the dr&pw

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

DEPARTMENTAL POLICY ON REPORTING AND INVESTIGATION OF POTENTIAL FINANCIAL MISCONDUCT

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1. DEFINITIONS

Unless otherwise indicated, the following terms shall be defined as follows:

Department	Refers the Department of Roads and Public within the Northern Cape Provincial Administration.
Financial Misconduct	Refers to any intentional act to acquire financial gain for oneself or for those of relatives, friends, or associates from or through activities and transactions related to the business of the Department. It also refers to acts that the PFMA or any other law and that results in unauthorised expenditure, an irregular expenditure, fruitless and wasteful expenditure or any loss resulting from criminal conduct.
FMC	Financial Misconduct Committee
Fruitless and Wasteful Expenditure	As defined in the PFMA, means expenditure that was made in vain and would have been avoided had reasonable care been exercised.
HOD	Head of Department
Irregular Expenditure	Refers expenditure other than unauthorized expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation; i.e. PFMA, Act 1 of 1999; STBA, Act 86 of 1968; any provincial legislation providing for the procurement of goods and services in that province.
Unauthorised Expenditure	a) overspending of approved budget items; b) Spending not in line with the original approved purpose of the budget item; and c) Expenditure incurred without the appropriate approval. Unauthorised spending is expenditure that has not been budgeted for, or expenditure that is not in terms of the conditions of an allocation received from another sphere of government, municipality or organ of state and expenditure in the form of a grant that is not permitted in terms of the Public Finance Management Act (Act No.1 of 1999).

2. POLICY STATEMENT

The purpose of this policy is to define employee and management responsibility for reporting financial or potential financial misconduct and to establish procedures for addressing financial misconduct.

All officials of the department have a responsibility to ensure that department's funds and resources are used only in activities that support the missions of the department; to protect departments funds and resources from theft, misuse, misappropriation and other conduct that may be injurious to the financial welfare and reputation of the department; and, to ensure the integrity of the department's financial records through accurate reporting.

From the inference above, what constitute an act of misconduct should therefore follow its definition in the PFMA (Section 81(1)&(2) which states, an Accounting Officer:-

1. for a department commits an act of financial misconduct if the Accounting Officer wilfully or negligently:-

    a) fails to comply with a requirement of section 38, 39 and 40 or

    b) makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure

2. An official of the department to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty

3. INTRODUCTION AND BACKGROUND

Financial misconduct by officials is defined in terms of section 81(2) of the PFMA which states, "an official of the department, a trading entity or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official willfully or negligently fails to exercise that power or perform that duty"

Financial misconduct therefore refers to; any intentional act to acquire financial gain for oneself or for those of relatives, friends, or associates from or through activities and transactions related to the business of the department.

It also refers to any falsification of records, deliberate misrepresentation in financial reporting to the department's management or external bodies, any material losses through criminal conduct and the commitment of unauthorized, irregular, fruitless and wasteful expenditure. Here are some of the examples of financial misconduct:

- Financial mismanagement, e.g. failure to follow procurement procedures;
- Theft of departmental assets;
- Misappropriation and abuse the department's assets;
- Gross negligence, e.g. loss of state property;
- Unauthorized expenditure
- Alteration of records including financial reports, attendance and timekeeping reports;
- Submission of fraudulent business expenses for reimbursement;
- Bribery by acceptance of kickbacks from vendors;
- Overriding the department's internal controls such as the established review and authorization processes for expenses;
- Falsification or alteration of various records related to accounting and financial reporting;
- Falsification or alteration of records related to employee tax reporting and employee benefit plans;
- Deliberate misrepresentation in financial reporting to department's leadership and other recipients of financial reports.

Financial misconduct is a violation of the fiduciary and stewardship responsibilities that officials of the department are expected to exercise. All departmental officials have a responsibility to ensure that the funds of the department are used appropriately and to exercise due diligence when generating, reviewing, and approving transactions that commit the department to a financial obligation.

To help all officials of the department understand and fulfill their fiduciary and stewardship responsibilities, policies and procedures on a variety of financial activities and transactions have been developed. All officials of the department are expected to know these policies and to follow established procedures, as well as seek guidance whenever appropriate from offices or individuals responsible for specific policies.

4. REGULATORY FRAMEWORK

3.1. The Constitution of the Republic of South Africa (Act No. 108 of 1996), section 215 and 217.

3.2. The Public Finance Management Act no.1 of 1999 (as amended by Act no 29 of 1999):

- Section 38 dealing with general responsibilities of accounting officers and specifically subsection 38 (1)(a)(i), 38(1)(b),38(1)(d),38(1)(h) and
- Section 45 dealing with the responsibilities of other officials.
- Section 81 dealing with financial misconduct by officials in the department.

3.3. The Public Finance Management Act no.1 of 1999 (as amended by Act no 29 of 1999): Chapter 10.

3.4. Treasury Regulation section 4.

3.5. The Public Service Act, Act No. 103 of 1994.

3.6. The Prevention and Combating of Corrupt Activities Act (12 of 2004) aims to prevent and fight corruption in the Government and in the Public Sector.

5. OBJECTIVE AND SCOPE

The department's funds and resources come from annual budget allocated to them that carry fiduciary responsibilities for those individual with stewardship and whose primary function is to act as a custodians of those resources. These responsibilities require the officials of the department to use these funds and resources only on expenses and activities that support the missions of the department, to maintain operations according to policies established by the management, and to comply with all applicable legislation and regulations.

To ensure the financial integrity of the department, all officials of the department are required to exercise responsible stewardship. The Public Finance Management Act, Treasury Regulations and the department's various financial policies provide the guidelines that help foster stewardship and avoid situations that may lead to financial misconduct.

Wilful disregard or violation of department's financial policies for the purpose of personal gain or the gain of families, friends, or associates; places the department at risk. Such situations must be reported and investigated according to the guidelines provided in this policy.

The reporting and investigation of potential financial misconduct must conform to established procedures to promote confidentiality and fairness and to help ensure that the conduct of the department's business is not disrupted. When reporting suspected financial misconduct, one must be cognizant of the risk of damage to the reputation of an individual who may ultimately be absolved of any wrongdoing. The Department espouses confidentiality and ethical conduct at all times.

6. PRINCIPLES, VALUES AND PHILOSOPHY

This policy is intended to reflect the department's commitment to the principles, goals and ideals described in the department vision and core values.

It shall apply to all employees of the Northern Cape Department of Roads and Public Works .

7. FINANCIAL MISCONDUCT COMMITTEE

The accounting officer has the power to constitute the Committte and to dismiss members in the event of a committee not performing satisfactorily. The Financial Misconduct Committee should be composed of members of appropriate mix representing the necessary skills to strategically guide the department in cases of financial misconduct. The Committee shall have full authority and be accountable for all cases that are brought before it.

The Financial Misconduct Committee will be responsible for investigating and resolving all reported complaints and allegations concerning fraud or financial misconduct..

Compliance Officer: The Financial Misconduct Committee / Head of Department designate the Chief Financial Officer as the Compliance Officer.

8. PROCEDURES

8.1. Every official of the department has the responsibility to report to the Head of Department, incidences of fraud or financial misconduct which (if not attended to) could lead to incidences of fraud or financial loss. The procedures for reporting potential financial misconduct as a result of expenditure and losses listed below are set-out in the following policies and procedures for:

a) Unauthorized;

b) Irregular expenditure;

c) Fruitless and Wasteful Expenditure and

d) Loss control policy.

8.2. Reporting Potential Financial Misconduct

The procedure for reporting potential financial misconduct is outlined as follows:-

a. *Uncovering of Financial Misconduct*

All officials of the department are urged to report promptly and in a confidential manner to the Compliance Officer when acts of financial misconduct are suspected or uncovered.

If the potential misconduct is that of the Compliance Officer, initial contact should be with the Head of Department and not the Compliance Officer.

b. *Responsibilities of Those Who Receive Reports of Potential Misconduct .The Executing Authority, Accounting Officer or Heads of Directorates /* who receive reports of potential misconduct are required to contact the Compliance Officer.

All officials of the department are advised to refrain from conducting an investigation on their own, or from taking any action to resolve the irregularity before contacting the Compliance Officer

c. *Confidentiality of Reporting Guaranteed*

All information regarding known or suspected financial misconduct is deemed privileged and confidential.

To the extent possible, the department will protect the identity of both those who alert the Department to any irregularity and those suspected of wrongdoing.

8.3. Investigating Potential Financial Misconduct

The Head of Department has the primary responsibility for the investigation of all suspected fraudulent acts as defined in the policy. Investigation of alleged financial misconduct must be conducted in accordance with Treasury Regulation 33 and department of Roads and Public Works disciplinary procedures . The procedure for investigating potential financial misconduct is outlined as follows:-

In terms of section 85(1) (b); (c) and (d) of the PFMA, Act 1 of 1999, as amended

a. the Accounting Officer of an institution must conduct an investigation if an official is alleged to have committed financial misconduct. On confirmation, a disciplinary hearing must be held in accordance with the relevant prescripts and agreements applicable in the public service.

b. the Accounting Officer must ensure that an investigation is instituted within 30 days from the date of discovery of the alleged financial misconduct.

c. If an Accounting Officer is alleged to have committed financial misconduct the relevant Treasury, once aware of the alleged misconduct must ensure that the relevant Executive Authority initiates an investigation, and once confirmed hold a disciplinary hearing in accordance with the relevant prescripts and agreements applicable in the public service.

d. A relevant treasury may:-

   i. direct that an official other than an employee of the institution conducts the investigation; and

   ii. issue any reasonable requirements regarding the way in which the investigation should be performed.

a. *Financial Misconduct Records*

All reports of potential financial misconduct will be reviewed promptly by the Compliance Officer. The Compliance Officer will evaluate all records and information provided to verify the validity of the reports and make a preliminary determination whether an investigation is warranted.

When an investigation is underway, all directorates / units are required to cooperate and support the investigating team by responding promptly to inquiries made by the Compliance Officer and to provide access to relevant records.

b. *Risk Assessment*

The Compliance Officer will develop a risk assessment giving due consideration to the extent of possible financial consequences, any regulatory compliance issues compromised, and any external reporting obligations (*Public Service Commission, Office of the Auditor General, Office of the Public Protector, National Prosecuting Authority, South African Police Service and South African Receiver of Revenue*) that may be necessary. Based on the risk assessment, the Compliance Officer will provide interim reports to the Financial Misconduct Committee as the investigation gets underway.

c. *Coordination with other Directorates, State Departments and Regulatory Institutions*

The Compliance Officer's role is to focus the investigations on financial matters but will; when necessary, coordinate with the Internal Audit; Human Capital Management ;Office of State Attorney, National prosecuting Authority (NPA); Office of the Auditor General; South African Police Service; and or any other appropriate external authorities.

8.4. Reporting Investigation Results

The requirements in terms of section 85(1) (a) and (e) of the PFMA, when an act of financial misconduct has been established are:-

a. The Accounting Officer of a department must, once disciplinary proceedings are completed, report to the Executive Authority, the Department of Public Service and Administration and the Public Service Commission, the outcome, including:-
   i. the name and rank of the official against whom proceedings have been instituted;
   ii. the charges, indicating the financial misconduct the official is alleged to have committed;
   iii. the findings
   iv. any sanctions imposed on the official; and
   v. any further action to be taken against the official, including criminal charges or civil proceedings.

The reporting on financial misconduct, once the Financial Misconduct Committee has been established will be performed by this Committee and will follow the same procedures as outlined above; and the format will be as follows:-

- The Compliance Officer will prepare a report at the conclusion of the investigation that will summarize issues investigated, procedures followed; conclusions reached and recommended actions to be taken.

- The report will be provided to the Financial Misconduct Committee.

- The report will provide a plan of corrective action to safeguard against recurring losses.

- The conduct and outcome of all investigations that result in the finding of financial misconduct will be reported to the Public Service Commission, Office of the Auditor General, Provincial Treasury and any appropriate external authorities.

8.5. Disciplinary Action Procedure

The Accounting Officer of the Department is empowered in terms of the Public Finance Management Act to effect disciplinary actions against any individual within the department who is found to have committed acts of financial misconduct that could result in the financial loss or damage to the department and the provisions of the Act are quoted verbatim below as follows:-

The Accounting officer must take effective and appropriate disciplinary steps against any official in the service of the department, who:

a) Contravenes or fails to comply with a provision of the Public Finance Management Act, Act 1 of 1999 as amended.
b) Commits an Act which undermines the financial management and internal control systems of the department.
c) Makes or permits an unauthorized expenditure, irregular expenditure or fruitless and wasteful expenditure.
d) Collect all revenue which has accrued to the Department.

When disciplinary action has been decided upon , the matter must be referred to the Directorate Human Capital Management (Human Resources – Labour Relations) for further handling .

Should an official act in any way that infringes the terms of this policy, he/she may face disciplinary action.

Failure to take disciplinary action where required under this policy shall itself be a breach of financial discipline under this policy.

8.6. Criminal Proceedings

a. DR&PW has vested the responsibility to interact or communicate with any external legal counsel, whether retained by the Department or representing another client, on the Department's Legal Services Directorate. Only the Department's Legal Service Directorate is authorized to respond to any litigation requests as well as to subpoenas and other notices from state prosecution authorities.

b. Section 86 of the PFMA, states; "the Accounting Officer must advise the Executive Authority, relevant Treasury and the Auditor General of any criminal charges laid against any person in terms of that section".

c. Section 86 further states that; the relevant Treasury may direct an institution to lay criminal charges against any person should an Accounting Officer fail to take appropriate action.

8.7. Offences and Penalties

a. Section 86, stipulates that an Accounting Officer is guilty of an offence and liable on conviction to a fine, or imprisonment for a period not exceeding five (5) years if that Accounting Officer willfully or negligently failed to comply with the provisions of section 38, 39, or 40.

8.8. Grievance Procedure

If an employee considers that this policy has not been applied fairly or correctly, he/she may utilise the applicable grievance procedures.

9. ROLES AND RESPONSIBILITIES

9.1. The Executive Authority / Member of the Executive Council (MEC)

9.1.1. The Executive Authority must investigate allegations of financial misconduct against the Accounting Officer and if necessary institute disciplinary proceedings.

9.2. The Accounting Officer / Head of Department

9.2.1. In terms of section 38(1)(c)(iii) of the PFMA; The accounting officer for a department, trading entity or constitutional institution must take effective and appropriate steps to prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct.

9.2.2. The Accounting Officer must investigate allegations of financial misconduct and if necessary institute disciplinary proceedings.

9.2.3. Sections 81 - 86 of the PFMA also make provisions for sanctions against non-compliance. Persons who are found responsible for non-compliance are liable to a charge of financial misconduct which may lead to a dismissal or suspension.

9.3. The Human Capital Management

9.3.1. The Human Resource section must consult with the Head of the Unit / Directorate when internal discipline involves suspension or termination of employee's service.

9.3.2. Assist in ensuring that any action conforms to collective bargaining agreements and departmental policies, as well as informed on employee rights including those related to compensation and benefits.

9.4. The Financial Misconduct Committee

The purpose of the Financial Misconduct Committee (FMC) is to help the Executive Committee fulfill its responsibilities effectively and efficiently, although the FMC does not displace the oversight responsibilities of the executive management as a whole:

9.4.1. Facilitate the development of the department's procedures on handling cases of possible financial misconduct/ losses or damages as a result of negligence.

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

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

9.4.4. Make recommendations to the HOD on appropriate control processes to be implemented to avoid future recurrence.

9.4.5. Make recommendations to the HOD on appropriate disciplinary action against an official/s who had committed financial misconduct, is responsible for a loss to the Department or has caused damage to the Department's property/ asset.

9.4.6. Establish whether appropriate processes were followed to determine liability on the part of the official.

9.4.7. Make recommendations to the HOD on the writing off of losses.

9.5. Employees of the Department

9.5.1. All employees of the department are expected to adhere to the requirements of the Public Service Code of Conduct.

9.5.2. Officials should be vigilant to the possibility of corruption and fraud as defined in the Prevention and Combating of Corrupt Activities Act andd at all times be aware of their responsibility in assisting in the prevention and detection of fraud.

9.5.3. Officials are encouraged to report any suspected acts of fraudulent activities immediately.

9.5.4. All officials are encouraged to co-operate fully with the investigators during the course of the investigation and to treat all matters relating to the investigation confidentially.

9.5.5. No official should issue public statements unless sanctioned by the Head of Department.

10. RESOURCE IMPLICATIONS

10.1. An Enabling Environment

- Protection of whistle-blowers through the establishment of a whistle blowing policy in line with the Protected Disclosure Act, Act 6 of 2000.
- Political will in fighting corruptions.
- Strengthening public / private discourse.
- Talking freely about issues relating to fraud, corruption and related activities
- Consider the establishment of a well-publicized means; (i.e. fraud hotlines, government meet the people programmes) to receive and process information from the public on perceived irregularities.

10.2. Human Capital Requirements

- Recruitment of suitably qualified financial misconduct investigators or re-training of inspectorate officials to deal with cases of financial misconduct.
- Training of all departmental employees on issues relating to unauthorized, irregular and fruitless and wasteful expenditure, through the attendance workshops and seminars.
- Induction of the Financial Misconduct Committee members.

10.3. Financial Resources

The Chief Financial Officer shall ensure that the Financial Misconduct Committee is adequately funded, with a dedicated budget to ensure the sustainability of the programme.

11. MONITORING AND EVALUATION

The effectiveness of the program will be monitored closely by the Financial Misconduct Committee in conjunction with the departmental units such as Labour Relations, Legal Services, Finance, Strategic Planning and Inspectorate.

All reports that relates to the issues concerning financial misconduct will be dealt with confidentially by all relevant parties.

12. POLICY REVIEW

This policy will become effective and applicable after the approval by the Head of Department and is subject to review and amendment every five (5) years. In the event that the policy is amended, the amended policy or provisions thereof will supersede the previous one.

13. APPROVAL

Approved/ Not Approved

Comments:

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HEAD OF DEPARTMENT

5.3.19

DATE