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# COMMONWEALTH FRAUD CONTROL GUIDELINES

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## Summary for Executives

## 1. Purpose

1.1 The Commonwealth Fraud Control Guidelines – Summary for Executives, provides an abridged guide to the mandatory requirements and recommended practice within the Commonwealth Fraud Control Guidelines (the Guidelines). It is intended as a reference tool for Chief Executives and others requiring a concise summary of the Guidelines and the requirements contained therein. This document is not a legislative instrument, and should not be considered as a replacement for the Guidelines.

1.2 The Commonwealth Fraud Control Guidelines (Guidelines) are issued by the Minister for Home Affairs under Regulation 16A of the *Financial Management and Accountability Regulations 1997* (FMA Regulations).<sup>1</sup> The FMA Regulations require officials to have regard to the Guidelines when performing duties related to the efficient, effective and ethical management of public resources.

1.3 The Guidelines articulate the Government's expectations for effective fraud control for all departments and agencies (agencies), and their employees and contractors, subject to the *Financial Management and Accountability Act 1997* (FMA Act). The Guidelines may also apply to bodies subject to the *Commonwealth Authorities and Companies Act 1997* (CAC Act), where the Finance Minister has issued a General Policy Order (GPO) made under section 48A of the CAC Act. Where a GPO does not apply to a CAC Act agency, the agency should consider applying the Commonwealth Fraud Control Guidelines as a matter of policy.

## 2. The Legislative Framework

2.1 The Guidelines are a Legislative Instrument registered in accordance with the requirements of the *Legislative Instruments Act 2003* and are legally binding.

2.2 Breaches of the Guidelines, as part of the financial management framework, may attract a range of criminal, civil or administrative remedies (including under the FMA Act, the *Public Service Act 1999*, the *Criminal Code Act 1995* and the *Crimes Act 1914*). Non-compliance with the financial management framework is also reported on in agency Certificates of Compliance.

## 3. Objectives and Scope

3.1 The management of fraud risk is a collective responsibility of all persons employed by the Government, whether working in policy design, program delivery, or other functions.

3.2 The objectives of the Guidelines, consistent with the good government of the Commonwealth, are to:

- protect public money, information and property, and
- protect the integrity and good reputation of Commonwealth agencies.

This includes reducing the risk of fraud occurring, discovering and investigating fraud when it occurs, and taking appropriate corrective actions to remedy the harm.

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<sup>1</sup> Section 16A of the FMA Regulations provides that the 'Minister for Home Affairs may issue guidelines (to be called Fraud Control Guidelines) about the control of fraud, dealing with fraud risk assessments, the preparation and implementation of fraud control plans and arrangements for the reporting of fraud.'

3.3 The Guidelines establish the framework within which individual agencies develop their fraud control plans and processes to manage the prevention and detection of potential fraud perpetrated on their activities. Fraud control strategies should become an integral part of agency culture, processes and practices. The most effective way to prevent or deter fraud is through the thorough and rigorous design of policy and programs, which should include detailed planning for implementation.

## 4. Definition of Fraud

4.1 For the purpose of the Guidelines, fraud against the Commonwealth is defined as ‘dishonestly obtaining a benefit, or causing a loss, by deception or other means’.

4.2 There is a mental or fault element to the offence of fraud; it requires more than carelessness, accident or error. Conduct constituting fraud requires a knowledge or intention to deceive or deprive, or recklessness or negligence: the person must have some understanding that there is a wrong-doing. Conduct constituting fraud may involve an act or an omission to perform an act.

4.3 A benefit is not restricted to monetary or material benefits, and may be tangible or intangible. A benefit may also be obtained by a third party rather than, or in addition to, the perpetrator of the fraud.

## 5. Obligations of Chief Executives<sup>2</sup>

5.1 The primary responsibility for fraud control rests with Chief Executive Officers in agencies subject to the FMA Act, and Boards of Directors of bodies subject to the CAC Act. They play a key role in ensuring their agencies and bodies have appropriate fraud control arrangements, and in setting the ethical tone within an agency.

5.2 Section 44 of the FMA Act provides that an agency Chief Executive must manage the affairs of the agency in a way that promotes proper use of the Commonwealth resources for which the Chief Executive is responsible. Section 45 of the FMA Act provides that a Chief Executive must implement a fraud control plan for the agency.

5.3 The CAC Act, which applies to Commonwealth authorities that are legally and financially separate from the Commonwealth, imposes a number of obligations on officers of these bodies to exercise care and diligence and to act in good faith in the best interests of their authority. Similarly, the officers of Commonwealth companies (i.e. companies that the Commonwealth controls) are subject to equivalent duties under the *Corporations Act 2001*.

5.4 Chief Executives must be satisfied that their agency complies with the mandatory requirements for risk assessments, fraud control plans, training and awareness, fraud detection, investigation and response, outsourcing, quality assurance and review, and reporting contained in the Guidelines, regardless of whether all or part of that agency’s fraud control activities are outsourced. These requirements are presented at Appendix 1.

5.5 Chief Executives must also:

- foster and maintain the highest standards of ethical behaviour in their agency, and make staff aware of their obligations under the Guidelines, and individual obligations under

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<sup>2</sup> For the purposes of the Guidelines, references to Chief Executives include relevant Boards of Directors of CAC Act bodies.

Acts or codes of conduct relevant to the agency, such as the *Public Service Act 1999*, and the APS Values and Code of Conduct

- take all reasonable measures to prevent and detect fraud. This may include establishment of specific systems to counter fraud where agency functions are outsourced
- ensure that program design and policy development within their agency incorporates consideration of fraud risks
- provide an annual report to their Minister or Presiding Officers, which includes:
  - fraud initiatives undertaken by the agency in the reporting period, including an evaluation of their effectiveness
  - planned fraud initiatives not yet in place
  - information regarding significant fraud risks for the agency, and
  - significant fraud incidents which occurred during the reporting period
- certify in their Annual Reports that they are satisfied that:
  - their agency has prepared fraud risk assessments and fraud control plans
  - their agency has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the specific needs of the agency, and
  - they have taken all reasonable measures to minimise the incidence of fraud in their agency and to investigate and recover the proceeds of fraud against their agency.

## Appendix 1: Mandatory Requirements

Reference	Requirement – Obligations of Chief Executives
5.4	Chief Executives must be satisfied that their agency complies with the mandatory requirements for risk assessments, fraud control plans, training and awareness, fraud detection, investigation and response, outsourcing, quality assurance and review, and reporting contained in the Guidelines.
5.8	Chief Executives must foster and maintain the highest standards of ethical behaviour in their agency, and make staff aware of their obligations under the Guidelines, and individual obligations under Acts or codes of conduct relevant to the agency.
5.8	Chief Executives must take all reasonable measures to prevent and detect fraud.
5.8	Chief Executives must ensure that program design and policy development within their agency incorporates consideration of fraud risks.
5.8	Chief Executives must provide an annual report to their Minister or Presiding Officers, which includes: <ul style="list-style-type: none"> <li>• fraud initiatives undertaken by the agency in the reporting period, including an evaluation of their effectiveness</li> <li>• planned fraud initiatives not yet in place</li> <li>• information regarding significant fraud risks for the agency, and</li> <li>• significant fraud incidents which occurred during the reporting period.</li> </ul>
5.8	Chief Executives must certify in their Annual Reports that they are satisfied that: <ul style="list-style-type: none"> <li>• their agency has prepared fraud risk assessments and fraud control plans</li> <li>• their agency has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the specific needs of the agency, and</li> <li>• they have taken all reasonable measures to minimise the incidence of fraud in their agency and to investigate and recover the proceeds of fraud against their agency.</li> </ul>

Reference	Requirement - Risk Assessments
6.1	Agencies must undertake a fraud risk assessment at least once every two years. Risk assessments must consider internal and external fraud risks.
6.3	Agencies must carefully assess the likely occurrence of fraud and its impact on an agency's key organisational objectives and/or core business.
6.6	Agencies must adopt a methodology consistent with the relevant recognised standards, currently the Australian/New Zealand Standard AS/NZ ISO 31000-2009 <i>Risk Management – Principles and Guidelines</i> and Australian Standard AS 8001-2008 <i>Fraud and Corruption Control</i> .
6.8	Agencies must revise their fraud risk assessment where there is a substantial change in structure, function, or where there is a significant transfer in function.
6.9	The risk of fraud must be considered when major new policies are being developed or where a significant change in policy, or the way a policy will be implemented, occurs.

## Appendix 1: Mandatory requirements

Reference	Requirement - Risk Assessments
6.11	Where all or part of the risk assessment process is outsourced, the process must be overseen by a senior officer in that agency. Outsourcing does not remove the responsibility of the Chief Executive or of senior management to deal with fraud risk.
6.12	Agencies must review and refine their risk assessment strategies on an on-going basis in light of their experience with continuing or emerging fraud vulnerabilities.

Reference	Requirement - Fraud Control Plans
7.1	Fraud risk assessments must be followed immediately by the development (or updating) and implementation of a fraud control plan to manage the risks.
7.3	Fraud control plans must address the agency's individual needs. They must document the agency's approach to controlling fraud at a strategic, operational and tactical level, and encompass prevention, detection, reporting, and investigation measures.
7.6	The fraud control plan must include review mechanisms to enable an agency to evaluate the effectiveness of fraud control strategies regularly, particularly following changes in business processes or systems or after instances of fraud have been discovered.

Reference	Requirement - Fraud Awareness and Training
8.2	Agencies must prepare and widely distribute a fraud policy statement.
8.4	All employees and contractors must take into account the need to prevent and detect fraud as part of their normal responsibilities. Agencies must implement a rolling program of regular fraud awareness raising and prevention training for all employees and contractors.
8.7	Agencies must clearly document their procedures and instructions that assist employees to deal with fraud. Agencies must ensure that all employees engaged in fraud control or investigations are aware of and have access to the Guidelines.
8.9	Agencies must provide a copy of the fraud control policy and plan to consultants so that they are fully aware of the agency's approach to fraud control.
8.12	Agencies must ensure that employees who are primarily engaged in detecting or investigating fraud as a minimum meet the required fraud control competency requirements set out in the AGIS.
8.13	Agencies must ensure that these employees attain the relevant qualifications within 12 months of starting employment. Until an employee has attained the relevant qualifications, agencies must ensure that appropriate supervision is provided to maintain acceptable fraud investigation standards. Agencies must also ensure these employees undertake appropriate professional development training to further develop their expertise and ensure their skills remain current.
8.14	Agencies must ensure employees engaged in fraud control activities, including prevention and detection, possess or attain relevant qualifications or training to effectively carry out their duties.

## Appendix 1: Mandatory requirements

Reference	Requirement - Outsourcing
9.2	Agencies must make third party providers aware of the Australian Government's position on fraud control, and put measures in place to ensure that external service providers meet the high standard of accountability needed as part of the Commonwealth's financial management framework.

Reference	Requirement - Detection, Investigation and Response
10.1	Agencies must be aware of the requirements of the AGIS when developing systems and processes for the detection and investigation of fraud.
10.2	Agencies must have in place appropriate systems to ensure they are able to detect internal or external fraud, or attempted fraud, as soon as possible.
10.4	Employees, clients or members of the public must be able to report alleged fraud through an appropriate channel that ensures confidentiality.
10.6	Agencies are responsible for making decisions at a number of critical stages in the management of a suspected fraud, including the decision to initiate an investigation (including the transition from audit or compliance work to a fraud investigation), referral to law enforcement, referral of a brief of evidence to the CDPP, application of administrative, disciplinary or civil sanction or other action (such as a decision to take no further action).
10.7	Agencies must put in place appropriately documented procedures setting out criteria for making the decisions referred to at 10.6. The procedures must be consistent with the Guidelines and in accordance with any relevant requirements under the AGIS.
10.9	Agencies must appropriately document decisions to use civil, administrative or disciplinary procedures or to take no further action, so that matters are resolved in a consistent and defensible manner.
10.10	Agencies are responsible for investigating routine or minor instances of fraud, including investigating disciplinary matters. 'Routine or minor' means instances of fraud that, on an initial assessment by the agency, would be unlikely to be accepted by the AFP under its Case Categorisation and Prioritisation Model (CCPM).
10.11	The AFP has the primary law enforcement responsibility for investigating serious or complex fraud against the Commonwealth. Agencies must refer all instances of potential serious or complex fraud offences to the AFP in accordance with the AGIS and AFP referral process published on the website <a href="http://www.afp.gov.au">www.afp.gov.au</a> , except in the following circumstances: <ul style="list-style-type: none"> <li>agencies that have the capacity and the appropriate skills and resources needed to investigate criminal matters and meet the requirements of the AFP and CDPP in gathering evidence and preparing briefs of evidence, or</li> <li>where the issue involves alleged breaches of the <i>Commonwealth Electoral Act 1918</i>.</li> </ul>
10.14	Where a matter involves offences under State or Territory law, agencies must consider referring the matter to the responsible State or Territory police service for investigation.

## Appendix 1: Mandatory requirements

Reference	Requirement - Detection, Investigation and Response
10.15	Where a police service declines a referral, agencies must resolve the matter, in accordance with internal and external requirements such as the AGIS and agency specific criteria as outlined in 10.7.
10.20	Investigations must be carried out by appropriately qualified and experienced personnel with the appropriate level of managerial oversight. If external investigators are engaged, they must also be appropriately qualified and supervised.
10.22	Agencies may investigate allegations of fraud affecting that agency or its programs using agency or third party investigators only where: <ul style="list-style-type: none"> <li>• the investigators possess the minimum competencies outlined in 8.12 and 8.14</li> <li>• the Chief Executive has formally authorised the investigators to undertake fraud investigations, and</li> <li>• the investigations are conducted by agency investigators in accordance with these Guidelines and other relevant laws, including privacy provisions and any secrecy provisions under Acts specific to an agency or program.</li> </ul>
10.23	Investigators must be mindful of legislative provisions regulating the disclosure or use of information.
10.24	Agencies must have in place processes and procedures that are consistent with, or exceed, the model procedures outlined in the AGIS. Agencies must also comply with the <i>Prosecution Policy of the Commonwealth</i> , the Commonwealth Protective Security Policy, the <i>Freedom of Information Act 1982</i> , the <i>Privacy Act 1988</i> and the <i>Archives Act 1983</i> .
10.31	Agencies must be committed to recovering financial losses caused by illegal activity through proceeds of crime and civil recovery processes or administrative remedies.
10.32	Where an investigation discloses criminal activity involving another agency's activities or programs, the investigating agency must report the matter to that agency in accordance with the <i>Privacy Act 1988</i> and the Information Privacy Principles.

Reference	Requirement - Quality Assurance and Reviews of Commonwealth Fraud Control Arrangements
11.4	The AFP must provide the results of the QAR process to the AGD.

Reference	Requirement – Information Management and Reporting Requirements
12.2	Agencies must have information systems in place to manage information gathered about fraud against the agency. The information systems must be appropriate for the number of cases and complexity of investigations undertaken.
12.4	All agencies must collect information on fraud and provide it to the AIC, and through the AIC to the AGD, by 30 September each year to facilitate production of an AIC annual report on fraud against the Commonwealth and fraud control arrangements and an AGD annual compliance report on whole-of-Government compliance with the requirements of the Guidelines.

## Appendix 2: Recommendations for best practice

<b>Reference</b>	<b>Recommendation – Fraud Risk Assessment</b>
6.2	Fraud risk should not be looked at in isolation from the general business of the agency but should be considered as an aspect of the agency's broader risk assessment processes, including the agency's security risk assessment.
6.3	Risk management should be integrated into an agency's strategic and business planning processes.
6.4	Risk assessment processes should take into account all significant factors likely to affect an agency's exposure to risk.
6.5	Generally, management of fraud risks should be embedded in an agency's risk control and governance procedures rather than being seen or practiced as a separate program.
6.7	Risk assessment is a process of continuing improvement. Where appropriate, agencies should introduce a rolling program of updating risk assessments. Agencies should develop dynamic risk assessment procedures and greater integration of the fraud risk assessment process within an overall general business risk approach.
6.9	The assessment of fraud risks is an integral part of program design, and should include measures to prevent fraud from occurring in addition to fraud minimisation.
6.11	Where elements of risk assessment are outsourced, agencies should ensure that relevant corporate knowledge is appropriately captured and taken into account during the risk assessment and fraud control planning processes.
6.12	The outcomes of fraud risk assessments should also be provided to agencies' internal audit units, for consideration in the annual audit work program.

<b>Reference</b>	<b>Recommendation - Fraud Control Plans</b>
7.1	Agency audit committees should oversee the process of developing and implementing the fraud control plan. The fraud control plan should, wherever appropriate, emphasise prevention measures, including effective policy and program design to minimise the opportunity for fraud.
7.2	The fraud control plan should, where appropriate, be integrated into the agency's strategic or business plan, Where a fraud risk is assessed to be high by nature of business, specific fraud risk plans at the agency, enterprise or program level may be appropriate.

## Appendix 2: Recommendations for best practice

Reference	Recommendation - Fraud Control Plans
7.3	<p>The fraud control plan should include:</p> <ul style="list-style-type: none"> <li>• a summary of the identified internal and external fraud risks or vulnerabilities associated with the agency’s administration or function</li> <li>• the treatment strategies or controls (including policies, governance and other structures, and procedures) put in place to mitigate the identified risks of fraud or attempted fraud</li> <li>• information about implementation such as identifying positions responsible for implementation, timeframes, monitoring arrangements, and channels and processes for employees, contractors or members of the public to report fraud or suspected fraud</li> <li>• strategies to ensure the agency meets its training requirements</li> <li>• mechanisms for collecting, analysing and reporting the number and nature of incidents of fraud or alleged fraud within or against the agency</li> <li>• protocols setting out how the agency will handle allegations/suspicions of fraud, including assessment of allegations, establishment of investigations and options for resolution of incidents (such as referral to police and when/how to initiate recovery action).</li> </ul>
7.4	Controls and strategies outlined in fraud control plans should not unnecessarily hinder the agency’s ability to carry out its business. Controls should be reviewed on a regular basis to make sure they remain useful.
7.5	Fraud control arrangements should reflect the fraud risk profile of an agency or particular program.
7.7	Fraud control plans should be user-friendly and available to all relevant employees.

Reference	Recommendation - Fraud Awareness and Training
8.4	Fraud awareness training should be included in all induction training programs. Agencies should also provide all employees and contractors with training in ethics, privacy and relevant codes applicable to the agency, such as the APS Values and Code of Conduct.
8.6	Awareness-raising and training should be evaluated to determine if it has been successful and that the target group is, in fact, more aware of fraud control and their responsibilities in relation to it.
8.11	Clients should also be provided with information in relation to their rights, responsibilities and obligations including information on their responsibilities for fraud control.
8.13	Agencies with a greater exposure to fraud should consider developing more specialised training programs for these employees to ensure the potential risks to their business are minimised.
8.14	Employees primarily engaged in agency fraud risk assessment and planning activities should acquire or possess Certificate IV in Government (Fraud Control) as a minimum. Employees primarily engaged in the coordination and management of agency fraud control (including prevention and detection activities) should attain or possess a Diploma in Government (Fraud Control) as a minimum.

## Appendix 2: Recommendations for best practice

Reference	Recommendation - Fraud Awareness and Training
8.15	Agency employees performing some fraud control or investigation functions, but who are not primarily engaged in fraud control (including prevention and detection activities) or investigation, do not need to attain full qualifications but should obtain Statements of Attainment against appropriate units of competence in accordance with the Public Sector Training Package.

Reference	Recommendation - Detection, Investigation and Response
10.2	Early detection of fraud is an essential element of fraud control, and particularly in areas of identified high risk, agencies should not rely on reporting of fraud. Agencies should consider techniques which may include monitoring high risk jobs or areas, conducting reviews or internal audits, intrusion detection systems, review activity focused on clients at risk, or data mining and data matching.
10.3	Agencies should consider putting in place and appropriately publicising mechanisms to enable members of the public to report suspected fraudulent activity by an agency's clients, employees, contractors or agents.
10.4	Agencies should develop a formal system of reporting where all instances and allegations of internal or external fraud or attempted fraud against or within the agency, any subsequent investigation and their outcomes, can be securely stored, recorded, analysed and monitored.
10.5	Because there are no consistent statutory protections across jurisdictions for people reporting suspected fraud, agencies should establish their own whistleblower policies and procedures.
10.8	<p>The particular criteria for decision making on fraud matters, as outlined in 10.6, will reflect the particular circumstances of each agency, and should include consideration of the:</p> <ul style="list-style-type: none"> <li>• cost or value of the alleged fraud</li> <li>• political sensitivity and public exposure of the allegations</li> <li>• likely cost of investigation or prosecution</li> <li>• possible benefit, including recovery of losses and deterrent value</li> <li>• identity of person(s) against whom the allegations are made</li> <li>• the nature of the alleged fraud, and</li> <li>• prospect of compiling sufficient evidence for a brief to the CDPP.</li> </ul>
10.9	Procedures established should reflect the assumption that allegations of fraud will be investigated and appropriately acted upon.
10.12	All matters of a politically sensitive nature, not limited to fraud, requiring the assistance of the AFP should be raised with the Minister for Home Affairs and Justice by the relevant Minister or Department when referring the matter to the AFP. This enables the Minister to be informed of significant matters affecting their responsibility for the AFP and does not affect the AFP's assessment of the referral.

## Appendix 2: Recommendations for best practice

Reference	Recommendation - Detection, Investigation and Response
10.18	Where an agency has negotiated or has in place a service agreement with the AFP to meet its obligations and responsibilities, the role and responsibilities of each agency should be clearly specified.
10.25	The AGIS should be applied in all investigations other than audit.
10.26	Agencies should have graduated and proportionate responses to non-compliance. If the evidence cannot establish the requisite degree of intention, recklessness or negligence required for the appropriate criminal offence, it may be appropriate to apply administrative sanctions for non-compliance.
10.27	Agencies should consider prosecution in appropriate circumstances, in accordance with the <i>Prosecution Policy of the Commonwealth</i> .
10.28	Briefs of Evidence for the CDPP should be prepared in accordance with the <i>Guidelines for Dealings between Commonwealth Investigators and the Commonwealth Director of Public Prosecutions</i> .
10.30	In the absence of criminal prosecution, agencies should also consider civil, administrative or disciplinary proceedings for which a lower standard of proof is required. Agencies with a range of legislated remedies should develop an enforcement strategy to ensure appropriate use is made of each remedy.
10.31	There should be a general policy that recovery action be undertaken where the likely benefit will exceed the recovery costs.