



Australian Government

COMMONWEALTH FRAUD CONTROL GUIDELINES

2011



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FOREWORD



Fraud has long been a threat that affects every Commonwealth agency. While it is always difficult to accurately estimate the extent of fraud, Commonwealth agencies reported losses due to external fraud of approximately \$600 million in 2008–09.

Agencies encounter the risk of fraud in all areas of business, from benefits programs, dealing with contractors and suppliers, and in some cases, among agency staff. Of most concern perhaps are government relief payments, such as those aimed at assisting communities to recover from natural disasters, which have also provided an opportunity for criminals to attempt a range of frauds.

The Government also recognises that the threat of fraud is becoming more complex. The trend towards the delivery of government services online, coupled with digital records and more personalised services, increases in the accessibility and efficiency of government programs. However, it also creates major opportunities for cybercriminals operating both in Australia and overseas.

It is for these reasons that I am releasing a revised version of the Commonwealth Fraud Control Guidelines. The new Guidelines are shorter, simpler and clarify agency obligations. Importantly, they not only aim to reduce the incidence of fraud, but to also reduce the opportunity for fraud.

The new Guidelines retain the core elements of the fraud control framework: the need for rigorous risk assessments and detailed fraud prevention planning to prevent fraud from occurring; and obligations to thoroughly investigate, and prosecute where appropriate, in cases where fraud is detected. More importantly, however, at the heart of the new Guidelines is an obligation on agency CEOs to build a strong fraud prevention culture within their agencies.

The Government takes the matter of fraud extremely seriously and is determined that all measures are taken to ensure that public funds are spent properly and accountably. Ultimately this will benefit all Australians by ensuring that government funds are used fairly, equitably, and for their intended purposes.

A handwritten signature in blue ink that reads "Brendan O'Connor". The signature is fluid and cursive, written in a professional style.

The Hon Brendan O'Connor MP

Minister for Home Affairs
Minister for Justice

1. PURPOSE

1.1 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).¹ The FMA Regulations require officials to have regard to the Guidelines when performing duties related to the efficient, effective, economical and ethical use of public resources.

1.2 Fraud against the Commonwealth is an extremely serious matter for all departments and agencies (agencies) and for the community. Not only is it a criminal offence, but fraud reduces the funds available for delivering public goods and services and can undermine public confidence in the Government. The Australian community rightly expects that Commonwealth agencies and employees acknowledge and fulfil their responsibilities as stewards of public funds and make every effort to protect public money and property.

1.3 The purpose of the Guidelines is to establish the policy framework and articulate the Government's expectations for effective fraud control for all agencies and their employees and contractors, subject to the *Financial Management and Accountability Act 1997* (FMA Act).

1.4 A body subject to the *Commonwealth Authorities and Companies Act 1997* (CAC Act) is not subject to the Guidelines unless the Finance Minister has made a General Policy Order (GPO) in accordance with section 48A of the Act, specifying the mandatory requirements for that body under the Guidelines. CAC bodies which are not subject to such a GPO should consider applying the Guidelines as a matter of policy.

¹ 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 reporting of fraud.'

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 individuals and agencies have a legal obligation to comply with the requirements set out within the Guidelines.

2.2 Obligations that are required to be complied with, in all circumstances, are denoted by the use of the term 'must' in the Guidelines. The use of the word 'should' denotes matters which are recommended as sound practice.

2.3 The Guidelines are part of the wider Australian Government's financial management framework, which create an overarching requirement to manage an agency's affairs efficiently, effectively and ethically and in accordance with the policies of the Commonwealth.

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

2.5 The Guidelines should be read in conjunction with other relevant documents, including, the *Commonwealth Grant Guidelines*, the *Commonwealth Procurement Guidelines*, the *Covert Surveillance in Commonwealth Administration Guidelines*, the Commonwealth Protective Security Policy Framework and the *Australian Government Investigation Standards* (AGIS).

2.6 The AGIS provides minimum case handling standards for investigations. Copies of the AGIS are available from the Australian Federal Police, which undertakes this function on behalf of the Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA).

ROLES AND RESPONSIBILITIES OF KEY AGENCIES

- The AFP investigates serious or complex crime against Commonwealth laws, its revenue, expenditure and property, which can include both internal fraud and external fraud committed in relation to Commonwealth programs. The AFP conducts Quality Assurance Reviews (QARs) of agency fraud investigations and is able to provide advice and in some instances other forms of assistance to agencies conducting fraud investigations, including recovery action under the *Proceeds of Crime Act 2002*. The AFP also administers and maintains the AGIS.
- The Commonwealth Director of Public Prosecutions (CDPP) is responsible for prosecuting offences against Commonwealth law and for conducting related criminal assets recovery. All prosecutions and related decisions are made in accordance with the guidelines set out in the *Prosecution Policy of the Commonwealth*.
- The Attorney-General's Department (AGD) is responsible for providing high-level policy advice to the Government about fraud control arrangements within the Commonwealth. This includes developing and reviewing general policies of Government with respect to fraud control, currently embodied in these Guidelines, advising Commonwealth agencies about the content and application of those policies, and reporting to Government on compliance with the Guidelines.

- The Australian Institute of Criminology (AIC) is responsible for conducting an annual fraud survey of Australian Government agencies and producing a report on fraud against the Commonwealth, and fraud control arrangements within Australian Government agencies. This report is known as the *Annual Report to Government: Fraud Against the Commonwealth*, and, as mandated by the Guidelines, is to be provided to the Minister for Home Affairs.
- The Australian National Audit Office (ANAO) is responsible for assessment of key aspects of Australian Government agencies' fraud control arrangements to effectively prevent, detect and respond to fraud, as outlined in the Guidelines. This assessment is published in the *Fraud Control in Australian Government Agencies* report.

3. OBJECTIVES AND SCOPE

3.1 The Australian Government, as custodian of the public purse, is committed to taking a systematic and stringent approach to the prevention and detection of fraud perpetrated against the Government. The management of fraud risk is a collective responsibility of all persons employed by the Commonwealth. Everyone in an agency is responsible for the proper management of public resources, 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.

3.3 The Guidelines establish the fraud control policy framework within which agencies determine their own specific practices, plans and procedures to manage the prevention and detection of fraudulent activities, the related investigation and, where appropriate, prosecution of offenders. 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.

3.4 Fraud control in the Commonwealth is based on:

- thorough assessment of risks particular to the operating environments of agencies and of the programs they administer
- development and implementation of processes and systems to effectively prevent, detect and investigate fraud
- application of appropriate prosecutorial, civil, administrative or disciplinary action to remedy the harms from fraud
- recovery of proceeds of fraudulent activity
- training of all employees and relevant contractors in fraud awareness and specialised training of employees involved in fraud control activities, and
- external scrutiny of fraud control activities by the ANAO to provide accountability to Parliament.

3.5 Two types of documents set out and explain the fraud control policy framework:

- the Guidelines issued by the Minister for Home Affairs (legislative instrument), and
- guidance documents which may be developed by the AGD or other agencies as necessary to assist agencies to implement the fraud control policy framework.

3.6 The Guidelines are not intended to be an exhaustive tool to deal with all types of agency risk. For instance, where corruption or other internal or external agency risks are concerned, the Guidelines should be considered a useful starting point to be considered with other appropriate guidance materials.

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 fraud; it requires more than carelessness, accident or error.

4.3 Offences of fraud against the Commonwealth may be prosecuted under a number of different Commonwealth laws. The dishonesty offences under Part 7.3 in Chapter 7 of the Criminal Code are often used and offer a good example of the fault elements necessary to establish fraudulent behaviour.

4.4 Fraud against the Commonwealth may include (but is not limited to):

- theft
- accounting fraud (false invoices, misappropriation etc)
- unlawful use of, or obtaining property, equipment, material or services
- causing a loss, or avoiding and/or creating a liability
- providing false or misleading information to the Commonwealth, or failing to provide it when there is an obligation to do so
- misuse of Commonwealth assets, equipment or facilities
- making, or using false, forged or falsified documents, and
- wrongfully using Commonwealth information or intellectual property.

4.5 A benefit is not restricted to monetary or material benefits, and may be tangible or intangible, including the unauthorised provision of access to or disclosure of information. A benefit may also be obtained by a third party rather than, or in addition to, the perpetrator of the fraud.

4.6 Fraud against the Commonwealth takes many forms, and may target:

- revenue (e.g. income tax, GST fraud, customs duties)
- benefits (e.g. social security, health, child care, education/training, visa or grant of citizenship)
- property (e.g. cash, computers, other portable and attractive items, stationery)
- information and intelligence (e.g. personal information or classified material)
- Commonwealth program funding and grants (e.g. education, childcare, employment)
- entitlements (e.g. expenses, leave, travel allowances, attendance records)
- facilities (e.g. unauthorised use of vehicles, information technology and telecommunication systems), and
- money or property held in trust or confiscated.

4.7 The risk of fraud can come from inside an agency, that is, from its employees or contractors. This is known as internal fraud. External fraud, on the other hand, is where the risk of fraud comes from outside the agency, that is, from external parties, such as clients, service providers or other members of the public.

4.8 Agencies also need to be alert to the risk of complex fraud involving collusion between agency employees and external parties. Complex fraud, which may also constitute corrupt conduct, can include instances where an employee or group of employees:

- are targeted and succumb to exploitation by external parties (bribery, extortion, grooming for favours or promises), or
- initiate the misconduct (including through infiltration of an agency by an external party).

Note that some forms of corrupt conduct, such as soliciting for bribes or secret commissions, may not cause a direct loss to the Commonwealth, but may distort the market for fair provision of services or inflate prices.

DISHONESTY IN THE CRIMINAL CODE

Part 7.3 in Chapter 7 of the Criminal Code deals with fraudulent conduct against the Commonwealth, and contains a range of offences, including:

- dishonestly obtaining a financial advantage from a Commonwealth entity by deception (s.134.2)
- doing anything with the intention of dishonestly:
 - obtaining a gain from a Commonwealth entity, or
 - causing a loss to a Commonwealth entity (s.135.1(1) and (3))
- conspiring with another person with the intention of dishonestly:
 - obtaining a gain from a Commonwealth entity, or
 - causing a loss to a Commonwealth entity (s.135.4(1) and (3)), or
- dishonestly influencing a Commonwealth public official in the exercise of their duties (s.135.1(7)), or
- obtaining a financial advantage which the recipient knows or believes they are not eligible to receive (s.135.2(1))

The meaning of dishonesty is set out in s.130.3 as follows:

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the defendant to be dishonest according to the standards of ordinary people.

(Valid as at January 2011)

5. OBLIGATIONS OF CHIEF EXECUTIVES

5.1 Effective fraud control requires the commitment of all employees, contractors and third party providers. However, the primary responsibility for fraud control rests with Chief Executives in agencies subject to the FMA Act, and Boards of Directors of bodies subject to the CAC Act. Chief Executives play a key role in ensuring their agencies and bodies have appropriate fraud control arrangements, and in setting the ethical tone within an agency.²

5.2 The FMA Act specifies the responsibilities and powers of Chief Executive Officers and officials, including the responsibilities associated with the expenditure of public monies. Section 44 of the FMA Act provides that agency Chief Executives 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. Proper use means efficient, effective and ethical use that is consistent with the policies of the Commonwealth.

5.3 Section 44 of the FMA Act is an overarching requirement applying to all aspects of an agency's resource management. Chief Executives mainly discharge their responsibility under section 44 by ensuring that their agencies have appropriate policies, procedures and guidelines in place which function correctly.

5.4 Section 45 of the FMA Act provides that a Chief Executive must implement a fraud control plan for the agency. Depending on the agency's circumstances, this may be a standalone plan or it may form part of the agency's risk management framework. Agency fraud control plans must address the risk factors peculiar to an agency's particular business and vulnerabilities and must be regularly evaluated and updated.

5.5 The CAC Act applies to Commonwealth authorities that are legally and financially separate from the Commonwealth. The CAC Act 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*.

5.6 While the legal and compliance obligations of FMA Act agencies and CAC Act bodies differ, the public expects public sector bodies to conduct their business with diligence and integrity.

5.7 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, 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.

5.8 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 Acts or codes of conduct relevant to the agency, such as the *Public Service Act 1999*, and the Australian Public Service Values and Code of Conduct
- take all reasonable measures to prevent and detect fraud. This may include the 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

² For the purposes of the Guidelines, references to Chief Executives include relevant Boards of Directors, or where appropriate Managing Directors, of CAC Act bodies.

- report annually to their Minister or Presiding Officers, in a format to be determined by the agency, on fraud risk and fraud control measures, including:
 - 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 Reports³ 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.

³ The *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, distributed annually by the Department of Prime Minister and Cabinet require Chief Executives to certify in their annual reports that their agency has prepared fraud risk assessments and fraud control plans, and has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the specific needs of the agency and comply with the Guidelines.

6. RISK ASSESSMENT

6.1 Agencies must undertake a fraud risk assessment at least once every two years. Risk assessments must consider internal and external fraud risks. Agencies that undertake functions or use methods of operation that are associated with a high fraud risk, or which operate in high fraud or corruption risk environments, should assess risk more frequently.

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 Agencies will generally face different fraud control issues because of the size of the agency and the nature of the agency's business, which impacts that agency's potential exposure to fraud. Risk management is an integral part of good management practice and should be integrated into an agency's strategic and business planning processes. It is not cost effective to institute measures to address every possible business risk, including potential fraud. Therefore, the likely occurrence of fraud and its impact on an agency's key organisational objectives and/or core business must be carefully assessed. A risk-based approach enables an agency to target its resources, both in prevention and detection, at problem areas.

6.4 Agencies are responsible for determining the risk assessment approach that is most appropriate for their circumstances. Risk assessment processes should take into account all significant factors likely to affect an agency's exposure to risk. The level and depth of the assessment will be determined by the vulnerability or exposure to fraud that an agency considers to exist.

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. However, it is recognised that some large agencies or programs will have an inherent risk of fraud due to the nature of their business (e.g. revenue collection, payment of benefits, contract procurement activities). In such agencies, an additional fraud risk assessment specific to a particular policy or program area should be considered.

6.6 In developing their fraud risk assessment and fraud control plan, agencies should adopt a methodology consistent with the relevant recognised standards, the Australian/New Zealand Standard AS/NZ ISO 31000-2009 *Risk Management – Principles and Guidelines* and Australian Standard AS 8001-2008 *Fraud and Corruption Control*.⁴

6.7 Risk assessment is a process of continuing improvement. Where appropriate, agencies should introduce a rolling program of updating risk assessments and risk mitigation measures. Agencies should develop dynamic risk assessment procedures and greater integration of the fraud risk assessment process within an overall general business risk approach.

6.8 Where an agency undergoes a substantial change in structure, function, or where there is a significant transfer in function (for example, as a result of outsourcing), the agency must undertake another fraud risk assessment in relation to the changed functions. This can include changes to service delivery models, such as expansion of, or into, online provision of information and services. In such cases the revised fraud risk assessment will need to consider new or varied fraud risks from a transfer to, or increased use of, the online environment.

⁴ Relevant standards as at January 2011

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. Again, this can be considered in the context of other business risks. 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. This fraud risk assessment can be part of a general business risk assessment exercise.

6.10 Risk assessment and fraud control planning require specific expertise, particularly in the increasingly complex context in which agencies are operating. Risk assessments can be undertaken using in-house resources, but it is important to ensure that the risk assessment team has access to the range of skills, knowledge and experience necessary to provide coverage of the categories of risk to be considered.

6.11 Where resources are not available in-house, agencies may choose to outsource all or part of the risk assessment and fraud control planning process. However, even if the tasks are 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. Agencies should ensure the organisation to whom they are outsourcing meets the terms and competencies set out in the Guidelines. 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 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. The outcomes of fraud risk assessments should also be provided to agencies' internal audit units, for consideration in the annual audit work program.

7. FRAUD CONTROL PLANS

7.1 Fraud risk assessments must be followed by the development (or updating) and implementation of a fraud control plan to manage the risks. Effective oversight mechanisms should be in place to 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 It is not necessary for agencies to develop fraud control plans and processes as standalone documents. The fraud control plan should, where appropriate, be integrated into the agency's strategic, business plan or risk management plan. Where a fraud risk is assessed to be high due to the nature of the business, specific fraud risk plans at the agency, enterprise or program level may be appropriate.

7.3 Fraud control plans must address the agency's individual needs. They should document the agency's approach to controlling fraud at a strategic, operational and tactical level, and must encompass prevention, detection, reporting, and investigation measures. This should include:

- a summary of the identified internal and external fraud risks or vulnerabilities associated with the agency's administration or function
- 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
- 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
- strategies to ensure the agency meets its training requirements
- mechanisms for collecting, analysing and reporting the number and nature of incidents of fraud or alleged fraud within or against the agency, and

- protocols setting out how the agency will handle allegations/suspicious 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).

7.4 Controls and strategies outlined in fraud control plans should be commensurate with assessed fraud risks. Testing controls may indicate that not all of them are necessary or that different approaches may have more effective outcomes. 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. The ANAO report *Fraud Control in Australian Government Agencies* (2010) found that smaller agencies (those with less than 249 employees) comprised the largest percentage of agencies that indicated they were not meeting the mandatory fraud external reporting requirements and generally were less likely to have fraud prevention oversight arrangements in place. The nature and extent of internal and external fraud risks faced by smaller public sector agencies could be expected to differ from the fraud risks facing larger, service delivery organisations, however these risks will still require targeted mitigation strategies. Small public sector agencies should adopt "fit for purpose" mechanisms to address specific fraud risks.

7.6 Fraud control plans are by nature iterative. They 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. This will help ensure that control systems remain appropriate, cost effective and proportionate to the actual risks they are addressing.

7.7 Fraud control plans should be user-friendly and available to all relevant employees. Agencies must provide a copy of their fraud control plans to the AGD or the AFP on request to assist in the analysis of fraud trends and in development of guidance material.

8. FRAUD AWARENESS AND TRAINING

8.1 Fraud prevention involves not only putting into place effective accounting and operational controls, but also fostering an ethical culture that encourages employees and contractors at all levels to play their part in protecting public resources. Establishing an ethical culture is a key element of sound governance and is an important factor in preventing fraud and helping to detect it once it occurs.

8.2 As part of the Chief Executive's responsibility for developing an overall fraud control strategy, agencies must prepare and widely distribute a fraud policy statement. This will assist employees and contractors to understand what fraud is and encourage employees at all levels to participate actively in protecting public resources.

8.3 Typically, a fraud policy statement will form part of other corporate documentation and include:

- the definition of fraud and an outline of the agency's position on fraud
- agency commitment to investigating and prosecuting fraud or pursuing other effective remedies
- a statement of employee and contractor responsibilities relating to the prevention and reporting of fraud and how fraud is to be reported
- the consequences of acting fraudulently
- an assurance that allegations and investigations will be handled confidentially
- directions as to how allegations/incidents of fraud are to be managed, and
- advice on where further information can be found.

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, where deemed appropriate, to contractors.

Fraud awareness training should be included in all induction training programs. An understanding of the roles and responsibilities of other Commonwealth agencies, including the AFP and Commonwealth Director of Public Prosecutions (the CDPP, is also fundamental to sound fraud control.

8.5 Agencies should consider complimentary training in relation to ethics, privacy, and relevant codes applicable to the agency, such as the APS Values and Codes 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.

8.7 Agencies must clearly document their procedures and instructions that assist employees to deal with fraud. Such documents are an important part of effective fraud control. These should be kept up-to-date and made available to all employees, particularly those with direct responsibilities for fraud control. Agencies must ensure that all employees engaged in fraud control or investigations are aware of and have access to these Guidelines.

8.8 The agency's approach to fraud must be clearly communicated to clients and third party service providers, and should be made available, where necessary, to members of the public

8.9 Agencies must make their fraud control policy statement available to relevant consultants so that they are fully aware of the agency's approach to fraud control. Where deemed appropriate, a copy of agency's fraud control plan, or any relevant sections, should be made available to consultants.

8.10 Awareness-raising for third party providers needs to take account of both the work they do directly for the Australian Government and services delivered on behalf of the Australian Government to clients and customers.

8.11 Clients should have access to information in relation to their rights, responsibilities and obligations including information on their responsibilities for fraud control.

8.12 Agencies must ensure that employees who are primarily engaged in detecting or investigating fraud meet the required fraud control competency requirements set out in the AGIS as a minimum.

8.13 Agencies must ensure that these employees attain the relevant qualifications within twelve 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. Timeframes for refreshing employee knowledge and skills should be determined by individual agencies, but should occur at least every three years. 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 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. Employees primarily engaged in agency fraud risk assessment and planning activities should acquire or possess Certificate IV in Government (*Fraud Control*) or equivalent qualifications 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 of Government (*Fraud Control*) or equivalent qualifications as a minimum.

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 or undertake other appropriate training measures.

9. OUTSOURCING ARRANGEMENTS

9.1 Third party providers, including non-government organisations, the private sector or other levels of government, undertake a significant amount of work for Australian Government agencies.

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 third party service providers meet the high standard of accountability required as part of the Commonwealth's financial management framework. The purchasing agency retains responsibility for the services delivered by third parties to clients, including requirements in relation to fraud control.

9.3 Where an agency provides third party services for another agency, the agency delivering the service retains responsibility to meet the obligations of these Guidelines.

9.4 If allegations are made in relation to third party providers, agencies will need to determine whether, if proven, the fraud constitutes fraud against the Commonwealth. If a private sector contractor or non government organisation experiences internal fraud, this does not necessarily constitute fraud against the Commonwealth. The victim of the fraud is more likely to be the contractor and action is most likely to be considered through the application of State/Territory law.

10. DETECTION, INVESTIGATION AND RESPONSE

10.1 Fraud detection, investigation and response are key elements of the overall fraud control framework. Agencies must be aware of and comply with any requirements of the AGIS when developing systems and processes for the detection and investigation of fraud.

Detection

10.2 Agencies must have in place appropriate systems to ensure they are able to detect internal or external fraud, or attempted fraud. 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 Members of the public can play an important role in reporting suspected fraud. 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. Such initiatives are particularly important for agencies that deliver services and payments to the community.

10.4 Employees, clients or members of the public must be provided with an appropriate channel for reporting fraud that, where possible, ensures confidentiality. Agencies should have in place a formal reporting system where all instances or allegations of internal or external fraud or attempted fraud within the agency and any subsequent investigations and outcomes, can be securely stored, recorded, analysed and monitored.

10.5 Agencies should establish policies and procedures to encourage and support reporting of suspected fraud through proper channels. This should include consideration of appropriate management of risks of adverse consequences to those making such reports.

Fraud Incident Management Protocols

10.6 Agencies are responsible for making decisions at a number of critical stages in the management of a suspected fraud. This includes the decision to initiate an investigation (including the transition from audit or compliance work to a fraud investigation), or referral to law enforcement. It also includes subsequent decisions on the actions resulting from an investigation, whether that be 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 these Guidelines and in accordance with the requirements under the AGIS for identification of breaches and case selection, and investigation management.

10.8 The criteria will reflect the particular circumstances of each agency, and should include consideration of the:

- cost or value of the alleged fraud
- security implications of the alleged fraud
- likely cost of investigation or prosecution
- possible benefit, including recovery of losses and deterrent value, and non-monetary considerations such as the public interest
- identity of person(s) against whom the allegations are made
- nature of the alleged fraud
- prospect of compiling sufficient evidence for a brief to the CDPP, and
- possible ongoing risks caused by or evident in the fraud.

10.9 Consistent with these procedures, 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. Procedures should reflect the assumption that allegations of fraud will be investigated and appropriately acted upon.

Referrals to Law Enforcement Agencies

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). Agencies are encouraged to seek guidance from the AFP about the CCPM, and to discuss possible referrals with the AFP where there is any doubt about whether it is appropriate to refer a particular matter. Agencies may outsource these investigations where they do not involve conflicts of interest or politically sensitive matters.

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 the AFP referral process published on the website www.afp.gov.au, except where legislation sets out requirements for referrals of a particular nature or by a particular class of bodies or agencies or where agencies 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. This exception does not preclude an agency from referring a matter to the AFP where deemed appropriate.

10.12 Matters of a politically sensitive nature, not limited to fraud, deemed by the agency as appropriate for referral to the AFP should be brought to the attention of the Minister

for Home Affairs via the relevant Minister or Department at the time of referral. This enables the Government to be informed at the earliest juncture of potential politically contentious matters that may require AFP investigation. The procedure exists only to enable the Minister to be informed of significant matters affecting his or her responsibility for the AFP. The Minister does not have the power or function of deciding what particular allegations the AFP will investigate. The decision to seek an AFP investigation will, unless the matter affects other portfolios, remain that of the complainant agency.

10.13 The AFP will also consider investigating matter(s) where there could be a real or perceived conflict of interest if the matter were to be investigated by the agency concerned (for instance, where the allegation concerns potential criminal behaviour by a member of the executive with some responsibility for the agency's investigation function).

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.

10.15 The AFP and the State or Territory police services may not be able to accept all referrals. 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.

10.16 The AFP evaluates all matters referred to it for investigation in accordance with its CCPM. The CCPM has been developed by the AFP to provide a transparent, objective and consistent basis for evaluating and comparing AFP operational activities from a range of perspectives, including across agencies, regions (geographic location) or teams (work groups). The CCPM provides agencies with a basis for considering matters prior to referral. The AFP also uses the CCPM as a basis of identifying and agreeing with agencies, those types of matters that may be most appropriate for referral.

10.17 Where a fraud matter is declined for investigation, the AFP will advise the agency in writing at the earliest opportunity and, in any case, within 28 days (unless another period is agreed to), of the reasons. The AFP may also suggest alternative methods of handling the matter and may assist agencies by executing search warrants and/or providing other forms of assistance. If, after the AFP has advised an agency that it cannot accept a referral, additional information becomes available that shows that the matter is more serious than first indicated, the agency may again refer the matter to the AFP for consideration.

10.18 Where an agency needs specific arrangements with the AFP to meet its obligations and responsibilities, the agency and the AFP may negotiate a service agreement. Where there is a Commonwealth law enforcement interest, and where both parties support an outposting, the AFP may outpost employees to a Commonwealth agency. Where such arrangements are negotiated or in place, the role and responsibilities of each agency should be clearly specified.

Investigation

10.19 The investigation of fraud is crucial to effective fraud control. Agencies are encouraged to consult with the AFP to clarify whether a particular case requires criminal investigation.

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. Unqualified investigators may compromise a case by:

- failing to collect all the available evidence
- collecting evidence in a manner that is inadmissible in court, and/or
- alerting the suspect before all available or necessary evidence can be collected.

10.21 Where an investigation concerns matters which are security classified, agencies must ensure that investigators have obtained a security clearance commensurate with the classification of any materials discussed or reviewed during the investigation.

10.22 Agencies may investigate allegations of fraud affecting that agency or its programs using agency or third party investigators only where:

- the investigators possess the minimum competencies outlined in 8.12 and 8.14
- the Chief Executive, or delegate, has formally authorised the investigators to undertake fraud investigations, and
- 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.

10.23 Information Privacy Principle 11.1(e) allows the disclosure of information where it "is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue". Many investigations into fraud against the Commonwealth will involve, at the least, protection of the public revenue. Investigators must, however, be mindful of other 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 *Prosecution Policy of the Commonwealth*, the Commonwealth Protective Security Policy, Part 1C of the *Crimes Act 1914*, the *Freedom of Information Act 1982*, the *Privacy Act 1988*, the *Archives Act 1983* and other applicable law – including provisions arising from legislation administered by specific agencies.

10.25 Agencies should consider applying the AGIS in all investigations other than audit. Although compliance work generally involves investigations into matters which do not carry a criminal offence or for which the agency or investigating authority has pre-determined not to criminally prosecute, compliance investigations may in some circumstances progress into a criminal investigation and vice versa. Agencies should use their judgement in applying the AGIS to investigations if there is a possibility of the investigations resulting in a judicial proceeding.

10.26 For fraud to occur, it has to be seen that there has been an intent to defraud. Non-compliance is a particular issue for agencies dealing with revenue or benefits. However, non-compliance may not constitute fraud. It can be caused because of a lack of understanding or awareness of obligations, because compliance is difficult, or it may be deliberate. 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. The Australian Government's policy in relation to prosecution of criminal offences is set out in the *Prosecution Policy of the Commonwealth* which is available from the CDPP. Prosecutions are important in deterring future instances of fraud and in educating the public generally about the seriousness of fraud.

10.28 Where the AFP is unable to investigate a potential offence and returns the matter to the referring agency, the agency may, where the matter is investigated and sufficient evidence is obtained, subsequently refer the matter to the CDPP for consideration of prosecution action. Briefs should be prepared in accordance with the *Guidelines for Dealings between Commonwealth Investigators and the Commonwealth Director of Public Prosecutions*.

10.29 If any agency needs specific arrangements with the CDPP to meet its obligations and responsibilities, in addition to those outlined in these Guidelines, the agency and the CDPP may negotiate separate measures, such as a memorandum of understanding between the agency and the CDPP.

10.30 Where an agency sends a brief of evidence to the CDPP to consider prosecution action, and the CDPP advises that a prosecution will not proceed, the agency remains responsible for resolving the matter and for considering other available remedies, in accordance with the criteria established under 10.7. 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 Agencies must be committed to recovering financial losses caused by illegal activity through proceeds of crime and civil recovery processes or administrative remedies. There should be a general policy that recovery action be undertaken where the likely benefit will exceed the recovery costs. In this context, 'benefit' is not simply financial, but should include consideration of deterrent value and other non-financial benefits such as public interest and integrity of agency reputation.

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, subject to any requirements or limitations under the *Privacy Act 1988*, the Information Privacy Principles or agency legislation regulating the disclosure of information. This also applies to criminal activity identified by the AFP.

SERIOUS AND COMPLEX MATTERS

To ensure that AFP resources are directed towards the matters of highest priority, the AFP evaluates all matters that are referred for investigation in accordance with the CCPM. This considers:

- the incident type and the impact of the matter on Australian society
- the importance of the matter to both the client and the AFP in terms of the roles assigned to them by Government and Ministerial direction
- the type of response required (that is, whether an immediate response is needed), and
- the resources required by the AFP to undertake the matter.

It is not possible to be definitive about fraud matters that will be accepted by the AFP for investigation. While not an exclusive list, the criteria set out below provide some guidance as to whether a particular matter is of sufficient seriousness and may warrant referral to the AFP:

- significant or potentially significant monetary or property loss to the Commonwealth
- damage to the security, standing or integrity of the Commonwealth or an agency
- harm to the economy, national security, resources, assets, environment or well-being of Australia
- a serious breach of trust by a Commonwealth employee or contractor of an agency
- the use of sophisticated techniques or technology to avoid detection, that require specialised skills and technology for the matter to be successfully investigated

- the elements of a criminal conspiracy
- bribery, corruption or attempted bribery or corruption of a Commonwealth employee or contractor to an agency
- known or suspected criminal activity against more than one agency
- activities which could affect wider aspects of Commonwealth law enforcement (e.g. illegal immigration, money laundering), and
- politically sensitive matters.

11. QUALITY ASSURANCE AND REVIEWS

11.1 The Minister for Home Affairs may direct the AGD to review Commonwealth fraud control arrangements. Any reviews will be conducted in consultation with the ANAO, the AFP and other relevant agencies with the aim of improving fraud control activities across the Commonwealth.

11.2 Agencies should ensure appropriate monitoring and evaluation of fraud control plans by an appropriate committee or body.

11.3 Implementation of the Guidelines may be the subject of audit by the ANAO.

11.4 The AFP may conduct QARs of agency fraud investigations, as described under the AGIS. The AFP must provide the results of the QAR process on fraud investigations to the AGD.

11.5 Agencies conducting a number of investigations deemed to represent a significant risk must have a QAR system in place that complements AFP QARs and provides adequate information for effective monitoring and continuous improvement purposes.

12. INFORMATION MANAGEMENT AND REPORTING REQUIREMENTS

12.1 Reliable and up-to-date information is essential to sound decision-making. A reporting system that records all allegations of fraud, any subsequent investigation action and their outcomes can provide an overview of the nature, extent and location of fraud. It can also form the basis for developing an intelligence capability and risk profiles of potential fraud suspects, in addition to providing the data necessary for identifying trends and for appropriate performance monitoring and reporting.

12.2 Agencies must have 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. Information systems used to store information relating to investigations must comply with the relevant requirements of the AGIS.

12.3 Data collection on fraud and fraud control activities is an important part of controlling fraud against the Commonwealth. The AIC, in consultation with the AGD and AFP, will provide an annual report on fraud against the Commonwealth and fraud control arrangements in Australian Government agencies to the Minister for Home Affairs. This report will also be provided to Ministers, Presiding Officers and to Chief Executives. The AIC may also publish selected findings of the report with the agreement of the Minister for Home Affairs. The AGD will provide an annual compliance report to Government, through the Minister for Home Affairs, on whole-of-Government compliance with the requirements of the Guidelines.

12.4 All agencies must collect information on fraud and provide it to the AIC by 30 September each year to facilitate the process of annual reporting to Government, noting that compliance information will be made available to AGD for monitoring. This includes incidents of suspected fraud, incidents under investigation, and completed incidents, whether the fraud was proved or not, and whether the incident was dealt with by a criminal, civil or administrative remedy. The precise data items will be agreed between the AGD and the AIC in consultation with other agencies and agencies will be required to provide the information by responding to an online survey hosted by the AIC.

12.5 In addition to responding to the AICs online fraud survey, the AFP is to provide annual information to the AIC on all fraud incidents against the Commonwealth referred to, accepted or declined by, the AFP during the previous financial year. The precise data items will be agreed between the AFP and the AIC.

12.6 In addition to responding to the AICs online fraud survey, the CDPP is to provide annual information to the AIC on all fraud incidents handled by the CDPP during the previous financial year. The precise data items will be agreed between the CDPP and the AIC.

