



## GOVERNMENT OF NIUE

# FRAUD AND CORRUPTION POLICY

July 2024

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# **1 OVERVIEW**

## **1.1 AUTHORITY, SCOPE, AND RELATED DOCUMENTS**

This policy is approved by Cabinet, and controlled and enforced by the Government's Fraud Response Team.

This policy applies to all departments and boards within the Government of Niue, and all state owned entities. State owned entities are encouraged to have their own fraud and corruption policies that are suitable to them, but these must not conflict with the principles underlying the Government's Policy.

Related documents include:

- Niue Public Service Regulations 2004.
- Niue Public Service Code of Conduct 2006.
- Criminal Law Code, as published in 2019.
- Niue Treasury Instructions 2002.

## **1.2 SUMMARY OF THE FRAUD AND CORRUPTION POLICY**

- The Government of Niue has a Zero Tolerance policy towards fraud, corruption and other illegal and/or unethical behaviour. All believable non-trivial cases of suspected fraud and corruption will be investigated. If sufficient evidence of fraud or corruption is found, all available sanctions, including reporting to the Police where applicable, will be applied.
- The responsibilities for preventing, detecting and responding to fraud and corruption are layered as follows:
  - The Fraud Response Team has the primary responsibility for investigating cases of suspected fraud or corruption and taking appropriate action.
  - All Ministers, Commissioners and managers are responsible for fostering an environment where the risk of fraud and corruption is minimal and where employees feel safe to report cases of suspected fraud or corruption.
  - All Government employees, Commissioners and Assembly members are required to report all cases of suspected fraud or corruption immediately.
- The Government has zero tolerance towards any form of retaliation against persons reporting fraud or corruption, and will do its utmost best to protect and support reporting persons.

## **1.3 DEFINITIONS**

- Fraud: the use of deception (such as forging or destroying documents or making false entries in accounting records) in order to gain unfair or illegal benefits.
- Corruption: the abuse of power for private gain. Examples include: receiving or paying bribes, nepotism, keeping conflicts of interest secret and benefitting from them, and misuse of insider knowledge.
- Bribery: making or receiving payments (in money, kind or services) for the benefit of individuals rather than the Government, with the purpose of obtaining personal benefits such as special treatment.
- Conflict of interest: a situation where an Assembly member, Commissioner or employee may have an interest, relationship or friendship that could (or could be seen to) tempt him or her to make decisions to favour this interest, relationship or friendship and that are not in the best interests of the Government.

- Fraud triangle: the three common factors when fraud occurs: incentive/pressure, opportunity, and attitude/rationalism.

### 1.3 THE IMPACTS OF FRAUD AND CORRUPTION

Fraud and corruption have a number of impacts, including:

- Benefits that should go to the organisation, go instead to individuals who are not entitled to them.
- Bribery unfairly benefits some individuals to the disadvantage of others.
- Fraud and corruption and any perception that they are not dealt with adequately, cause reputational harm to the Government and reduce the trust that the Public has in the Government.

### 1.4 LEGAL BASIS

The main sections in the Criminal Law Code (as published in 2019) that cover fraud and corruption, are:

- S. 74(1) Theft: “the act of fraudulently or dishonestly taking, or converting to the use of any person, or misappropriating or disposing of, or dealing in any other manner with, anything capable of being stolen, with intent to defraud or injure any person having any property or interest in that thing.” It is punishable by imprisonment for up to 7 years, depending on the nature and value of the stolen goods.
- S. 88: Conspiracy to defraud: “Every one is liable to imprisonment for a term not exceeding 3 years who conspires with any other person by deceit or falsehood or other fraudulent means to defraud the public or any person ascertained or unascertained.”
- S. 89: Obtaining execution of valuable securities by fraud: “Every one is liable to imprisonment for a term not exceeding 3 years who by any false pretence causes or induces any person to execute, make, accept, endorse, or destroy the whole or any part of any valuable security.”
- S. 94(1): Forgery: “Forgery is the making of a false document with intent to defraud or deceive any person, whether ascertained or unascertained.” It is punishable by imprisonment for up to five years.
- Ss. 58-66: Bribery and corruption: giving bribes to or taking bribes from officials (including ministers, commissioners, law enforcement officers, and public servants) is punishable by imprisonment for up to 14 years.

The Public Services Regulations 2004 has several sections relating to fraud and corruption:

- S. 52 forbids the soliciting or accepting of any gifts connected with the duties and responsibilities of an employee, except for tokens of courtesy, gifts presented on retirement or transfer, and presentations from colleagues.
- S. 53 restricts the use or sharing of official information for other than their stated purposes.
- S. 54 forbids the soliciting of the influence of any person to obtain an unfair advantage.
- Ss. 70-82 describe the disciplinary process.

The Niue Public Service Code of Conduct 2006 has several principles relating to fraud and corruption:

- Principles 1.15-17 require confidentiality of information.
- Principles 2.6-11 require employees to avoid conflicts of interest and report any potential conflicts of interest.
- Principles 2.12-15 require expenditure to be properly authorised.

- Principles 2.16-17 forbid the soliciting or accepting any gifts that may compromise or be seen to compromise the integrity of employees and that of the Public Service, or any gifts gained through the exercise of their duties.

The Niue Public Service Manual of Instructions 2018 has several sections relating to fraud and corruption:

- Instructions L8-10 requires information to be kept confidential and used only for its stated purposes.
- Instruction L11 forbids the soliciting of the influence of any person to obtain an unfair advantage.
- Instructions L21-23 forbid the soliciting or accepting of any gifts where this is connected with an employee's duties, unless the gift is made as a token of courtesy and reported to the employee's manager, the gift is presented on retirement or transfer, or the gift is a presentation from colleagues.
- Instructions L25-26 forbids borrowing from subordinate employees and lending by employees from official funds that they have control over.

## 2 PREVENTION

### 2.1 DEFINITION

*Prevention* is about reducing the risk of fraud or corruption from occurring in the first place.

### 2.2 THE FRAUD TRIANGLE

The concept of the Fraud Triangle describes the three common factors when fraud occurs: incentive/pressure, opportunity, and attitude/rationalism. Removing these common factors significantly reduces the risk of fraud and corruption:

- Removing *incentives or pressure* to commit fraud or corruption is about making people not want to commit such acts. For example, if all employees are paid fair wages that enables them to live with dignity, then they don't have to steal or accept bribes just to be able to feed their families. Furthermore, if people feel that they can safely report suspected fraud or corruption, then it becomes more difficult for other people to pressure them into committing fraud or corruption. The "tone at the top" and the "whistle-blower regime" (both described in more detail below) are important tools for removing incentives and pressure.
- Reducing *opportunities* is about making it difficult to commit fraud or corruption. The main approach to achieve this is to maintain an internal control environment that leaves little room for fraud or corruption. This is described in more detail below.
- It is important to foster an *attitude* that is averse to fraud and corruption and to make it difficult to *rationalise* fraud and corruption. This is achieved by ensuring that everyone is aware that fraud and corruption are wrong and are not tolerated, and that everyone is aware of what is expected from them with regards to preventing, detecting and responding to cases of fraud or corruption.

### 2.3 INTERNAL CONTROL ENVIRONMENT

The internal control environment relates to the organisational culture, the organisational structure and all internal controls that are designed to minimise the risk of fraud and corruption. At a high level, the internal control environment includes:

- The “tone at the top”: management must (and must be seen to) actively foster a culture that does not tolerate fraud and corruption.
- Having a Fraud Response Team that is responsible for receiving reports of suspected fraud or corruption, investigating them and taking appropriate action.
- Having a comprehensive structure of internal controls that minimise the risk of fraud and corruption and to increase the chance of detecting fraud and corruption.
- Ensuring that existing controls cannot be overridden without proper authorisation. For example, in the case of emergency a payment needs to be made without having proper authorisations in accordance with the Government’s Procurement Policy, then at least two senior managers should approve this, and document their decision-making so that it can be scrutinised subsequently.
- A “whistle-blower regime” should be in place to ensure that anybody can feel safe to raise concerns about possible fraud or corruption without fear of retribution.
- Conflicts of interest should be declared and mitigated.
- All Assembly members, Commissioners and employees should be aware of what is expected of them.
- There should be clear guidelines on what gifts can be given or received, as well as the appropriate methods and circumstances for such exchanges.

## **2.4 THE “TONE AT THE TOP”**

The first tool of prevention is the “tone at the top”. Management must actively work to reduce the risk of fraud and corruption, and be seen to be doing so. Awareness that fraud and corruption will be responded to effectively (including reporting to the Police where applicable) has been proven to be effective in reducing instances of fraud.

The Government of Niue has a zero tolerance approach to fraud and corruption. All officials, from Ministers to public servants, are responsible for helping to prevent, detect and respond to instances of fraud and corruption. This policy is supported by Cabinet, the Assembly, the Niue Public Service Commission, and all layers of management.

## **2.5 FRAUD RESPONSE TEAM**

The Government shall have a Fraud Response Team, which will consist of the Secretary of Government, the Financial Secretary, a Public Service Commissioner, and the Chief of Police. The Fraud Response Team is tasked with investigating cases of suspected fraud or corruption and taking appropriate action when a case is considered likely to exist.

Any members of the Fraud Response Team who may be implicated or have a close relationship with a case of suspected fraud or corruption must be excluded from the Fraud Response Team; Cabinet must then appoint a replacement.

## **2.6 INTERNAL CONTROLS**

It is the responsibility of Cabinet, the Secretary of Government, the Financial Secretary, and the Public Service Commission, to implement and maintain a comprehensive structure of internal controls to prevent and detect fraud and corruption as much as possible. Examples of such internal controls are:

- Proper authorisation procedures within the procurement process (as detailed in the Procurement Policy).

- Segregations of duty within the procurement process (for example: the person requesting a purchase cannot also process the supplier invoice, and the person processing the supplier invoice cannot also authorise the payment on-line).
- All payments must be authorised by two persons.
- Payments are normally made through on-line banking that enforces authorisation by two persons. Cash payments must be kept to an absolute minimum, and receipts should be obtained for cash payments.
- Changes to bank account details in the Government's financial system can only be made upon receipt of written instructions. The financial system must be able to generate an audit report with supplier master file changes. Before each payment run, that report must be generated and audited against the written instructions by somebody who does not make the changes in the financial system.
- Payments made to the Government are encouraged to be electronic, to reduce the risk of cash being misappropriated. Eftpos and pre-numbered cash receipts shall be issued for all cash and eftpos payments.
- Where possible, sales of goods are reconciled. For example, opening stock plus purchases minus sales should equal closing stock; the latter can be confirmed through a physical stock-take.
- Assets shall be protected physically by keeping them locked away or otherwise, as appropriate.
- Financial reconciliations shall be maintained where appropriate. Examples of financial reconciliations are: balance sheet reconciliations, bank reconciliations, asset verifications (including physical stock-takes), etc.

## 2.7 AWARENESS

All staff involved with procurement shall act with integrity. This includes but is not limited to:

- Staff must conduct themselves with probity and honesty.
- Staff shall report any potential conflicts of interest to their manager and to Treasury. Potential conflicts of interests exist especially where staff have family, friendship or other relationships with suppliers who may be involved with the procurement, or where staff are themselves suppliers of goods and/or services.
- Confidentiality: staff shall not divulge procurement information to external parties unless necessary to conclude the procurement, or unless legally obliged to do so (e.g. in a Court of Law). Also, staff may not use confidential information for private benefit.
- Staff must not bring the Government in disrepute through their procurement activities.

Employment contracts must have a clause that allows for instant dismissal if an employee commits any act of gross misconduct, including fraud, bribery, theft or corruption. Supplier applications and contracts must have a clause that communicates the Government's zero tolerance approach to fraud and corruption and that the Government reserves the right to terminate any contract with a supplier that is found to act contrary to this Policy.

The Niue Public Service Commission shall make regular awareness training available to all Assembly Members, Commissioners, employees and long term contractors. This training aims to increase awareness of the risks of fraud and corruption, emphasise everyone's responsibility to mitigate these risks and report any instances of fraud and corruption, and explain the details of this Policy.

## 2.8 GIFTS

Gifts should never be given or received if they may be an attempt or perceived to be an attempt to influence a business decision.

Gifts (whether given or received) may sometimes be acceptable, subject to the following criteria:

- Gifts should never be asked for.
- Gifts should never be used or allowed to influence business decision-making.
- Gifts should never be given or received if they may create a sense of expectation or obligation.
- Gifts should never be given or received if a tender or other procurement process is underway.
- Gifts with an estimated value of less than \$100 require approval by the recipient's manager; gifts with a higher estimated value require approval by the Financial Secretary or the Secretary of Government.
- Gifts must not be of an inappropriate nature, such as involving gambling, drugs, sex, etc.
- Gifts may be appropriate where they strengthen genuine relationships (without creating the sense of obligation), for cultural reasons, to reward good behaviour or success, if given to a department or organisation rather than an individual, if they are branded marketing materials, and/or the timing of the gift is not suspicious.

Any employee receiving or being offered a gift must report this to his/her manager. If either the employee or his/her manager considers the gift inappropriate, then they should decline the gift and report it to the Financial Secretary, the Secretary of Government, or the Public Service Commission. Management will assess further appropriate action, which may include severing ties with the gifting individual and/or organisation, and reporting it to other authorities such as the Police.

## 3 DETECTION

*Detection* is about maximising the chance of uncovering fraud or corruption as soon as possible after it occurs.

- All Government employees, Commissioners and Assembly members are required to report all cases of suspected fraud or corruption immediately.
- Any employee or other person who has a genuine concern about fraud, corruption or other type of misconduct, may report this to either his/her manager or the Fraud Response Team. A genuine concern is based on information that the reporting person believes to be true or trustworthy or likely to be true or trustworthy, even if it later turns out to be incorrect. However,, if the reporting person knows or should clearly know the information to be incorrect, then disciplinary measures may be taken against this person.
- The Government shall maintain a dedicated "whistle-blower" line, where anybody in- or outside the Government can report concerns about fraud or corruption to the Fraud Response Team. The line shall facilitate various means of communication: in person, via telephone, via email, and via paper. All necessary information to report concerns shall be published on notice boards and on the Government's Web site: the names and contact details of the members of the Fraud Response Team, including telephone numbers, email addresses, and postal addresses. In addition, the Fraud Response Team shall have a dedicated generic email address.
- Concerns may be reported anonymously, but reporting persons are encouraged to give their name and contact details in case further enquiries are necessary. Reporting

persons will be asked to keep the reported details confidential while the investigation is underway, and not confront persons under investigation.

- The Government has zero tolerance towards any form of retaliation against reporting persons, and will do its utmost best to protect and support reporting persons.
- Some of the internal controls described in section 2.6, above, are important to help detect some types of fraud and corruption:
  - Changes to bank account details in the Government's financial system can only be made upon receipt of written instructions. The financial system must be able to generate an audit report with supplier master file changes. Before each payment run, that report must be generated and audited against the written instructions by somebody who does not make the changes in the financial system.
  - Where possible, sales of goods are reconciled. For example, opening stock plus purchases minus sales should equal closing stock; the latter can be confirmed through a physical stock-take.
  - Financial reconciliations shall be maintained where appropriate. Examples of financial reconciliations are: balance sheet reconciliations, bank reconciliations, asset verifications (including physical stock-takes), etc.

#### **4 RESPONSE**

*Response* is about taking immediate and decisive action to investigate all cases of suspected fraud and corruption and take appropriate action to punish those responsible and to reduce or remove any losses arising from such cases.

- The Fraud Response Team will actively investigate all indications of fraud or corruption, unless they are clearly frivolous, trivial, or unbelievable or if there is not enough information to investigate. The investigations will be impartial, thorough, timely, and confidential. All information pertaining to cases of fraud or corruption will be kept confidential, until a case is considered likely to exist.
- If a case was reported by a reporting person, then the Fraud Response Team will regularly update the reporting person on the progress of the investigation, but without divulging any information that may jeopardise the investigation. Persons under investigation will be considered innocent until proven guilty, but the Fraud Response Team may take steps to protect the Government from further harm (e.g. suspension, restricting access to Government premises and systems, or removing a person's authority to spend).
- The Fraud Response Team has unrestricted access to all Government records, premises and other property, and the authority to examine all documents (in any form) in all locations. All employees must cooperate with an investigation, and answer any questions asked by the Fraud Response team.
- The Fraud Response Team may engage external professional assistance, such as private detectives or forensic accountants, if it considers this necessary. The Fraud Response Team may delegate all or any of its investigative powers to these professionals.
- The Fraud Response Team may provide incentives to induce people to provide (more) information. In cases of collusion or coercion (i.e. where the fraud or corruption was committed by more than one person), it may consider leniency where a person under investigation cooperates in such a manner that evidence is uncovered about other persons who were complicit in the case.
- At the conclusion of an investigation, the Fraud Response Team will review and complete the case file. It will then decide whether there is a case to answer, or whether



the case should be dismissed because of insufficient evidence. If there is a case to answer, then the Fraud Response Team will consider a range of appropriate actions:

- Pass the case to the Public Service Commission for disciplinary action, which may result in dismissal.
- Report the case to the Police for criminal investigation and prosecution.
- Seek to recover any losses incurred by the Government, including the costs of the investigation.
- Publish a summary of the outcome of the investigation and actions underway.
- Assess whether gaps in internal control systems made the case possible, and make recommendations on improving internal control systems.

It is Government policy to take *all* of these actions where applicable.

- The Fraud Response Team shall maintain a Fraud & Corruption Register, in which all initiated investigations are recorded with a summary of the case and the outcome of the investigation. If in any financial year no cases have been investigated, then the Fraud Response Team shall enter an entry in the Fraud & Corruption Register to that effect. Aside of the Fraud Response Team, the most senior accountant responsible for preparing the Government's annual Financial Statements, the Solicitor General and the Government's auditors shall have access to the Fraud & Corruption Register for the purposes of preparing and auditing the Government's annual Financial Statements.