the dr&pw

Department:
Roads and Public Works
NORTHERN CAPE PROVINCE
**REPUBLIC OF SOUTH AFRICA**

# DEPARTMENTAL POLICY ON DAMAGES AND LOSSES

**Version 2**

**(April 2017)**

**From:** DRPW-Info
**To:** A Maina; A Mokwadi; A van Staden; AFanie; AFembers; AKula; ALesoth...
**Date:** 3/29/2017 1:45 AM
**Subject:** DEPARTMENTAL POLICY ON DAMAGES AND LOSSES
**Attachments:** SKM_C654e17032908560.pdf

Dear Colleagues

Find attached a draft Departmental Policy on Damages and Losses. Kindly submit your inputs or queries on or before 03 April 2017, to Mr. K. Matthews at 053-8392345 or kmatthews@ncpg.gov.za.

Thanking you in anticipation

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# 1. DEFINITIONS AND ACRONYMS

| | |
|---|---|
| **"Act"** | Means the Public Finance Management Act, 1999 (Act 1 of 1999). |
| **"AO"** | Accounting Officer. |
| **"Claim"** | Means a lawsuit, action, interdict, arbitration, inquest or dispute. |
| **"Compensation"** | Refers to any compensation paid in monetary value or in kind |
| **"Drive"** | Refers to a mobile departmental asset and includes the getting in, onto, or off, by the driver of a departmental vehicle or his/her passengers. |
| **"Damages"** | An act instance, or consequences of breaking or destroying departmental assets. |
| **"*Ex Gratia* payment"** | An ex *gratia* is the payment made to reimburse a departmental official for the loss suffered while on official duty. |
| **"Investigation officer"** | Refers to a person appointed by the AO in writing to investigate the cases on behalf of the financial Management Committee |
| **"Losses"** | Means any material loss or damages or prejudice to the Department. |
| **"Financial Management Committee"** | Refers to a committee appointed by the accounting officer (AO) ,Responsible for adjudicating all cases of losses suffered by DRPW |
| **"Officials"** | Means a person in the employ of the Department. |
| **"State Attorney"** | Means the State Attorney or any person in command of an office of the State Attorney's Office or his/her delegates, doing all work in the interest of the Department which is done in the private sector by attorneys, notaries and conveyances according to law, practice or usage. |
| **"Service provider"** | Refers to any individual institution, legal body and a business concern rendering service to the department (DRPW) |
| **"Reporting official"** | An employee who identifies the loss and reports the case. |
| **"Thefts"** | The stealing or unauthorized use of moveable and/or immovable departmental assets. |

## 2. INTRODUCTION

The utilization of departmental goods, property, assets including electronic services and communications of the Department of Transport, Roads and Public Works must take place in order to enhance the productivity of the Department and to further the efficient accomplishment of tasks that benefit the business of the Department. This policy is intended to ensure the abovementioned and to protect the Department from claims arising from the use of the said services.

## 3. THE PURPOSE

The purpose of this policy is to establish clearly defined, easy to understand guidelines for the management of losses and claims in accordance with the Public Finance Management Act no1 of 1999 (as amended by act 29 of 1999) and directives that have been introduced by the Treasure Regulations

## 4. REGULATORY FRAMEWORK

4.1 The Constitution of the Republic of South Africa Act (Act No. 108 of 1996).

4.2 The Public Finance Management Act (PFMA), Act 1 of 1999 (as amended by Act No 29 of 1999) Section 38 (1)(b), (d) and (1) and 38 (2) 76(1)(b) and 76(4)(a).

4.3 The Electronic Communications and Transactions Act (ECTA), 2002 (Act No. 25 of 2002).

4.4 Treasury Regulations (March 2005) - Chapter 12.

4.4.1 In terms of Treasury Regulation 12.1.2 the Accounting Officer may insure motor vehicles or other moveable assets as determined by the Treasury to a maximum premium of R 250 000 a year. In all other respects the Department bears its own damages and accident risks and accepts responsibility for all claims and losses of State property, arising from Departmental activities by a person who is or was in the employ of the Department.

4.4.2 Subject to the provisions of this regulation, or any other legislation or agreement, the department will bear its own damages and accident risks and be responsible for all claims and losses of department property where these arise from department activities by an official who is liable in law and who is or was employed by an institution.

4.4.3 According to Treasury Regulation 12.2.1 officials enjoy State protection for acts or omissions resulting in losses or damages, provided:

4.4.3.1 the act or omission did not involve the use of alcohol or drugs;

4.4.3.2 the official acted in the course of his or her employment;

4.4.3.3 the official did not fail to comply with or ignore standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim, excluding losses and damages arising from the use of a state vehicle; and

4.4.3.4 in the case of a loss, damage or claim arising from the use of a state vehicle, the official used the vehicle with authorisation for official purposes, and:

a) possesses a valid driver's licence;
b) used the vehicle in the interest of the state;
c) did not allow unauthorised persons to handle the vehicle;
d) did not deviate materially from the official journey or route without prior authorisation; and
e) did not, without prior consultation with the State Attorney, make an admission that was detrimental to the State.

4.4.3.5 Regardless as to whether or not money is recovered in terms of these instructions, disciplinary measures in terms of any relevant disciplinary code, code of conduct or law must be considered.

## 5. POLICY SCOPE AND APPLICATION

5.1 This policy is applicable to all departmental officials and any person appointed as a casual worker, assets to employees in carrying out their official duties, as well as the employees themselves who make use of such departmental assets.

5.2 The process begins when the responsibility manager of the said official is notified, or discovers that departmental assets have been lost, damaged or destroyed.

## 6. OBJECTIVES

## The objectives of the policy are as follows:

6.1.1 To ensure effective, efficient, economic and transparent management of theft and losses within DRPW

6.1.2 To ensure that losses are handled in accordance with Treasury Regulations

6.1.3 To ensure that all losses and damages are fully recovered by the Department (DRPW)

6.1.4 To ensure efficient, effective and economic use of assets allocated to DRPW officials

# 7. MANAGEMENT OF LOSSES AND/OR DAMAGES

## GENERAL

7.1 In accordance with TR 12.1.1 the DRPW will bear its own damages and accident risk and be responsible for all claims and losses of state property where these arise from state activities by an official who is liable in law and who is or was employed by the DRPW

7.1.2 The DRPW in accordance with chapter 12 of the TR and provided that:
a) The condition stipulated in 12.2.1 are met; and
b) Losses and damages which arose from acts or omissions of officials of the DRPW accepts liability for losses and/or damages suffered by the DRPW, officials of the DRPW and other persons.

7.1.3 The CFO may on own accord or on request of the FMC consult with the State Attorney to obtain clarity/legal advice on the implementation of paragraph 12.2.1 of the TR

7.1.4 All amounts owed to the DRPW must be handled in terms of the "Policy for the Management of Debt"

7.1.5 Losses suffered by the DRPW due to cancelled air tickets, after hours call fees and/or bank recall fees may be written off by the CFO and presented to the FMC for noting provided that sufficient supporting documentation is attached.

**7.2 The following guidelines will be considered by the FMC but are not exhaustive**

7.2.1 Office security is the responsibility of the designated staff member responsible for that office

7.2.2 All staff is responsible for ensuring that appropriate measures are taken to provide for the safekeeping and utilization of all assets under their control

7.2.3 All office doors must be locked during any absence of the responsible staff member

7.3.4 Keys must not be left hanging in the door locks, personal items such as handbags, briefcase, wallets, cellphones etc. must not be left unattended

7.3.5 No visitor must be allowed to remain in the office without the direct supervision of a staff member or escort security.

7.3.6 All asset losses must be reported in writing to the Security Manager as soon as a loss is discovered

7.3.7 The sub-directorate; Security Management, reserves the right to investigate and request written reports on all losses

7.3.8 If departmental property has been taken home or to a place of residence and get stolen, the involved official(s) will be liable for loss

7.3.9 If the property is stolen out of a vehicle or if the vehicle is stolen, full evidence must be produced

7.3.10 The Department shall take possession of any property belonging to the Department that is in an employee's possession on their last day of service or after resignation, suspension, transfer or dismissal.

7.2.11 The Department's property should be handed in by the affected employee(s).Upon failure to hand in Departmental property, the matter will be transferred to legal service for the recovery of the loss

7.2.12 All employees in the department must be cognizant of the fact that all information in hardcopy format and or electronic copies is the property of the Department and all information should be left intact by the employee(s) upon resignation, suspension, dismissal or transfer.

## 8. THE FINANCIAL MISCONDUCT COMMITTEE

8.1 The Financial Misconduct Committee FMC) is established in line with the Public Finance Management Act (Act of 1999) (PFMA) and Department of Roads and Works (DRPW) Work Risk Management Strategy

8.1.2 Composition of the Financial Misconduct Committee

The following officials shall constitute the Financial Misconduct Committee

- Independent Chairperson
- Chief Financial Officer (CFO)
- Senior Manager: Legal Services
- Manager: Risk Management
- Senior Manager: Policy and Planning, Monitoring and Evaluation
- Senior Manager: Security (Loss Control Officer)
- Senior Manager: Labour Relations

- Manager: SCM
- Manager: Inspectorate (Secretariat)

## 9. Responsibilities of FMC.

9.1.1 The overall responsibility of the FMC shall be to investigate all financial misconduct and losses in the Department and make recommendations to the AO on corrective action to be taken.

9.1.2 FMC will facilitate the development of the Departments procedures on handling cases of possible financial misconduct, losses or damages as a result of negligence

9.1.3 Establish criteria for the evaluation of possible financial misconduct, losses or damages

9.1.4 Evaluate all cases of possible financial misconduct, which may result in unauthorized, irregular, fruitless or wasteful expenditure

9.1.5 Make recommendations to the AO on appropriate disciplinary action against an official(s) who had committed financial misconduct, is responsible for a loss to the department, or has caused damaged to the departments property asset

9.1.6 Establish whether appropriate processes were followed to determine liability on the part of the official(s)

9.1.7 Make recommendations to the AO on the writing off of losses.

9.1.8 In the addition to the list of risk areas where losses and /or damagers may occur as submitted to it by the Risk Managers, the FMC may discuss and evaluate any other matter which to its opinion is a high risk area in respect of losses and damages, in order to ensure that sufficient preventive measures are in place. If found necessary the FMC may propose the introduction of additional preventive measures

9.1.9 As soon as a loss or damage occurs the Chairperson of the Committee or Deputy Chair Person/ CFO shall immediately put preventive measures in place in other to prevent further losses or damages

9.1.10 The FMC may summon any official who was allegedly responsible for a loss and/or damage to appear before it in order to explain the circumstances surrounding the loss and/or damage and the official's involvement there in

9.1.11 The FMC may summon any official who may have additional information in respect of a loss and damage to appear before it in order to clarify certain aspects regarding the circumstances surrounding the loss and damage

9.1.12 The FMC has a right to access any documentation in any official's possession regarding a loss and damage

9.1.13 The FMC has a right to appoint an Independent Investigating Officer if it is not satisfied with the information contained in the investigating report

9.1.14 In a case where the FMC charges an official for negligence and the official is required to refund the department, the decision taken must first be presented to the Accounting Officer priors to implementation. This will prevent situations where the AO may be required to overrule a decision and /or action taken by the FMC. Once the AO takes cognizance of the decisions/action taken by the FMC no other party structure will be permitted to overrule the decision

9.1.15 The FMC shall determine who is liable for losses and damages that occurred taken into consideration the conditions stipulated in Chapter 12 of the TR

9.1.16 The FMC may, in addition to the amount to be recovered from the official, propose to the AO a suitable action to be taken against an official should he/she be found responsible for the loss and or damage

9.1.17 The FMC must ensure that corrective measures are introduced to prevent further losses and/ or damages in those areas where losses and /or damages occurred

## 10. DUTIES OF THE LOSS CONTROL OFFICER (LCO)

The loss control officer (LCO) must be appointed in writing by the accounting officer to manage losses in the DRPW

### Duties of the LCO are as follows (SECURITY HEAD)

10.1.2 The LCO is responsible for the management of all claims regarding losses and damages against the DRPW

10.1.3 All losses and damages caused by DRPW officials or casual worker shall immediately be reported in writing to the LCO by the official concerned

10.1.4 The LCO shall upon receipt of any claim in respect of losses and damages against the DRPW, record it immediately in the loss/not loss control register (LCR)

10.1.5 The LCO must submit the loss control register regularly to the Financial Management Committee to check for the corrections of completeness thereof

10.1.6 The LCO shall ensure that all loses and damages reported are included on the Financial Management Committee's agenda for discussion in the meeting

10.1.7 The LCO must obtain, as soon as possible all necessary information and statements regarding the loss and damages to enable the Financial Management Committee to make an informed decision

10.1.8 The LCO must as soon as possible inform the CFO as well as other role players of the decision of the Financial Management Committee (FMC) regarding losses and damagers.

## 11.1 MANAGEMENT OF LOSSES AND/OR DAMAGES

**Losses and/or damages through acts or omission of officials of the DRPW**

*Losses and /or damages suffered by the DRPW*

11.1.2 The FMC shall consider the liability of an official responsible for a loss and/or damage in terms of TR 12.2.1

11.1.3 Should the FMC or AO where applicable, find that the official is in terms of TR12.2.1 not liable, the DRPW shall accept the cost of the loss and/or damage.

11.1.4 Should the FMC or AO where applicable find that the official is in terms of TR12.2.2 liable, the FMC or AO where applicable, shall determine an amount to be recovered from the official. The amount recovered shall be based on the asset valuation method as indicated in the Asset Management Policy based on the following

a) Damage to buildings

b) Lost or damaged motor vehicle, computer equipment, furniture, other equipment and stores

c) Losses of unused inventory stores

11.1.5 The following Scale will guide the recommendations made by the FMC

6 months to 1 years ...75%.....
2 years and older ...50%.....
3 years and older ...30%.....
4 years and older ...10%.....

11.1.6 It is the responsibility of each and every official in possession of state assets (such as laptops and other portable equipment) to ensure that the doors of his/her vehicle are properly locked wherever a vehicle is left unattended or parked. Failure to do so will result in officials being held liable for any loss or damage of state assets which are stolen through the interception of the signal on the remote control device of a vehicle by criminals.

*11.2 Losses or damage suffered by the other persons*

11.2.1 The FMC shall determine whether an official of the DRPW is responsible for the loss and/or damage suffered by other persons

11.2.2 Should it be found that an official of the DRPW was involve in the circumstances that lead to the loss and/ or damage, the FMC shall consider the liability of official in terms of TR12.2.1

11.2.3 Should the FMC or AO where applicable, find that the official is in terms of TR12.2.2 not liable the DRPW shall accept the total cost of the loss and/or damage

11.2.4 Should the FMC or AO find that an official is in terms of TR12.2.1 liable for a loss or damage suffered by another person the total amount paid by the DRPW in respect of the loss and/ or damage suffered by the other person must be recovered from the official concerned if the official is liable in law to compensate the DRPW (See 11.1.5)

11.2.5 The State Attorney or an independent investigator may only obligate the funds of the DRPW with a prior written approval of:

*11.3 Losses or damages suffered by official of the DRPW*

11.3.1 A loss and /or damage sustained by the official of the DRPW in the execution of official duties, may be made good provided that the official-

a) has not been or will not be compensated from another source: and
b) can prove such loss and /or damage

11.3.2 Notwithstanding paragraph 11.3.1 of the policy FMC shall consider the liability of the official responsible for loss and damage in terms of TR12.2.1

11.3.3 Should the FMC or AO where applicable, find the official is in terms of TR 12.2.1 not liable for the loss and damage, the FMC or AO where applicable may determine an amount to reimburse the official

11.3.4 Should the FMC or AO where applicable find that the official is in terms of TR12 2.1 through own acts and /or omission liable for the loss/or damage occurred, the official shall not be entitled to any reimbursement

**11.4 Losses and /or damages through criminal acts or omission of officials of the DRPW**

*Losses and /or damage suffered by the DRPW*

11.4.1 If the DRPW suffers a loss or damage through an act or omission of another person the value of the loss and/or damage suffered must be calculated in terms of paragraph 11.1.5 of this policy and be claimed from the person.

11.4.2 If the person denies liability for an amount which is more than R250 000 the CFO must refer the matter to the State Attorney or an independent investigator

*11.5 Losses or damages suffered by the officials of the DRPW*

11.5.1 If an official of the DRPW whilst on official duty, suffers a loss or damage though an act or omission of another person the loss and/or damage may be made good provided that the official-

a) has not been or will not be compensated from another source; and

b) can prove such loss and/or damage suffered

11.5.2 Notwithstanding paragraph 11.5.1 of this Policy the FMC shall consider the liability of the official responsible for the loss and /damage in terms of TR12.2.1

11.5.3 Should the FMC find that the official is in terms of TR12.2.1 not liable for the loss and /or damage, the FMC recommend to the AO that the official be compensated in full or for a portion of the loss or damage suffered.

11.5.4 Should the FMC find that the official is in terms of TR12.2.1 through own acts and or omissions, liable for the loss and/or damage occurred the official shall not be entitled to any reimbursement.

**11.6 Losses and/or damages through criminal acts or omission of officials of the DRPW**

*Losses and/damages suffered by the DRPW*

11.6.1 When it appears that the DRPW has suffered losses and/or damages through criminal acts or potential criminal acts, the matter must, in addition to the normal reporting procedures, Immediately be reported within 24 hrs to-
a) the South African Police Service(SAPS) in writing by the official under whose custody the lost or damaged property was/is; and
b) the head of the security component of the DRPW

11.6.2 The head of the security component of the DRPW must ensure that the incident has been reported to the SAPS

11.6.3 The case must be presented in the next FMC meeting by the loss control officer (Head of Security)

11.6.4 The matter must be discussed immediately by the FMC and a preliminary investigation report must be submitted to the AO within seven working days of the occurrence

11.6.5 The report compiled by the investigating officer must only contain the process followed in the investigating as well as findings on the case without any proposals or recommendation. The report must also be approved and signed by D.SCM

11.6.6 In case of omissions

a) the matter, in addition to the normal reporting procedures be reported immediate ,in writing to the AO
b) The value of the loss and /or damage must be recovered from the person(s) responsible whether or not the person(s) still a government employee or not (See 11.1.5)

11.7 *Losses or damages suffered by the other persons*

11.7.1 The FMC shall consider the circumstances surrounding the matter and consult with the State Attorney or an independent investigator whether the DRPW could be held liable for any loss and /or damage

*11.7.2 Losses or damages suffered by officials of the DRPW (EX Gratia payment)*

11.7.3 The FMC shall consider the circumstances surrounding the matter and consult with the State Attorney or an independent investigator whether the DRPW should be held liable to any loss and/or damage

11.8 **Losses and/or damagers through criminal acts or omission by other person**
*Losses and/or damages suffered by the DRPW*

11.8.1 When it appears that the DRPW has suffered losses and /or damages through criminal acts or potential criminal acts, the matter must, in addition to the normal reporting procedures, immediately be reported within 24 hours to-

a) the South African Police Service (SAPS) in writing by the official under whose custody the lost or damage property was/is; and
b) the Head of Security Component of the DRPW

11.8.2 The Head of Security component of the DRPW must ensure that the incident has been reported to the SAPS

11.8.3 The incident report must be submitted in writing to the AO by the Head of Security

11.8.4 The CFO shall investigate the possible involvement of the officials in the matter and report to the FMC on the findings

11.8.5 After considering the findings the CFO and, the FMC shall propose to the AO suitable actions to be taken

11.8.6 If it has been found that an official of the DRPW is involve in criminal act, the fact must be reported immediately to the SAPS

11.8.7 In the case of omissions-

a) The CFO shall investigate the possible involvement of officials in the matter and report to the FMC on the findings

b) After considering the finding of the CFO the FMC shall propose to the AO suitable actions to be taken; and

c) If it has been found that an official of the DRPW is involve in the omission, the matter must be referred to the SAPs or independent investigator for advice

11.8.8 The value of the losses and/or damages suffered must be recovered from the responsible per

*11.9 Losses or damages suffered by officials of the DRPW*

11.9.1 If an official of the DRPW, whilst in official duty, suffers a loss or damage/ through criminal acts or an omission of another person the loss and/or damage may be good provided the official-

a) has not been or will not be compensated from another source; and
b) can prove such loss and /or damage

11.9.2 Notwithstanding paragraph 11.9.1 of this policy the FMC shall, in terms of TR12.2.1 and taking the official's behavior before, during and after the incident into consideration, decide whether the official has contributed in any way to the loss and /or damage.

11.9.3 Depending on its findings the FMC may recommend to the AO that the official be compensated

11.9.4 *Recovery of losses and /or damages*

11.9.5 A claim against an official must be waived if the conditions of TR12.2.1 (b) to (e) are met

11.9.6 Losses and damages suffered by the DRPW because of an act committed or omitted by an official of the DRPW must be recovered from such an official

11.9.7 The CFO may, following a request by the FMC consult with the State Attorney or an official with a legal background on questions of law in the implementation of paragraphs 11.9.5 and 11.9.6 above.

Any amount to be recovered due to losses and damages must be handled as debt in terms of the "Policy for the Management of debt"

*Revision of The Policy*

This policy will be reviewed when deemed necessary

2017-04-18
DATE

MRS A. MPOTSANG
CHIEF DIRECTOR: CORPORATE AND MANAGEMENT SERVICE
Recommended / Not Recommended

19/04/2017
DATE

MR K. NOGWILI
HEAD OF DEPARTMENT
Policy Adopted / Policy not Adopted

the **dr&pw**

Department:
Roads and Public Works
NORTHERN CAPE PROVINCE
**REPUBLIC OF SOUTH AFRICA**

# INTERNAL MEMO

| | | | |
|---|---|---|---|
| **DATE:** | 18 April 2017 | **REF. NO.** | |
| **TO:** | HEAD OF DEPARRMENT (HOD) | | |
| **FROM:** | THE DIRECTOR: POLICY, AND MONITORING AND EVALUATION | | |
| **COPY** | THE CHIEF DIRECTOR: CORPORATE AND MANAGEMENT SERVICES | | |
| **SUBJECT:** | DEPARTMENTAL POLICY ON DAMAGES AND LOSSES | | |

**Purpose**

1. The purpose of this submission is to obtain approval from the Head of Department (HOD) for the operationalization within the department of the Departmental Policy on Damages and Losses

**Recommendations**

1. The final draft of this policy has been circulated departmentally by Communication Unit.
2. It is therefore recommended that the HOD approve this policy as Departmental policy.
3. Please see e-mail attached of the Evidence of Departmental Consultation

Mathews

MR K.MATHEWS
DIRECTOR: POLICY,MONITORING AND EVALUATION
Recommended / Not Recommended

18/04/2017
Date