney-General's Department – *Resource Management Guide No 201 Preventing, detecting and dealing with fraud* (fraud guidance).
- viii. For the purposes of the policy, the fraud rule, and fraud guidance, fraud is defined as 'dishonestly obtaining a benefit or causing a loss by deception or other means'. This definition is based on the fraudulent conduct offences under part 7.3 of the *Criminal Code*, in addition to other relevant offences under chapter 7 of the Criminal Code.

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## Commonwealth fraud control procedures

- ix. In addition to the requirements set out in the fraud rule, each accountable authority is responsible for ensuring their entity meets the following procedural requirements:

### ***Prevention and training***

1. Entities must maintain appropriately documented instructions and procedures to assist officials prevent, detect and deal with fraud.
2. Entities must ensure officials primarily engaged in fraud control activities possess or attain relevant qualifications or training to effectively carry out their duties.

### ***Investigations***

3. Entities must maintain appropriately documented procedures setting out criteria for making decisions at critical stages in managing a suspected fraud incident.
4. Entities must have in place investigation and referral processes and procedures that are consistent with the Australian Government Investigations Standards (AGIS).
5. Entities must appropriately document decisions to use civil, administrative or disciplinary procedures, or to take no further action in response to a suspected fraud incident.
6. An entity is responsible for investigating instances of fraud or suspected fraud against it, including investigating disciplinary matters, unless the matter is referred to and accepted by the Australian Federal Police (AFP) or another law enforcement agency.
7. Where a law enforcement agency declines a referral, entities must resolve the matter in accordance with relevant internal and external requirements.
8. The AFP has the primary law enforcement responsibility for investigating serious or complex fraud against the Commonwealth. Entities must refer all instances of potential serious or complex fraud offences to the AFP in accordance with the AGIS and AFP referral process, except in the following circumstances:
  - a) where entities:
    - i. have the capacity and the appropriate skills and resources needed to investigate potential criminal matters, and
    - ii. meet requirements of the AGIS for gathering evidence and the Commonwealth Director of Public Prosecutions (CDPP) in preparing briefs of evidence, or
  - b) where legislation sets out specific alternative arrangements.
9. Fraud investigations must be carried out by appropriately qualified personnel as set out in the AGIS. If external investigators are engaged, they must as a minimum meet the required investigations competency requirements set out in the AGIS.

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10. Entities must take all reasonable measures to recover financial losses caused by illegal activity through proceeds of crime and civil recovery processes or administrative remedies.
11. Where an investigation discloses potential criminal activity involving another entity's activities or programs, the investigating entity must report the matter to that entity to the extent possible subject to relevant requirements of any Australian law.

## **Reporting**

12. Entities must have procedures in place to collect and manage information gathered about fraud against the entity.

### ***Australian Institute of Criminology report on fraud against the Commonwealth***

13. The Australian Institute of Criminology (AIC) must make an annual report to the Attorney-General's Department (AGD) on fraud against the Commonwealth and fraud control arrangements within six months of receiving the information collected under paragraph 14.
14. To facilitate the AIC annual report:
  - a) all entities must provide information to the AIC in the form requested by AIC
  - b) the AFP must also provide information on all fraud incidents against the Commonwealth referred to, accepted or declined by the AFP during the previous financial year, in a form requested by AIC
  - c) the CDPP must also provide information on all fraud incidents against the Commonwealth handled by the CDPP during the previous financial year, in a form requested by AIC, and
  - d) all information in this paragraph is to be provided to AIC by 30 September each year.

## **Glossary of terms**

**Accountable authority** – The person or group of persons who has responsibility for, and control over, a Commonwealth entity's operations as set out under section 12 of the PGPA Act.

**Commonwealth entity** – A department of state, a parliamentary department, a listed entity or a body corporate established by a law of the Commonwealth.

**Commonwealth official (official)** – An individual who is in, or forms part of, the entity as set out under section 13 of the PGPA Act.

**Corporate Commonwealth entity** – A Commonwealth entity that is a body corporate and legally separate from the Commonwealth.

**Non-corporate Commonwealth entity** – A Commonwealth entity that is not a body corporate and legally part of the Commonwealth.

**Serious and complex fraud** – Fraud which due to its size or nature is too complex for most entities to investigate (further information on serious and complex fraud can be found in the fraud guidance).