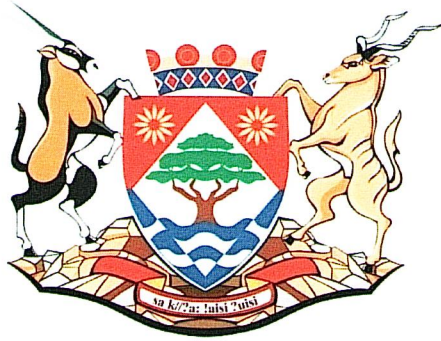




the dr&pw

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

**DEPARTMENTAL POLICY
ON THE REPORTING AND INVESTIGATION
OF POTENTIAL FINANCIAL MISCONDUCT

AND

TERMS OF REFERENCE &
CODE OF CONDUCT OF THE
FINANCIAL MISCONDUCT COMMITTEE
(FMC)**

Version 4
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1. DEFINITIONS AND ACRONYMS

“AG”	Means Auditor General. The Office of the Auditor General is an institution of state, established by Chapter 9 of the Constitution of the Republic of South Africa, 1996. The AG also functions in terms of the Public Audit Act, 2004 (Act No. 25 of 2004) and as amended by the Public Audit Amendment Act, 2018 (Act No. 5 of 2018). As an oversight body responsible for overseeing the management of public finances on behalf of the parliament/provincial legislatures, the functions of the AG are to ascertain, investigate and audit all the accounts and financial statements of: a) all departments of the national, provincial and local spheres of the government; and b) any statutory body or any other institution which is financed wholly or partly by public funds, including public corporations, parastatals and other entities. Besides conducting performance audits, once public expenditure of departments have been audited, the AG prepares and publishes a report for that particular public institution. The report is then submitted to parliament/provincial legislature for discussion. The AG is basically the extension of the legislature's committees, including the Standing Committee on Public Accounts (SCOPA), in that they use the very report of the AG to summon whoever they wish to summon, particularly the Accounting Officers (AOs) and Political Heads (MECs) of departments. Accounting Officers refer to the highest ranking administrative officials who head a state department or municipality or any other public sector institution, inclusive of parastatals and public corporations. Accounting Officers are directly accountable to parliament or a relevant Provincial Legislature in respect of their performance, particularly financial matters. Parliament and every Provincial Legislature have a SCOPA, which summon Accounting Officers to give an account of financial transactions involving their specific institutions.
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“AO”	Means Accounting Officer, which refers to a person mentioned in section 36 of the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999), as amended. The AO is also the Head of Department (HOD).
“Asset”	Means a resource that is controlled by an institution (e.g. provincial department) as a result of past events and future economic benefits, or service potential, that is expected to flow to the said institution.
“CFO”	Means Chief Financial Officer, referring to the CFO of the DR&PW.
“Corruption”	Refers to the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.
“CPA”	Means Criminal Procedure Act, 1977 (Act No. 51 of 1977).
“DPSA”	Means the national Department of Public Service and Administration.
“Department/ DR&PW”	Means Department of Roads and Public Works, Province of the Northern Cape.
“Executive/Executing Authority (EA)”	The Executing/Executive Authority refers to the Member of the Executive Council (MEC) of the Province of the Northern Cape, who is responsible for a department, in this case the Department of Roads and Public Works (DR&PW), as defined in section 1(1) of the Public Service Act, 1994 (Act No. 103 of 1994), as amended, except with regard to the appointment and other career incidents of a Head of Department (HOD), in which case it means the Executing Authority as contemplated in section 3B of the abovementioned Act.
“FICA”	Means Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).
“Fiduciary Responsibility”	Refer to responsibilities/duties owed by a fiduciary to a beneficiary. Examples of fiduciary responsibilities include a duty of confidentiality, a

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	duty of no conflict, and a duty not to profit from his/her position. A fiduciary is a person who holds a position of trust or responsibility, including decision-making powers relating to the affairs of an organisation. Breach of fiduciary responsibility, which includes forms of financial misconduct, refers to the situation when employees in positions of trust act for their self interest rather than in the interest of the DR&PW. It also includes disclosing of confidential or proprietary information ("leaking" of information) to outside parties for financial or other advantage.
"Financial Misconduct"	Refers to any act that results in unauthorised expenditure, an irregular expenditure, fruitless and wasteful expenditure or any loss due to <u>negligent</u> conduct, that could have been avoided had <u>reasonable care</u> been exercised, as referred to in Chapter 1 of the PFMA, 1999, as amended, or in any other applicable law. <u>Gross financial misconduct</u> amounts to <u>fraud and/or corruption</u>, if it is found that a <u>wilful (intentional)</u> act was committed 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 DR&PW. This refers to any act that results in unauthorised expenditure, an irregular expenditure, fruitless and wasteful expenditure or any loss resulting from <u>criminal</u> conduct, as referred to in section 38(c)(ii) of the PFMA, 1999, as amended, or in any other applicable law.
"FMC"	Means Financial Misconduct Committee, which is an internal departmental committee of the DR&PW.
"FPERC"	Means Fraud Prevention, Ethics and Risk management Committee, a departmental sub-committee of the DR&PW, which replaces the previous Joint Risk Management Committee (JRMCM). The FPERC is a subcommittee of the DR&PW's Internal Audit Committee (IAC).
"Fraud"	Fraud refers to a deception that is intentional and caused by an employee/network of employees for personal gain. In other words, fraud is

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	a deceitful activity used to gain an advantage or generate an illegal profit.
<i>“Fruitless and Wasteful Expenditure”</i>	As defined in the PFMA, means expenditure that was made in vain and would have been avoided had reasonable care been exercised.
<i>“HOD”</i>	Refers to the Head of Department of the DR&PW, who is also the Accounting Officer (AO).
<i>“IAC”</i>	Means Internal Audit Committee. According to section 38(1)(a)(ii) of the PFMA, 1999, as amended, the accounting officer for a department, trading entity or constitutional institution must ensure that <u>“a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77”</u> is established and maintained.
<i>“Irregular Expenditure”</i>	Refers to expenditure other than unauthorized expenditure, incurred in contravention of, or that has not been incurred in accordance with a requirement of any applicable legislation; i.e. the PFMA, 1999, as amended; the STBA, 1968, as amended; and any provincial legislation providing for the procurement of goods and services in that province.
<i>“MEC”</i>	Means Member of the Executive Council (EXCO), referring to the Member of the Executive Council that is responsible for Roads and Public Works in the Province of the Northern Cape. The MEC is the Political Head of the DR&PW, (called the <i>“Executing Authority”</i>). The difference between the offices of the Executing Authority and that of the Accounting Officer (HOD) is that the MEC is responsible for policy choices and outcomes, while the HOD takes responsibility for implementing the policy and achieving the outcomes.
<i>“M&E”</i>	Means Monitoring and Evaluation.

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"MISS"	Refers to the Minimum Information Security Standards Policy of the South African Government, as approved by Cabinet.
"NCPT"	Means Northern Cape Provincial Treasury.
"NPA"	Means National Prosecuting Authority.
"NT"	Means National Treasury, which is a national government department established by section five (5) of the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999), as amended.
"PAJA"	Means Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) as amended.
"PAIA"	Means Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
"PAM"	Means Public Administration Management Act, 2014 (Act No. 11 of 2014).
"PDA"	Means Protected Disclosures Act, 2000 (Act No. 26 of 2000).
"PFMA"	Means Public Finance Management Act, 1999 (Act No. 1 of 1999), as amended.
"PIA"	Means Protection of Information Act, 1982 (Act No. 84 of 1982).
"POCA"	Means Prevention of Organized Crime Act, 1998 (Act No. 121 of 1998).
"POPIA"	Means Protection of Personal Information Act, 2013 (Act No. 4 of 2013).
"PP"	Means Public Protector. As an accountability mechanism, this institution of state has the power to investigate any conduct in state affairs, or in public administration in any sphere of government that is alleged or

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	suspected to be improper or to result in any impropriety or prejudice. Chapter 10 of the Constitution of the Republic of South Africa, 1996 states that the Public Protector shall, on her or his own initiative or on receipt of a complaint, investigate any alleged maladministration, abuse or unjustifiable exercise of power, improper or dishonest act, corruption, and unlawful enrichment. The Public Protector shall also investigate any receipt or any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration of public institutions, or omission by a person in the employ of any sphere of the government, or a person performing a public function, which results in unlawful or improper prejudice to any person. The legislative framework regulating the Office of the Public Protector in South Africa is the Public Protector Act, 1994 (Act No. 23 of 1994). The Office measures its effectiveness in respect of whether recommendations in a particular case are followed.
"PRECCA"	Means Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 2 of 2004).
"Provincial Treasury"	Means a treasury established in terms of section 17 of the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999), as amended.
"PSA"	Means Public Service Act, 1994 (Act No. 103 of 1994).
"PSC"	Means Public Service Commission, which is an institution of state, established by Chapter 10 of the Constitution of the Republic of South Africa, 1996. The main role of the PSC, as mandated by the Constitution, 1996, is that of playing an oversight and monitoring role of the entire public service. It is responsible for investigating, monitoring and evaluating the organization and practices of the South African public service. It derives its mandate from Sections 195 and 196 of the 1996 Constitution. Section 195 of the Constitution of the Republic of South Africa sets out the following values and principles of public administration that must be promoted by the PSC: a) promoting and maintaining a high standard of professional ethics;

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	b) providing services impartially, fairly, equitably and without bias; and c) ensuring accountability on the part of public administration.
“Regulation”	Means the Regulations published in terms of the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999), as amended, Gazette Number 25767, dated 05 December 2003.
“Risk Management”	Refers to an effective system for the identification, consideration and avoidance of potential risks in the financial management systems of the DR&PW.
“SAPS”	Means South African Police Service.
“SCM”	Means Supply Chain Management.
“SITA”	Means State Information Technology Agency.
“STBA”	Means State Tender Board Act, 1968 (Act No. 86 of 1968), as amended.
“ToR”	Means Terms of Reference. Terms of Reference refer to the instructions given to someone/group of persons when they are asked to consider or investigate a particular subject, telling them what they must deal with and what they must ignore.
“Unauthorised Expenditure”	Refers to the following types of 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 has not been incurred 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

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	in terms of the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999), as amended.
"Vendor"	A vendor is a party in the supply chain that makes goods and services available to a consumer, which in this case is the DR&PW. The term "vendor" is typically used to describe the entity that is paid for goods/services that are provided, including contractors and consultants.
"WPA"	Means Witness Protection Act, 1998 (Act No. 112 of 1998).

2. INTRODUCTION

- 2.1 Financial misconduct by officials of government is defined in terms of section 81(2) of the PFMA, 1999, as amended, which states as follows: "...an official of a 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 wilfully or negligently fails to exercise that power or perform that duty".
- 2.2 Financial misconduct therefore refers to any negligent **OR** intentional (wilful) act or omission, with the aim of acquiring financial gain for oneself or for those of relatives, friends, or associates from or through activities and transactions related to the business of the DR&PW.
- 2.3 It also refers to any intentional falsification of records, deliberate misrepresentation in financial reporting to the DR&PW's management or external bodies, any material losses through criminal conduct, as well as the negligent **OR** intentional (wilful) commitment of unauthorized, irregular, fruitless and wasteful expenditure. Here are some examples of financial misconduct:
- a) Financial mismanagement, e.g. failure to follow procurement procedures, either wilfully (intentionally) or due to negligence.
 - b) Wilful theft of DR&PW assets.
 - c) Misappropriation and abuse of the DR&PW's assets, either wilfully (intentionally) or due to negligence.
 - d) Gross negligence, e.g. the unintentional loss of state property.
 - e) Unauthorized expenditure, either intentionally or negligently.

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- f) The intentional alteration of records, including financial reports, attendance and timekeeping reports.
- g) Intentional submission of fraudulent business expenses for reimbursement.
- h) Bribery, which is a form of corruption (gross financial misconduct), by acceptance of “kickbacks” (acceptance of unlawful and undue gratuities/money or “gifts”) from vendors.
- i) Intentional overriding the DR&PW's internal controls, such as the established review and authorization processes for expenses.
- j) Intentional falsification or alteration of various records related to accounting and financial reporting.
- k) Intentional falsification or alteration of records related to employee tax reporting and employee benefit plans.
- l) Deliberate (intentional) misrepresentation in financial reporting to the DR&PW's leadership and other external recipients (e.g. the AG or SCOPA) of financial and/or performance (finance related) reports.

2.4 Financial misconduct, whether negligent or intentional, is a violation of the fiduciary and stewardship responsibilities that officials of the DR&PW are expected to exercise. All officials of the DR&PW have a responsibility to ensure that the funds of the DR&PW are used appropriately and to exercise due diligence when generating, reviewing, and approving transactions that commit the DR&PW to a financial obligation.

2.5 In order to guide and assist all officials of the DR&PW to understand and fulfil their fiduciary and stewardship responsibilities, policies and procedures on a variety of financial activities and transactions have been developed. All officials of the DR&PW are expected to know these policies and to follow established procedures, as well as seek guidance whenever appropriate from offices or individuals (champion units) responsible for specific policies and the implementation thereof.

3. POLICY STATEMENT

3.1 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.

3.2 All officials of the DR&PW have a responsibility to ensure that departmental funds and resources are used only in activities that support the missions of the DR&PW; to protect the DR&PW's funds and

resources from negligence, theft, misuse, misappropriation and other conduct that may be injurious to the financial welfare and reputation of the DR&PW; and, to ensure the integrity of the DR&PW's financial records through accurate reporting/financial accounting.

3.3 From the inference above, what constitute an act of misconduct should therefore follow its definition in the PFMA, 1999, as amended [Section 81(1) & (2)], which states as follows regarding an Accounting Officer (AO):

- 1) *for a department commits an act of financial misconduct if the AO 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.*

4. REGULATORY FRAMEWORK

- 4.1 The Constitution of the Republic of South Africa, 1996, specifically also sections 215 and 217.
- 4.2 The Public Finance Management Act (PFMA), 1999 (Act No.1 of 1999), as amended by PFMA Amendment Act, 1999 (Act No. 29 of 1999), specifically, but not limited to:
 - a) 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);
 - b) section 45 dealing with the responsibilities of other officials;
 - c) section 81 dealing with financial misconduct by officials in the department; and
 - d) chapter 10 of the PFMA, 1999, as amended.
- 4.3 The State Tender Board Act (STBA), 1968 (Act No. 86 of 1968), as amended.
- 4.4 The Public Service Act (PSA), 1994 (Act No. 103 of 1994).
- 4.5 The Prevention and Combating of Corrupt Activities (PRECCA) Act, 2004 (Act No. 2 of 2004), which aims to prevent and fight corruption in the Public Sector, Government in general, as well as in the Public Administration.

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4.6 Other applicable legislation this departmental policy is consistent with, are as follows:

- a) The Prevention of Organized Crime Act (POCA), 1998 (Act No. 121 of 1998).
- b) The Criminal Procedure Act (CPA), 1977 (Act No. 51 of 1977).
- c) The Competition Act, 1998, (Act No. 89 of 1998), as amended and Regulations.
- d) The Promotion of Administrative Justice Act (PAJA), 2000 (Act No. 3 of 2000) as amended.
- e) The Promotion of Access to Information Act (PAIA), 2000 (Act No. 2 of 2000) and the PAIA Manual.
- f) The Protection of Personal Information Act (POPIA), 2013 (Act No. 4 of 2013).
- g) The State Information Technology Agency (SITA) Act, 1998 (Act No. 88 of 1998), as amended and the SITA Procurement Policies and Procedures.
- h) The Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act No. 70 of 2002).
- i) The Protection of Information Act (PIA), 1982 (Act No. 84 of 1982).
- j) The Protected Disclosures Act (PDA), 2000 (Act No. 26 of 2000).
- k) The Public Administration Management Act (PAM), 2014 (Act No. 11 of 2014).
- l) The Witness Protection Act (WPA), 1998 (Act No. 112 of 1998).
- m) The Financial Intelligence Centre Act (FICA), 2001 (Act No. 38 of 2001).

4.7 National Treasury Regulations, 2001, Section 4.

4.8 National Treasury Regulations, 2005, Section 4.

4.9 The Public Service Regulations (PSR), 2001, as amended in 2002 and 2016.

4.10 The Disciplinary Code and Procedure for the Public Service (PSCBC Resolution 2 of 1999).

4.11 The Code of Conduct for the Public Service, as contained in the Public Service Regulations, 2016.

4.12 The Minimum Information Security Standards (MISS) policy as approved by Cabinet on 04 December 1996, as amended.

4.13 The Public Service Anti-Corruption Strategy, 2002.

4.14 The National Anti-Corruption Strategy, 2020-2030.

4.15 The Northern Cape Provincial Government Information Security Policy, as endorsed by the DR&PW.

4.16 The following associated departmental regulatory frameworks, amongst others, apply:

- a) The DR&PW Policy on Damages and Losses.
- b) The DR&PW Inventory Management Policy and Standard Operating Procedures (SOPs).
- c) The DR&PW Policy on the Management of Unauthorised Expenditure.
- d) The DR&PW Policy and Procedures on the Management of Irregular Expenditure.
- e) The DR&PW Policy and Procedures on the Management of Fruitless and Wasteful Expenditure.
- f) The Plan: DR&PW Compilation of Policies on Fraud, Corruption and Ethics Management, specifically the following:
 - (i) the DR&PW Anti-Fraud and Corruption Implementation Plan;
 - (ii) the DR&PW Anti-Fraud and Corruption Charter;
 - (iii) the DR&PW Code of Ethics and Conduct;
 - (iv) the DR&PW Anti-Fraud and Corruption Policy and Response Plan;
 - (v) the DR&PW Policy on Whistle Blowing / Protected Disclosures;
 - (vi) the DR&PW Whistle Blowing / Protected Disclosures Guidelines;
 - (vii) the DR&PW Anti-Fraud, Anti-Corruption and Ethics Strategy and
 - (viii) the DR&PW Terms of Reference of the departmental Fraud Prevention, Ethics and Risk management Committee (FPERC).
- g) The DR&PW Risk Management Policy.
- h) The DR&PW Risk Management Strategy.
- i) The DR&PW Supply Chain Management (SCM) Policy.
- j) The DR&PW Monitoring and Evaluation (M&E) Policy Framework.
- k) The Current DR&PW Internal Audit Plan.

5. POLICY OBJECTIVE

- 5.1 The DR&PW's funds and resources come from an annual budget, allocated for functions undertaken by those officials that carry fiduciary responsibilities and for those officials with stewardship responsibilities, whose primary task is to act as custodians of those departmental resources. These responsibilities require the officials of the DR&PW to use the allocated funds and resources only on expenses and activities that support the missions of the DR&PW, to maintain operations according to policies established by the departmental management, and to comply with all applicable legislation and regulations.
- 5.2 To ensure the financial integrity of the DR&PW, all departmental officials are required to exercise responsible stewardship. The PFMA, 1999, as amended, Treasury Regulations and the DR&PW's various financial and other applicable policies provide the guidelines that help foster stewardship and avoid situations that may lead to financial misconduct.
- 5.3 Wilful disregard or violation of the DR&PW's financial and other applicable policies for the purpose of personal gain or the gain of family, friends, or associates places the DR&PW at risk. Such situations must be reported and investigated according to the guidelines provided in this policy.
- 5.4 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 DR&PW'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 DR&PW espouses confidentiality and ethical conduct at all times.
- 5.5 The DR&PW instruments for the investigation of potential financial misconduct are the Financial Misconduct Committee (FMC) and the Fraud Prevention, Ethics and Risk management Committee (FPERC) respectively.
- 5.6 The objective of this policy is also to outline the processes and procedures regarding the establishment, powers and functions of the FMC.

6. PRINCIPLES, VALUES AND PHILOSOPHY

- 6.1 This policy is intended to reflect the DR&PW's commitment to the principles, goals and ideals described in the departmental vision and core values.
- 6.2 This policy shall apply to all employees of the Department of Roads and Public Works (DR&PW) of the Province of the Northern Cape.

7. FINANCIAL MISCONDUCT COMMITTEE (FMC)

- 7.1 The AO has the power to constitute the FMC and to dismiss members in the event of the FMC not performing satisfactorily as a result of the conduct of particular FMC members.
- 7.2 The FMC will be composed of members of an appropriate mix, representing the necessary skills to strategically guide the DR&PW in cases of financial misconduct.
- 7.3 The FMC shall have the necessary authority and be accountable for all cases that are brought before it and which are found to be within the ambit of its powers and functions.
- 7.4 The FMC will be responsible for investigating and resolving all reported complaints and allegations concerning financial misconduct which are found to be within its ambit of powers and functions.
- 7.5 Once it has been established that actual financial misconduct had taken place in terms of a particular case being investigated by the Financial Misconduct Committee (FMC), the first order of business of the FMC is to determine whether the said actual financial misconduct was as a result of negligence or had been committed intentionally (wilfully). Intentional financial misconduct means that gross financial misconduct, referring to any act that results in unauthorised expenditure, an irregular expenditure, fruitless and wasteful expenditure or any loss resulting from criminal conduct, as referred to in section 38 of the PFMA, 1999, as amended, was committed, which also amounts to fraud and/or corruption.
- 7.6 If it is found that an act/acts of gross financial misconduct as referred to in 7.5 above, was committed, the matter will be escalated to the DR&PW Fraud Prevention, Ethics and Risk management Committee (FPERC), which is a sub-committee of the Internal Audit Committee (IAC), for further investigation and action.

7.7 Compliance Officer: For purposes of the Financial Misconduct Committee (FMC), the HOD/AO hereby designates the appointed Chairperson of the FMC as the Compliance Officer.

8. PROCEDURES

Every official of the DR&PW has the responsibility to report to the HOD/AO, incidences of fraud/corruption or financial misconduct which, if not attended to, could lead to incidences of financial loss. The procedures for reporting potential financial misconduct as a result of expenditure and losses listed below are set out in the departmental policies and procedures for:

- a) Unauthorized expenditure;
- b) Irregular expenditure;
- c) Fruitless and Wasteful expenditure; and
- d) Damages and Losses.

8.1 Reporting Potential Financial Misconduct

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

8.1.1 Uncovering of Financial Misconduct

- a) All officials of the DR&PW are urged to report promptly and in a confidential manner to the Compliance Officer when acts of financial misconduct are suspected or uncovered.
- b) If the potential misconduct is that of the Compliance Officer (HOD Appointed Chairperson of the FMC), regarding investigations into a case/cases of potential financial misconduct in the Department, initial contact should be with the HOD/AO and not the Compliance Officer.

8.1.2 Responsibilities of Those Who Receive Reports of Potential Misconduct

- a) The Executing Authority (MEC), Accounting Officer (HOD) or Heads of Directorates / who receive reports of potential financial misconduct are required to contact the Compliance Officer (HOD Appointed Chairperson of the FMC).
- b) All officials of the DR&PW are advised to refrain from conducting an investigation on their own, or from taking any action to resolve the financial irregularity/misconduct before contacting the Compliance Officer.

8.1.3 Confidentiality of Reporting Guaranteed

- a) All information regarding known or suspected financial misconduct is deemed privileged and confidential.
- b) To the extent possible, the DR&PW will protect the identity of both those who alert the DR&PW to any irregularity and those suspected of wrongdoing.

8.1.4 Investigating Potential Financial Misconduct

- a) The HOD, as AO, has the primary responsibility for the investigation of all suspected fraudulent acts as defined in this and other departmental policies.
- b) Investigation of alleged financial misconduct must be conducted in accordance with Treasury Regulation 33 and the disciplinary procedures of the Public Service and the DR&PW.
- c) In terms of section 85(1)(b); (c) and (d) of the PFMA, Act 1 of 1999, as amended, the procedure for investigating potential financial misconduct is outlined as follows:
 - i. the AO 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.
 - ii. the AO must ensure that an investigation is instituted within thirty (30) days from the date of discovery of the alleged financial misconduct.
- d) If the AO is alleged to have committed financial misconduct, the relevant Provincial Treasury, once aware of the alleged misconduct, must ensure that the relevant Executive Authority (MEC) initiates an investigation, and once confirmed, hold a disciplinary hearing in accordance with the relevant prescripts and agreements applicable in the public service.
- e) 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.

8.1.5 Financial Misconduct Records

- a) 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.

- b) 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.

8.1.6 Risk Assessment

- a) 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 (PSC), Office of the Auditor General (AG), Office of the Public Protector (PP), National Prosecuting Authority (NPA), South African Police Service (SAPS), South African Revenue Service (SARS)*] that may be necessary.
- b) Based on the risk assessment, the Compliance Officer will provide interim reports to the FMC, as the investigation gets underway.

8.1.7 Coordination with other Directorates, Committees, State Departments and Regulatory Institutions

- a) The Compliance Officer's role is to focus investigations on matters of financial misconduct. However, in cases where investigations uncover evidence of gross financial misconduct, the FMC will coordinate with DR&PW Human Resource Management (HRM) and Labour Relations and refer the matter to the Internal Audit Committee (IAC), specifically the Fraud Prevention, Ethics and Risk Management Committee (FPERC), which is a sub-committee of the IAC; in which case the matter will also be referred to the Office of the State Attorney, the NPA; the Office of the AG; the SAPS; and/or any other appropriate or relevant external authorities.

8.2 Reporting Investigation Results

The requirements in terms of section 85(1) (a) and (e) of the PFMA, 1999, as amended, when an act of financial misconduct has been established are:

- a) The AO of a department must, once disciplinary proceedings are completed, report to the Executive Authority (MEC), the DPSA and the PSC, the outcome, including:
 - i. the name and rank of the official(s) against whom proceedings have been instituted;
 - ii. the charges, indicating the financial misconduct the official(s) is alleged to have committed;
 - iii. the findings;
 - iv. any sanctions imposed on the official(s); and

- v. any further action to be taken against the official(s), including criminal charges or civil proceedings.
- b) Once the FMC has been established, reporting on financial misconduct will be performed by the FMC and it will follow the same procedures as outlined above; and the format will be as follows:
 - i. 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.
 - ii. The report will be provided to the FMC.
 - iii. The report will provide a plan of corrective action to safeguard against recurring losses.
 - iv. The conduct and outcome of all investigations that result in the finding of financial misconduct will be reported to the PSC, the Office of the AG, the NCPT and any appropriate external authorities.

8.3 Disciplinary Action Procedure

The AO of the DR&PW is empowered in terms of the PFMA, 1999, as amended, to effect disciplinary actions against any individual within the DR&PW who is found to have committed acts of financial misconduct that could result in financial loss or damage to the DR&PW and the provisions of the PFMA are quoted below as follows:

- a) The AO must take effective and appropriate disciplinary steps against any official in the service of the DR&PW, who:
 - i. Contravenes or fails to comply with a provision of the PFMA, 1999, (Act 1 of 1999) as amended.
 - ii. Commits an act which undermines the financial management and internal control systems of the DR&PW.
 - iii. Makes or permits an unauthorized expenditure, irregular expenditure or fruitless and wasteful expenditure.
 - iv. Collect all revenue which has accrued to the DR&PW.
- b) When disciplinary action has been decided upon, the matter must be referred to the Directorate Human Resource Management and the Directorate Labour Relations for further handling.
- c) Should an official act in any way that infringes the terms of this policy, she/he may face disciplinary action.
- c) Failure to take disciplinary action where required, in line with the provisions of this policy, shall

itself be a breach of financial discipline in terms of this policy.

8.4 Criminal Proceedings

- a) The DR&PW has vested the responsibility to interact or communicate with any external legal counsel, whether retained by the DR&PW or representing another client, in the DR&PW's Directorate Legal Services. Only the DR&PW's Directorate Legal Services is authorized to respond to any litigation requests as well as to subpoenas and other notices from state prosecution authorities.
- b) Section 85 of the PFMA, 1999, as amended, outlines the regulations on financial misconduct procedures and section 86 of the PFMA deals with offenses and penalties regarding criminal proceedings in terms of the said Act.

8.5 Offences and Penalties

Section 86 of the PFMA, 1999, as amended, stipulates that an AO is guilty of an offence and liable on conviction to a fine, or imprisonment for a period not exceeding five (5) years, if that AO wilfully or negligently failed to comply with the provisions of PFMA sections 38, 39, or 40.

8.6 Grievance Procedure

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

9. ROLES AND RESPONSIBILITIES

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

The MEC must investigate allegations of financial misconduct against the AO and, if necessary, institute disciplinary proceedings.

9.2 The Accounting Officer (AO) / Head of Department (HOD)

- a) In terms of section 38(1)(c)(iii) of the PFMA, the AO 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.

- b) The AO must investigate allegations of financial misconduct and if necessary institute disciplinary proceedings.
- c) Sections 81 to 86 of the PFMA, 1999, as amended, 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 Directorate Human Resource Management (HRM)

- a) The Human Resource section must consult with the Head of the Unit / Directorate when internal discipline involves suspension or termination of an employee's service.
- b) The Human Resource section must assist in ensuring that any action conforms to collective bargaining agreements and departmental policies, as well as being informed on employee rights including those related to compensation and benefits.

9.4 The Financial Misconduct Committee (FMC)

The purpose of the FMC is to assist the HOD as accounting officer and the EA (MEC) who exercises oversight, to fulfil their responsibilities effectively and efficiently, although the FMC does not displace the respective accounting and oversight responsibilities of the above mentioned as a whole, but to:

- a) facilitate the development of the DR&PW's processes and procedures on managing cases of possible financial misconduct/losses or damages as a result of negligence;
- b) establish criteria for the evaluation of possible financial misconduct, losses or damages;
- c) evaluate all cases of possible financial misconduct as defined in this policy and which may result in unauthorized, irregular, fruitless or wasteful expenditure;
- d) make recommendations to the HOD/AO on appropriate control processes to be implemented to avoid future recurrence of said cases of financial misconduct;
- e) make recommendations to the HOD/AO on appropriate disciplinary action against an official(s) who had committed financial misconduct, is responsible for a loss to the DR&PW or has caused damage to the DR&PW's property/asset(s);
- f) establish whether appropriate processes were followed to determine liability on the part of the relevant official(s); and
- g) make recommendations to the HOD/AO on the writing-off of losses.

9.5 Employees of the DR&PW

- a) All employees of the DR&PW are expected to adhere to the requirements of the Public Service Code of Conduct and the DR&PW Code of Ethics and Conduct.

- b) Officials must be vigilant to the possibility of fraud and corruption as defined in the Prevention and Combating of Corrupt Activities Act (PRECCA), 2004 (Act No. 2 of 2004) and at all times be aware of their responsibility in assisting in the prevention and detection of financial misconduct, fraud and corruption.
- c) Officials are encouraged to report any suspected acts of fraudulent/corrupt activities and financial maladministration immediately.
- d) 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.
- e) No official can issue public statements unless sanctioned by the HOD/AO.

10. RESOURCE IMPLICATIONS

10.1 An Enabling Environment

- a) Protection of whistle-blowers through the approved DR&PW Whistle Blowing Policy, and Whistle Blowing Guidelines, respectively, in line with the Protected Disclosures Act, 2000 (Act No. 6 of 2000).
- b) Political and Administrative will in the fight against financial misconduct, fraud and corruption.
- c) Strengthening public / private discourse on the prevention and management of financial misconduct, fraud and corruption.
- d) An organizational culture which allows for free discussions on issues relating to the prevention and management of financial misconduct, fraud, corruption and related activities, with due respect for confidentiality and privacy, as required by law.
- e) The establishment of a well-publicized means of prevention and management of financial misconduct, fraud and corruption (i.e. fraud hotlines, government meet the people programmes, etc.) to receive and process information from the public and officials on perceived irregularities.

10.2 Human Resource Requirements

- a) Recruitment of suitably qualified financial misconduct investigators and regular re-training of inspectorate officials to deal with cases of financial misconduct.
- b) Training of all departmental employees on issues relating to unauthorized, irregular and fruitless and wasteful expenditure, as well as fraud and corruption prevention and management, through the attendance workshops, seminars and other related training.

- c) Induction and orientation of Financial Misconduct Committee (FMC) members.

10.3 Financial Resource Requirements

The CFO shall ensure that the FMC is adequately funded, with a dedicated budget, to ensure the sustainability of the FMC.

11. MONITORING AND EVALUATION (M&E)

- 11.1 The Directorates Financial Management and Accounting and Supply Chain Management (SCM) respectively, supported by the departmental Monitoring and Evaluation (M&E) Unit shall, on behalf of the HOD/AO, ensure amongst others, the following:
- a) Efficient and effective implementation of this policy.
 - b) The accessibility of this policy to the intended stakeholders.
 - c) The implementation of measures to limit the possible abuse of this policy.
 - d) Submission of the required monitoring and evaluation reports related to the implementation of this policy.
 - e) Development of necessary tools and processes to assess the outcome of the policy implications by all the stakeholders.
- 11.2 Any failure to comply with this policy will be viewed as a serious disciplinary transgression and could lead to disciplinary action taken against the offending employee(s) in terms of the Public Service Regulations and Code of Conduct, as well as the DR&PW Compilation of Policies on Fraud, Corruption and Ethics Management, called *The Plan*.
- 11.3 Any employee that contravenes the provisions of this policy shall be charged with misconduct and/or fraud and corruption and will be held liable for any damages suffered by the state as a result of non-compliance.
- 11.4 Furthermore, those employees found to have connived or committed irregularities, including fraud and/or corruption and related matters, may be summarily dismissed from the public service.
- 11.5 Individuals who have been found guilty of violating this policy shall be prohibited from conducting any future business with the state; and, depending on the severity of the offence, legal action may

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**DEPARTMENTAL POLICY ON THE REPORTING AND
INVESTIGATION OF POTENTIAL FINANCIAL MISCONDUCT AND
ToR & CODE OF CONDUCT OF THE FMC**

be taken against the perpetrator(s); and if it is discovered that fraud and/or corruption was committed, the case will be reported to the SAPS for investigation and prosecution.

12. POLICY REVIEW AND AMENDMENT

- a) This policy is effective from date of signature.
- b) The assessment to determine the effectiveness and appropriateness of this policy will be done five (5) years after its effective date. The assessment could be performed earlier than five (5) years to accommodate any substantial structural or other organizational changes at the DR&PW or any change required by law.
- c) If and when any provision of this policy is amended, the amended provision will supersede the previous one.
- d) Deviations from this policy must be approved by the Accounting Officer (AO) of the DR&PW.

13. APPROVAL OF THE POLICY AND DATE OF EFFECT

This policy is Approved / ~~Not Approved~~

Comments:

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DR. J. MAC KAY
ACCOUNTING OFFICER

27/03/2023
DATE



the dr&pw

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

INTERNAL MEMO

DATE:	23 FEBRUARY 2023	REF. NO.	
TO:	THE DIRECTOR: STRATEGIC PLANNING MANAGEMENT		
FROM:	THE DEPUTY DIRECTOR: POLICY AND RESEARCH MANAGEMENT SERVICES		
SUBJECT:	SUBMISSION FOR APPROVAL OF THE REVIEWED DEPARTMENTAL POLICY ON THE REPORTING AND INVESTIGATION OF POTENTIAL FINANCIAL MISCONDUCT (VERSION 4) AND TERMS OF REFERENCE (VERSION 2) AND CODE OF CONDUCT (VERSION 2) OF THE DEPARTMENTAL FINANCIAL MISCONDUCT COMMITTEE (FMC)		

Dear Ms. Bekebeke

Please find attached the final drafts of the departmental policy on the Reporting and Investigation of Potential Financial Misconduct (version 4) and Terms of Reference (version 2) and Code of Conduct (version 2) of the departmental Financial Misconduct Committee (FMC), which was again reviewed; for your perusal and consideration. These policy documents have again been circulated departmentally for consultation and inputs, and it is hereby submitted for approval by the Head of Department (HOD).

Regards,

Mr. T. Ferreira
Deputy Director: Policy and Research Management Services



the dr&pw

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

INTERNAL MEMO

DATE:	23 FEBRUARY 2023	REF. NO.	
TO:	THE HEAD OF DEPARTMENT (HOD)		
FROM:	THE DIRECTOR: STRATEGIC PLANNING MANAGEMENT		
COPY:	THE CHIEF DIRECTOR: CORPORATE AND MANAGEMENT SERVICES		
SUBJECT:	SUBMISSION FOR APPROVAL OF THE REVIEWED DEPARTMENTAL POLICY ON THE REPORTING AND INVESTIGATION OF POTENTIAL FINANCIAL MISCONDUCT (VERSION 4) AND TERMS OF REFERENCE (VERSION 2) AND CODE OF CONDUCT (VERSION 2) OF THE DEPARTMENTAL FINANCIAL MISCONDUCT COMMITTEE (FMC)		

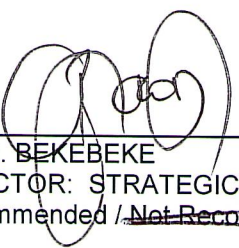
Purpose

1. The purpose of this submission is to obtain approval from the Head of Department (HOD) for the operationalization within the Department of the reviewed departmental policy on the Reporting and Investigation of Potential Financial Misconduct (version 4) and Terms of Reference (version 2) and Code of Conduct (version 2) of the departmental Financial Misconduct Committee (FMC).

Recommendations

1. The above mentioned policy documents have been circulated departmentally by the Communication and Marketing Unit to consult the staff members in order to provide an opportunity for inputs toward the development of the said policy documents.
2. It is therefore recommended that the HOD approve these policy documents as departmental policies.
3. Please see e-mail attached of the Evidence of Departmental Consultation.

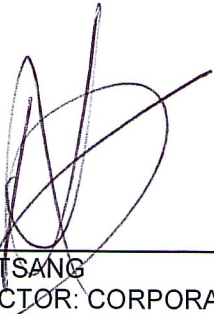
SUBMISSION FOR APPROVAL OF THE DEPARTMENTAL
POLICY ON THE REPORTING AND INVESTIGATION OF POTENTIAL FINANCIAL
MISCONDUCT (VERSION 4) AND TERMS OF REFERENCE (VERSION 2) AND CODE
OF CONDUCT (VERSION 2) OF THE DEPARTMENTAL FINANCIAL MISCONDUCT
COMMITTEE (FMC)



MS. B. BEKEBEKE
DIRECTOR: STRATEGIC PLANNING MANAGEMENT
Recommended / ~~Not Recommended~~

13/03/2023

DATE



MS. A. MPOTSANG
CHIEF DIRECTOR: CORPORATE AND MANAGEMENT SERVICES
Recommended / ~~Not Recommended~~

2023-03-22

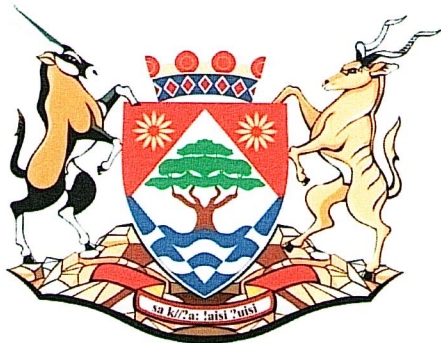
DATE



DR. J. MAC KAY
HEAD OF DEPARTMENT
Policies Approved / ~~Policies Not Approved~~

27/03/2023

DATE



the dr&pw

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

**EVIDENCE OF CONSULTATION WITH
DEPARTMENTAL STAKEHOLDERS**

**DEPARTMENTAL POLICY
ON THE REPORTING AND INVESTIGATION
OF POTENTIAL FINANCIAL MISCONDUCT**

AND

**TERMS OF REFERENCE &
CODE OF CONDUCT OF THE
FINANCIAL MISCONDUCT COMMITTEE
(FMC)**

**SUBMISSION FOR APPROVAL
23 FEBRUARY 2023**

TFerreira - DR&PW Policy REVIEW - Reporting & Invest - Fin Miscond AND ToR & Code of FMC - Ver 4 - 2023

From: DRPW-Info

To: A AMokwadi; A van Staden; ABrand; ACLouw; Adele Louw; AFembers; AKula; ALesotho; Ali Choma; ALSishi; AMasisi; AMegalanyane; AMiller; AMkhize; AMoeti; Amogelang Mokwadi; AMotlagodisa; AMPotsang; Andre Jooste; Ann Mpotsang; ARudman; ASwanepoel; B BDamon; BaatileItumeleng; Babalwa Bekebeke; BBobeje; BChotelo; BCloete; Betty Mabilo; BGAonakala; BGoba; BKapanda; BMaclean; BMazwi; BMeruti; BMontshiwa; Bobby Bobeje; BonoloMakoko; BosmanP; BPitso; Bradley Slingers; BSedisho; BSemau; BValentine; C CvanRooi; C Robertson; CAdams; CBailey; CChakela; CDenysschen; CFourie; ChanelFourie; ChantelleCloete; ChristinaF; CKakora; Clive Bailey; CMrwebi; CNdebele; CNotuku; Collin Nel; CRabaji; CRobertson; CValentine; D DMokoena; D DMwembo; Dan Tsoai; DBingwa; DBingwane; Denice Bingwane; DGaehete; DKowa; DMAqutyana; DMonyamane; DPhirisi; DRPW-Info; DSolo; DvdMerwe; EbenSwarthooi; EBeukes; EBlauw; EBreytenbach; Ed Simon; EduPlessis; Edward Simon; EJobe; EJonkers; EKhatwane; ELecwedi; Ella Modise; Elsie du Plessis; EMichaels; ENodoba; EPino; EricksenA; ESimon; Eurica Nodoba; Faith Petoro; FdeBruin; FDooling; Felicia de Bruin; FMogoje; FPetoro; FvanVuuren; Gaolatlhe Sefotlo; GAppels; Garnett Keyser; GCloete; GJacobs; Gladwyn Stuurman; GMoabi; GMolale; Godfrey Moabi; GPIetersen; Gregory; GRiet; GSalimana; GSefotlho; GSwanepoel; GThupe; GTopkin; Harold Roberts; Henry De Wee; Howard van Staden; HPuley; HvanderMerwe; I Bulane; I ICarolus; I ITIhopile; I MichaelsI; IFredericks; I Lottering; IMolore; Innocentia Rammutla; IOliphant; IRammutla; Isaac Prins; J Esterhuyse; J JHanekom; J Mac Kay; Jillian Williams; JillianWilliams; JLeeuw; JMarx; JMolale; JMoncho; JSehume; JSibiya; JSitler; JSpetember; JTawine; June Erasmus; June Grey; K KMaarman; K KMatonkonyane; K Malgask; KAaron; KagishoModise; Kathlego Rifles; KatzS; KBeuzana; KBopape; KChomi(...)

Date: 2/10/2023 8:23 AM

Subject: DR&PW Policy REVIEW - Reporting & Invest - Fin Miscond AND ToR & Code of FMC - Ver 4 - 2023

Attachments: DR&PW Policy REVIEW - Reporting & Invest - Fin Miscond AND ToR & Code of FMC - Ver 4 - 2023.docx

Dear Communication and Marketing Colleagues

Please find attached the Approved DR&PW Policy on the Reporting and Investigation of Potential Financial Misconduct, version 4 of 2023, which is again under review for inputs/comments/feedback.

Colleagues must please note that the proposed amendments are in RED, BOLD and UNDERLINED. The due date for inputs is Friday, 17 February 2023 and can be e-mailed to tferreira@ncpq.gov.za

Regards,

Tom Ferreira (M.Admin, PDIA)
Deputy Director: Policy and Research Management Services
DR&PW



DRPW-info@ncpg.gov.za
COMMUNICATION AND MARKETING SERVICES

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Trendsetters in infrastructure delivery to change the economic landscape of the province'