



LIMPOPO
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF
AGRICULTURE AND RURAL DEVELOPMENT

Loss Control Policy

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1. ACRONYMS AND ABBREVIATIONS

- **AR:** Accidental Report
- **CAS:** Crime Administration System
- **CFO:** Chief Financial Officer
- **Director:** Director
- **HOD:** Head of the Department
- **LCC:** Loss Control Committee
- **LDARD:** Limpopo Department of Agriculture and Rural Development
- **OB:** Occurrence Book
- **PFMA:** Public Finance Management Act
- **SAPS:** South African Police Service
- **SCM:** Supply Chain Management
- **SSA:** State Security Agency
- **FMB/C :** Financial Misconduct Board/Committee

2. EXECUTIVE SUMMARY

Treasury Regulations states that the Department must accept liability for any loss or damages suffered by another person, which arose from an act or omission of an official as a claim against the Department and does not recover compensation from an official, provided that the official has not forfeited cover. The purpose of the Loss Control Policy is to establish a policy and procedure pertaining to the management of losses. The policy is read in conjunction with other existing government regulations and policies.

The Loss Control Unit shall serve as the convener and the secretariat of the Loss Control Committee (LCC). The main purpose of the LCC is to make recommendations on all loss control cases which may include, claims against the State through acts or omissions, claims by the State, claims by officials against the State, losses and damages through criminal acts or omissions, losses and damages through vis major and other unavoidable causes. The appointment of seven LCC members shall lie with the HOD.

3. INTRODUCTION

According to paragraph 12.2 of the Treasury Regulations issued in terms of section 76 of (1) (h) of the Public Finance Management Act, Departments must accept liability for any loss or damage suffered by another person, which arose from act or omission of an official as a claim against the Department and does not recover compensation from an official, provided that the official has not forfeited cover.

In order for the Head of Department to implement the requirements of paragraph 12 of the said regulation, there are two issues that must be dealt with in order to arrive at a decision on whether to write off or to recover the money from the responsible official who is found to be liable in law. First is to determine whether the official was negligent. Secondly, whether he or she has lost cover in accordance with the law.

Furthermore the Accounting Officer may write off losses and damages that result from via major and other unavoidable causes. It is against this background that the LDARD has developed the Loss Control Policy to give effect to paragraph 12.2 of the Treasury Regulations and all other relevant government legislation.

4. PURPOSE AND OBJECTIVES OF THE POLICY

To establish a clearly defined policy and procedure pertaining to the management of losses in the Limpopo Department of Agriculture and Rural Development.

This policy is developed to support other existing policies designed to ensure that State resources are well managed and

The policy has been formulated so that all officials in the employ of the Department are aware of their responsibilities with regard to the loss of the state property. It also enables the Loss Control Unit and Legal division of the Department to determine whether or not an official has forfeited State cover thereby addressing the issue of recovery of the State loss in an appropriate manner and in accordance with the relevant legislation.

5. AUTHORITY OF THE POLICY

The Departmental Loss Control Policy is issued under the authority of Head of the Department as Accounting Officer and the Honorable MEC as Executive Authority.

6. LEGAL FRAMEWORK

The development and implementation of this policy gives due effect to other government existing policies and legislation, which include among others:

- a. Public Finance Management Act, Act 1 of 1999 (section 38(1); 76(1), (2) & 4, 80(1) & (2).
- b. Treasury Regulations, Chapters 9, 11 and 12.
- c. Public Service Code of Conduct.
- d. Directives as circulated by National Treasury.
- e. Limpopo Provincial Treasury Terms of Reference: Financial Misconduct Board.
- f. Prescription Act, 1969 (Act No. 68 of 1969).
- g. Promotion of Administrative Justice Act, Act 3 of 2000.

h. Specific Chapters and Sections applicable:

- i. Section 12 of the Treasury Regulations, published in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (“the PFMA”) as amended by the Public Finance Amendment Act, Act No. 29 of 1999 deals with the losses and claims.
- ii. The responsibility for the administration of claims by the State is assigned in terms of Treasury Regulation 12.3.
- iii. The responsibility for the administration of claims by officials against the State is assigned in terms of Treasury Regulation 12.4.
- iv. The responsibility for the administration of losses or damages through criminal acts or omissions is assigned in terms of Section 76 (1) (f) of the PFMA as well as Treasury Regulation 12.5.
- v. The responsibility for the administration of losses through vis major and other unavoidable causes is assigned in terms of Section 76 (1)(e) of the PFMA as well as Treasury Regulation 12.6.1.
- vi. The responsibility for the administration of the recovery of losses and damages is assigned in terms of Section 76 (1) (b) and 76 (4) (a) of the PFMA as well as the Treasury Regulation Chapter 12.7.
- vii. The responsibility for the administration of unauthorized, irregular, fruitless and wasteful expenditure is assigned in terms of Section 38 (1) (g) and 76 (2) (e) of the PFMA as well as Treasury Regulations Chapter 9.

7. SCOPE OF APPLICATION

The Departmental Loss Policy is applicable to all employees of the Department and private bodies/ persons who conduct business with the Department.

8. DEFINITIONS

Loss

In the context of this policy means expenditure incurred without the benefit to the department, whereby the LDARD suffers or suffered a loss or liability. This may happen as a result of physical loss or damage to the asset belonging to the department, or the liability arising from an act of the LDARD official causing the loss or damage to the third parties' asset or person.

This applies to instances where the Department incurred expenditure but no benefit was realised, which includes but is not limited to:

- i. Where an accommodation has been arranged and the official does not show-up or make use of that accommodation and does not cancel within the prescribed period;
- ii. Where the booking has been made of either a car, air ticket etc. and the official concerned does not make use such, and does not cancel within the prescribed period;
- iii. Where an official has arranged for training but fails to attend such training or cancel such training late, which results in cancellation fees charged against the LDARD;
- iv. Where goods have been ordered from the supplier and the delivered goods cannot be used due to poor quality, as a result of incorrect specifications given to the supplier by an official, e.g. newsletter, etc.

Loss Control Unit

The unit that administers the losses of the Department.

Accounting Officer
Head of Department

Employee

Any person, prospective or employed, by the Limpopo Department of Agriculture and Rural Development.

Employer

Limpopo Department of Agriculture and Rural Development (LDARD).

Claim

Includes a claim instituted by - (a) the Department against a private person or entity; (b) a private person or entity against the Department.

Ex-gratia payment

Payment made to an official as a gesture of goodwill by the Department or to compensate personal loss, of the official suffered during the course of official duty (this is not the legal definition).

Fruitless and Wasteful expenditure

Expenditure which was made in vain and would have been avoided had reasonable care been exercised.

The Head of the Loss Control Unit

Means Loss Control Deputy Director.

Asset

Any movable or immovable item, which has been acquired by the Department or to which the Department reserve legal right of ownership or exercises control in respect thereof, and property has similar meaning.

Chairperson

The chairperson refer to the chairperson of the Loss Control Committee.

Committee

Committee of inquiry appointed by the Accounting Officer.

Complainant

Any employee or other person, whether an employee of the Department or not who lodges a complaint pertaining to any loss, damage, abuse or any form of misuse whatsoever, of any asset.

Accident

The involvement of a Departmental vehicle in a collision with another vehicle or object on a public road or place, Departmental premise or private property which results in damage to the Departmental or other vehicles or property or injury or death to any person, and the incorrect or negligent use of any equipment, including any Departmental asset or any asset for which the Department is responsible.

Incident

Any act or omission, whether negligent or not, that may precipitate any damage or loss to the Department.

Incident Report

The report containing factual information, in respect of any incident, whether negligent or not, which indicates to the Department financial implications of any such incident and, which provides proposed remedial action(s).

Investigation

An investigation to systematically determine the cause and the magnitude of the reported incident (s) by means of the necessary and required measures and resources by any investigator so appointed by the relevant section or unit of the Department.

Investigator

An employee of the Department that is qualified and equipped to investigate any incident reported pertaining to Departmental asset(s) and /or any other person so appointed, designated or contracted to investigate any incident reported pertaining to the Departmental asset (s).

Member of the Loss Control Committee

Any designated employee of the Departmental appointed to serve on the Loss Control Committee.

Offence

Any act and/ or action that is in contravention of:

- Any act of South Africa
- Any approved Departmental policies and procedures and accordingly promulgated in the relevant gazette

and that is accordingly punishable.

Irregular Expenditure

Expenditure, other than unauthorized expenditure, incurred in contravention of or that is not in accordance with a requirement of PFMA.

Unauthorized Expenditure

- Overspending of a vote or main division within a vote;
- Expenditure not in accordance with the purpose of a vote, or in the case of a main division, not in accordance with the purpose of the main division.

Financial Misconduct

Defined in terms of Chapter 10 of the Public Finance Management Act, Act 1 of 1999 as amended, means: Theft or other misappropriation of assets, including assets of the department, suppliers or others with whom the department has business relationship.

9. POLICY PRONOUNCEMENTS

9.1 LOSS CONTROL UNIT

- i. The Loss Control Unit shall serve as the convener and the secretariat of the Loss Control Committee (LCC)
- ii. Loss Control Unit shall conduct investigations on all reported losses
- iii. Loss Control Unit shall present the investigation reports to the Loss Control Committee for Adjudication
- iv. The Loss Control Unit shall be responsible for presenting the evidence and has no voting powers, but shall serve as the advisor and the secretariat of the LCC.
- v. Loss Control Unit shall communicate the outcome of the cases with affected officials

9.2 LOSS CONTROL AND FINANCIAL MISCONDUCT COMMITTEE

- i. The Committee shall be established by the Head of Department to make recommendations on all loss cases which may include, claims against the State through Acts or omissions, claims by the State, claims by officials against the State, losses and damages through criminal acts or omissions, losses and damages through vis major and other unavoidable causes.
- ii. The Loss Control Committee shall also serve as the Financial Misconduct Board/Committee in terms of the terms Provincial Treasury's terms of reference (TOR) (see **Annexure B**)
- iii. The committee will adjudicate all cases of financial misconduct.
- iv. The Accounting Officer or any other delegated official shall approve the recommendations.

- v. The Head of Department shall appoint committee chairperson, together with another five members. The LCC members shall serve for a period of 36 months.
- vi. Committee must at least have members with knowledge in legal, internal audit, labour relations, asset management and government financial management.
- vii. The committee shall meet at a minimum twice per quarter and at a time as determined by the chairperson to consider any related matters.
- viii. The quorum for meetings is 50% plus one.
- ix. All appeals that may arise with respect to the outcome of the decisions made by the HOD must be directed to the HOD's office through the Loss Control Unit.
- x. The Loss Control Committee shall ensure compliance with PAJA.

9.3 APPEALS COMMITTEE

- i. The Head of Department shall appoint an appeal committee
- ii. The committee will adjudicate all appeals raised by the officials, private persons and or groups
- iii. The appeal committee shall provide an opportunity for the affected officials/private person to make a presentation on reasons for appeal
- iv. The appeal committee decisions shall be final, unless the case is referred to an outside body such as a court of law
- v. The committee shall be constituted by a minimum of five officials appointed by the Head of Department
- vi. The appeal committee shall serve for a period of 36 months
- vii. The Head of Department shall be the chairperson of the Committee
- viii. The Chief Financial Officer shall be the Deputy Chairperson of the Committee

9.4 MANAGEMENT OF COMMITTEE SITTINGS

- 9.4.1** The quorum for meetings for all committees shall be 50%+1
- 9.4.2** Members of committees shall submit written apologies two days prior to the sittings
- 9.4.3** Members are allowed to appoint a proxy to a maximum of two sittings per financial year.

- 9.4.4** The internal control directorate or a person appointed by the Head of Department shall provide secretariat services to the committees
- 9.4.5** Minutes of the meetings shall be provided to the members at least a week prior to the next sitting

9.5 MANAGEMENT OF LOSSES

- i. Section 12.1.1 of the Treasury Regulations states that “Subject to the provision of this regulation, or any other legislation or agreement, the state will bear its own damages and accident risks 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 an institution”.
- ii. Further section 12.1.2 states that “Notwithstanding paragraph 12.1.1 the Accounting Officer of an institution may (if deemed economical and based on a risk assessment) insure motor vehicles, including hired vehicles, or such other movable assets determined by the relevant treasury, but the insurance premium cost may not exceed R250 000.00 a year on that vote, unless otherwise approved by the relevant treasury”.

9.5.1 The following are various circumstances where loss can result to the Department:

9.5.1.1 Acts or omissions by employees

- (a) This means circumstances whereby the employee has committed an act or omitted an official act with the result that the Department ultimately incurs a loss or liability.
- (b) In such cases the Department shall, as advised in terms of the loss management procedure, determine liability of the employee or the third party, in case of the involvement of the third party, to such loss.

9.5.1.2 Claims against the state through criminal acts or omissions

(1) Responsibility for the administrator of claims against the State is assigned in terms of Section 76(1) (h) of the PFMA as well as Treasury Regulations section 12.5.

(2) Treasury Regulations 12.2.1 states as follows:

“An institution must accept liability for any loss or damage suffered by another person, which arose from an act or omission of an official as a claim against the State and does not recover compensation from the official, provided the official shall forfeit this cover if he or she, with regard to the act or omission is liable in law and –

(a) intentionally exceeded his or her powers;

(b) made use of alcohol or drugs

(c) did not act in the course and scope of his or her employment

(d) acted recklessly or intentionally

(e) without prior consultation with the Legal Services Directorate, made an admission that was detrimental to the State

(f) failed to comply with or ignored 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 damage arising from the use of the State vehicle

(g) in the case of a loss, damage or claim arising from the use of a State vehicle, the official –

(i) Used the vehicle without authorization

(ii) Did not possess a valid driver’s license or other appropriate license

(iii) Did not use the vehicle in the interest of the State

(iv) Allowed unauthorized persons to handle the vehicle

(v) Deviated materially from the official journey or route without prior authorization

- (3) All claims against the Department shall be administered by the Loss Control Unit.
- (4) In order to effectively administer all claims, the Loss Control Deputy Director, must ensure that all claims which are received are recorded in the relevant registers maintained. Furthermore, in respect of each claim, there must be a file in which all particulars of the claim are recorded.
- (5) Prior to the Department effecting the payment of a claim, the Loss Control Unit must ensure that it is in possession of the following forms:
 - (i) Affidavit setting out the reasons for the claim
 - (ii) In respect of a vehicle accident (with another vehicle), an official accident report form from SAPS, sketch plan of the scene of accident and any other relevant annexure where applicable
 - (iii) SAPS case or reference number, Crime Administration System (CAS)
 - (iv) Copy of the approved trip authority
 - (v) Copy of a driver's license
 - (vi) A submission or other correspondence clearly setting out the reasons for the payment of the claim
- (6) Prior to any claim against the State being finalized, the Loss Control Unit must submit the case via the Loss Control Committee to the Directorate: Legal Services for an opinion on whether or not payment can be effected. In those cases where there is doubt on questions of law the matter must be referred to the State Attorney for an opinion as to determine liability of the Department.
- (7) Interest payable on Claims against the State
 - (i) The Department will only pay interest on a claim against the State in the case where a court of law directs that the

Department is deemed liable for such interest. The rate of interest in such case will be determined in accordance with the court judgment.

- (ii) Any interest levied must be regarded as fruitless/wasteful expenditure and dealt with in terms of paragraph 9.6 of this policy.

9.5.1.3 Viz Major and other unavoidable causes:

These are losses or damages due to natural, unavoidable causes such as lightning, hail, wind, floods, fire, earthquakes, etc.

- (a) The responsibility for the administration of losses and damages through vis major and other unavoidable causes is assigned in terms of Section 76 (1)(e) of the PFMA as well as Treasury Regulation 12.6.1.
- (b) Treasury Regulation 12.6.1 reads as follows:
“The Accounting Officer may write-off losses and damages that result from vis major and other unavoidable causes.”
- (c) Examples of vis major and other unavoidable causes are as follows:
 - (i) Damages to the State property as a result of “acts of God” e.g. hail storms, lightning strikes, hurricanes, floods etc.
 - (ii) Fire as a result of an electrical short
 - (iii) Damage to electrical/audio visual equipment as a result of unexpected power surges
 - (iv) Damage to a building due to a burst water pipe which is not as a result of poor maintenance
- (d) All losses and damages through vis major and other unavoidable causes must be administered by the Loss Control Unit.
- (e) In order to effectively administer all cases, the Loss Control Deputy Director shall ensure that all losses and damages, which are reported are recorded and the relevant registers maintained. Furthermore, in respect of each case, there must be a file/register in which all particulars of the case are recorded.

- (f) To effectively administer the losses the Loss Control Unit must ensure that it is in possession of the following:
 - (i) A detailed submission or other correspondence (with necessary motivation) clearly setting out the circumstances that lead to the incident or event.
 - (ii) Incident Report Form/Loss Control form.

9.5.1.4 Losses or damages through criminal acts or omissions:

These are losses incurred through criminal or possible criminal acts (abuse of power or state assets, fraud, theft, arson, malicious damages, vandalism, etc.) and shall be subjected to a preliminary investigation and where necessary shall be referred to other competent organs of the State for assistance.

- (a) The responsibility for the administration of losses or damages through criminal acts or omissions is assigned in terms of Section 76(1) (f) of the PFMA as well as the Treasury Regulations Chapter 12.5.

- (b) Treasury Regulations 12.5.1 and 12.5.2 read as follows:

“When it appears that the State has suffered losses or damages through criminal acts or possible criminal acts, the matter must be reported, in writing, to the Accounting Officer and the South African Police Services. In the case of omissions, the matter must be reported to the Accounting Officer. Whether or not the person is still in the employ of the State, the Accounting Officer must recover the value of the loss or damage from the person responsible.

The Accounting Officer may write off losses or damages arising from criminal acts or omissions if, after a thorough investigation it is found that the loss or damage is irrecoverable.”

- (c) All losses/damages/thefts/accidents must be administered by the Loss Control Unit.
- (d) In order to effectively administer all cases, the Loss Control Deputy Director shall ensure that all

losses/damages/thefts/accidents which are received are recorded in the relevant registers maintained. Furthermore, in respect of each case, there must be a file in which all particulars of the case are recorded.

- (e) The Loss Control Unit must ensure that it is in possession of the following (losses or damages through criminal acts or omissions):
- i. In the case of an accident (with another vehicle) an accident form completed by the driver and counter signed by the relevant signatories.
 - ii. Statement from the responsible person (and where applicable a witness/es) setting out the reasons for the loss/damage/theft/accident.
 - iii. Copy of the approved trip and garaging authority where applicable.
 - iv. The South African Police Services case or reference number, including the prefix, e.g. Accident Report (AR), CAS, OB, etc.
 - v. In cases where a vehicle's windscreen/head light has been cracked due to a flying object, etc. it must be reported to the SAPS to obtain a OB number from them (this excludes rented vehicles).
 - vi. Similarly, in a case where a vehicle has sustained minor damages whilst parked, the incident must be reported to SAPS.
 - vii. All the above must also be reported to the Transport Officer and the Loss Control Unit by completing the Incident Report Form before any repairs are effected.
 - viii. For rented vehicles: in cases where a vehicle's windscreen/head light has been cracked due to a flying object etc. the incident must be reported to the SAPS.
 - ix. Similarly, in a case where a vehicle has sustained minor damages whilst parked, it is necessary to report the incident to the SAPS for record purposes, and a copy of the SAPS statement with the relevant case number must be forwarded to the Loss Control Unit and to the responsible Manager concerned, immediately after arrival.
 - x. Failure to comply with the above instruction, the official will be liable for all penalty payments that arise due to the incident.
 - xi. Copy of driver's license.

- xii. A detailed submission or other correspondence (with necessary motivation) clearly setting out the circumstances that lead to the incident or event.
- xiii. Costing documents, i.e. tax invoice or addendum or other documentation substantiating the loss to the Department.
- xiv. Proof of insurance claim by the official on his or her private insurance.

9.6 CLAIMS BY THE STATE

Where the state has suffered financial losses resulting from the actions of a private individual or a service provider or any other person who is not employed by the State and these losses were incurred from the party's actions or lack thereof.

Examples:

- i) The service provider's dereliction of duties in terms of the Service Level Agreement (SLA) led the state to suffer financial losses.
- ii) Damage to state vehicles arising from the third party's negligence.

9.6.1 Responsibility for the management of Claims by the State

- i. The responsibility for the administration of Claims by the State is assigned in terms of Treasury Regulation Chapter 12.3.
- ii. Treasury Regulations 12.3.1 states as follows:
"If the state suffers a loss or damage and the other person denies liability, the Accounting Officer must, if deemed economical, refer the matter to the State Attorney for legal action, including the recovery of the value of the loss or damage."
- iii. All claims by the Department must be administered by the Loss Control Unit.
- iv. In order to effectively administer all claims, the Loss Control Deputy Director must ensure that all claims which are instituted are recorded in the relevant registers and maintained up-to-date. Furthermore, in respect of each claim, there must be a file in which all particulars of the claim are recorded.
- v. Prior to the Department instituting a claim, the Loss Control Unit must ensure that it is in the possession of the following forms:

- (a) In respect of a vehicle accident an Official Accident Report and relevant annexure where applicable.
 - (b) Costing document, i.e. tax invoice/order or other documentation substantiating the loss to the Department.
 - (c) Other documentation clearly setting out the reasons for the claim, (e.g. a submission or memorandum setting out the need to institute a claim).
 - (d) Physical and postal addresses of all relevant parties.
 - (e) Contact telephone /fax number or other means of communication.
 - (f) South African Police Services case number, i.e. CAS, AR.
 - (g) In a vehicle related case, a copy of the approved trip authority.
 - (h) Copy of legible driver's license.
 - (i) Where an individual or company has breached a contract, a copy of the relevant contract document.
 - (j) Where erroneous payment or overpayment has been made to a creditor, institution or private body, a copy of the source documents pertaining to the erroneous payment/overpayment including a copy of the payment advice form proving such payment.
- vi. Prior to any claim by the State being instituted, the Head of the Loss Control Unit must submit the case via the Loss Control Committee to the Directorate: Legal Services to provide an opinion on whether or not it would be feasible to institute a claim. The matter will be referred to the State Attorney if it is economical to do so.

9.7 INTEREST PAYABLE ON CLAIMS BY THE STATE

- 9.7.1 The Department will levy interest on all claims instituted by the State unless the law dictates otherwise (e.g. no interest against the state official).
- 9.7.2 The rate of interest will be determined in accordance with a court judgment, where there is no court judgment, it shall not exceed the prevailing interest rates as determined by the National Minister of Finance, unless otherwise stipulated in a contractual agreement.

9.8 CLAIMS BY OFFICIALS AGAINST THE STATE (EX GRATIA PAYMENTS)

Examples

- 1) If an official is involved in an accident with his private vehicle whilst executing his official duties, and his/her car is not insured or the insurance company refuses to settle, as the official's vehicle is meant to be used for leisure activities and not meant for work as per his/her insurance contract.
- 2) An official is on official duty, utilizing a state issued vehicle, the car is broken into, hijacked or stolen as a result the official suffers financial losses, and his/her personal belongings are stolen or damaged during the incident.

9.8.1 The responsibility for the administration of claims by officials against the State is assigned in terms of Treasury Regulations Chapter 12.4.

9.8.2 Treasury Regulation 12.4.1 states as follows:

“If an official sustains a loss or damage in the execution of official duties and is not compensated, the Accounting Officer may make good the loss or damage provided that the official can prove such loss or damage.”

9.8.3 All ex-gratia claims must be administered by the Human Resource Directorate but reported through the Loss Control Unit.

9.8.4 In order to effectively administer all ex-gratia claims, the Loss Control Deputy Director must ensure that all claims which are received are recorded in the relevant registers. Furthermore, in respect of each claim, there must be a file in which all particulars of the claim are recorded.

9.8.5 Prior to the Department effecting the payment of a claim, the Loss Control Unit must ensure that it is in the possession of the following forms:

- a. Affidavit setting out the reasons for the claim
- b. Completed Incident Report Form for Losses (Annexure A)
- c. Where an official is already covered by a short term insurance policy and his/her insurance company has declined the claim, a confirmation letter to this effect from the insurance company setting out the reasons for declining the claim

- d. Where an official is not in possession of a short term insurance policy, a sworn affidavit to the effect, signed by a member of SAPS
 - e. Proof of purchase
 - f. South African Police Services case or reference number, including the prefix, e.g. AR, OR, CAS, OB. etc.
 - g. In respect of a vehicle related case a copy of the approved trip authority, copy of the driver's license
 - h. A motivated submission or other correspondence clearly setting out the reason for the payment of the claim
 - i. Financial documentation.
- 9.8.6 The Department will not reimburse officials for cash and or expensive decorative jewelry.
- 9.8.7 Where an official's short term insurance has declined to pay out for a particular loss suffered by an official whilst on duty, the Department will reserve the right to effect payment, e.g. if it was found that the official was negligent or did not act reasonable and such negligence or unreasonable actions led to the loss, then the ex-gratia claim will not be effected.
- 9.8.8 Prior to any ex-gratia claim being finalized the Head of the Loss Control Unit must submit the case to the Directorate: Legal Services for an opinion as to whether or not proof is sufficient to effect payment.
- 9.8.9 The Department will not make any payment based on the replacement value of an item/s. All payments will be effected in terms of clause 12.4.1 of the treasury regulations.
- 9.8.10 The Department may effect payment of any excess amount associated with an insurance policy in the event that an official has lodged a claim against their private insurance and the insurance company re-imburses the official minus an agreed excess amount.

9.9 RECOVERY OF LOSSES AND DAMAGES

- 9.9.1 The responsibility for the administration of the recovery of losses and damages is assigned in terms of Section 76(1) (b) and 76 (4) (a) of the PFMA as well as Treasury Regulation Chapter 12.7.
- 9.9.2 Treasury Regulations 12.7.1 to 12.7.4 states as follows:
“Losses or damages suffered by an institution because of an act committed or omitted by an official, must be recovered from such official if he or she is liable in law.”
- 9.9.3 The Loss Control Committee must determine the financial value of the loss or damage and, in writing request that the respective official pay the amount in accordance with the Departmental debt management policy, through the Finance division.
- 9.9.4 Clause 9.3 will be implemented upon the completion of all necessary steps of investigation and within the ambit of the law.
- 9.9.5 If the official fails to comply with the request, the necessary legal procedure shall be instituted against such an official.
- 9.9.6 Any appeals must be directed to the Loss Control Unit in writing which will in turn be forwarded to the HOD for consideration of writing off the expenditure incurred or uphold the recommendations of the Committee.
- 9.9.7 In order to effectively administer all cases, the Loss Control Deputy Director, must ensure that all recoveries which are dealt with are recorded in the relevant registers and maintained accordingly. Furthermore, in respect of each case, there must be a file in which all particulars of the case are recorded.
- 9.9.8 The Loss Control Unit must ensure that it is in possession of the following:
- (a) In case of an accident (with another vehicle) an accident form completed by the driver and counter signed by all relevant signatories (refer to Asset Management Policy)
 - (b) Statement from the responsible person (and where applicable a witness/es) setting out the reasons for the loss/damage/theft/accident
 - (c) Copy of the approved trip and garaging authority where applicable

- (d) In the case of criminal act or possible criminal acts, the SAPS case or reference number, including the prefix, e.g. AR, CAS, OB, etc.
- (e) Costing documents, i.e. tax invoice
- (f) A motivated submission or other correspondence clearly setting out the events

9.10 UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

9.10.1 The responsibility for the administration of unauthorized, irregular, fruitless and wasteful expenditure is assigned in terms of Section 38(1) (g) and 76(2)(e) of the PFMA as well as Treasury Regulations, Chapter 9.

9.10.2 Treasury Regulation 9.1.1 to 9.1.5 reads as follows:

“The Accounting Officer of a Department must exercise all reasonable care to prevent and detect unauthorized, irregular, fruitless and wasteful expenditure, and must for this purpose implement effective, efficient and transparent processes of financial risk management.

When an official of a Department discovers unauthorized, irregular, fruitless and wasteful expenditure, that official must immediately report such expenditure to the Accounting Officer. Such expenditure must also be reported in the monthly report, as required by Section 40(4) (b) of the Act. Where irregular expenditure occurred in contravention of tender procedures, the relevant tender board must also be notified.

When an Accounting Officer determines the appropriateness of disciplinary steps against an official in terms of Section 38(1) (g) of the Act, the Accounting Officer must take into account –

- (a) The circumstances of the transgression
- (b) The extent of the expenditure involved
- (c) The nature and seriousness of the transgression

The recovery of losses and damages resulting from unauthorized, irregular, fruitless and wasteful expenditure must be dealt with in accordance with Chapter 12 of the Treasury Regulations.

The amount of unauthorized, irregular, fruitless and wasteful expenditure must be disclosed as a note to the annual financial statements of the institution.

9.11 PRESCRIPTION ACT, 1969 (ACT NO. 68 OF 1969)

- 9.11.1 A loss prescribes when payment thereof has not been demanded within the periods of prescription as outlined in the Prescription Act, 1969 (Act No. 68 of 1969) and the Department cannot legally enforce payment of such loss. Similarly a private party cannot legally enforce payment once the loss has prescribed.
- 9.11.2 The period of the prescription is interrupted if:
- a. Payment to the debt is demanded by a registered letter of demand, for which proof of receipt has been obtained
 - b. Payment of the debt is determined by the issuance and service of summons;
 - c. The debtor acknowledges liability
 - d. The debtor commences payment
- 9.11.3 In terms of Section 11 of the Prescription Act, 1969 (Act No. 68 of 1969), the periods of prescription of cases is:
- a. **Fifteen years** in respect of any debt owed to the State and arising out of an advance or loan of money, or a sale or lease of land by the State to the debtor, unless a longer period applies in respect of the debt in question
 - b. **Six years** in respect of a debt arising from a bill of exchange or other negotiable instrument, or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph 5.1.1 above
 - c. **Three years** in respect of all other debts, save where an Act of Parliament provides otherwise

9.12 MISCELLANEOUS MATTERS

9.12.1 Forfeiture of rights and recovery of monies:

Should a loss case be referred to the Chief Directorate: Human Resource Management: Directorate: Labour Relations for disciplinary action the disciplinary aspect will be dealt with as a separate issue to that of the recovery of monies in terms of the Loss Control procedures.

9.12.2 Failure to submit Loss Control documentation

- (i) Should an official who is responsible for a loss/damage/theft/accident fail to submit the relevant documents to the Loss Control Unit within the time period stipulated in this policy or memorandum forwarded to them by the Loss Control Unit, then steps will be taken by the Loss Control Deputy Director to create a debt against such an official for the loss suffered by the Department.
- (ii) It will be accepted that a forfeiture of rights is evident because the official has failed to comply with or ignored a standing instruction of which he/she was aware of or could reasonably have been expected to be aware of.

9.12.3 Reporting of losses/damages/theft/accidents

All losses/damages/thefts/accidents must be reported to the relevant Loss Control Unit of the Department within 48-hours of the incident occurring. In the case of motor vehicles and where a driver is out of his office for more than 24-hours, the driver must ensure that the incident (where applicable) is reported to the SAPS within 24-hours of the incident as well as to the Loss Control Unit and his/her supervisor. All documentation pertaining to the incident must be forwarded to the Loss Control Unit within 48 hours.

9.12.4 Restitution Orders

When it is evident that the Department has suffered a loss due to for example, fraud, the official reporting the case to the South African Police Services must, where possible/feasible, take steps to apply for a Restitution Order in terms of Section 300 of the Criminal Procedure Act (Act 51 of 1977). The Loss Control Deputy Director must also ensure through the legal office that should the case proceed to trial, the Prosecutor administering the case is advised of the need to institute a Restitution Order.

9.12.5 Safe keeping of State-owned property:

- (i) In order to keep losses of State-owned property to a minimum, it is essential that items be safeguarded as far as possible.
- (ii) To ensure a rigid control over movable departmental assets, as well as other items of equipment which are issued to individuals, it is necessary that such person/s be called upon to sign for the item/s.
- (iii) Such person/s must also be informed, in writing, of the provisions of the Treasury Regulation relative to the safekeeping of State-owned property (Treasury Regulations 10 & 12) and, furthermore, that they may be called upon to contribute, fully or partially, towards the loss/damage of such equipment if it is found that the damage resulted from their negligence and/or a forfeiture of rights.
- (iv) Officers in charge of audio visual equipment, laptop computers, cameras, cellular telephones as well as other items of equipment, which are issued to individuals, or items of equipment which are under the care of such individuals (e.g. survey equipment), must ensure that these items are safeguarded against theft, irregular use or damage.
- (v) Under no circumstances may these items be left on the seats or floor of a vehicle, tables, offices that are not guarded or safely locked or left unguarded.
- (vi) If such items must, of necessity, be left in the vehicle/office, etc. they must be properly locked away e.g. in the boot, glove compartment, etc. In respect of laptop computers, cellular telephones, communicators and similar items, officials are directed to ensure that, such items are to be kept with them in person at all times.
- (vii) When, on account of their mass and/or size, it is impracticable to move such items to the boot of the vehicle, the driver or other responsible officer must take all possible and practical precautions for the safeguarding of such items before he/she necessarily absents himself/herself temporarily from the vehicle.

9.12.6 Accidents/claims: Defense of drivers/officials

- (i) In those cases where an official is summonsed in a “Civil” case (e.g. a motor vehicle accident) then the matter must be reported to the Legal Office
- (ii) In those cases where an official is summonsed in a “Criminal” case (e.g. a motor vehicle accident) then the matter must immediately be reported to the Legal Officer

9.13 WRITING OFF LOSSES/DAMAGES/THEFTS/ACCIDENTS

9.13.1 Legislation

In terms of section 12.5.2 of the Treasury Regulations (Section 76(1) (e) and 76(4) (a) of the PFMA, any loss written off by the Accounting Officer may:

- (a) only be written off after all reasonable steps have been taken to recover the loss (see above), and the Accounting Officer has convinced him/herself that:
 - (i) recovery of the loss would be uneconomical
 - (ii) recovery would cause undue hardship to the official or to his/her dependents
 - (iii) it would be to the advantage of the State to effect a settlement of the claim, or to waive the claim
- (b) Be disclosed in the annual financial statements, indicating the policy in terms of which the loss was written off

9.13.2 Conditions for write-off

In addition to the above-mentioned criteria, the Department will consider write-off of losses/damages/thefts/accidents in the following circumstances:

- (i) cases which have been prescribed above
- (ii) in cases where the responsible person cannot be traced
- (iii) losses/damages/thefts/accidents where no source documentation is available to substantiate the case, provided that the Accounting Officer

or his/her delegate has satisfied him/herself that all reasonable steps were taken to locate the source documents

- (iv) claims by the State where the responsible person has emigrated without fully liquidating the claim, leaving no assets available which could be used to offset the claim, and the person's whereabouts are unknown
- (v) amounts due by employees who have left the Department, and are now destitute, provided that the Accounting Officer or his/her delegate has satisfied himself/herself that the former employee is in fact destitute
- (vi) amounts owed by employees amounting to less than R5 000,00 where the former official is no longer employed by the State, provided that the provisions of this policy have been complied with
- (vii) amounts owed by persons or institutions, where the probability of recovery is remote, and it is not in the Department's interest to pursue such recovery

Unless affordable arrangements can be made with tracing agents, the costs associated with the tracing of the responsible person and subsequent legal costs occasioned thereby, could exceed the amount claimed. It would, therefore, not be in the Department's interest to attempt to recover the amount where the prospects of recovery are remote, and where the possibility exists that the costs associated with the recovery may exceed the loss.

9.14 MANAGEMENT REPORTING

A Management information on all claims for and against the State, ex-gratia payments and losses/thefts/damages/accidents of the Department shall be provided by the Loss Control Deputy Director to the Director: Asset Management, on a monthly basis. The report shall include the following minimum information:

- a. Amounts paid in respect of claims against the State
- b. Total amount of losses written off in terms of the Department's delegated authority
- c. Amounts paid in respect of ex-gratia payments
- d. Amounts recovered in respect of claims by the State

- e. Summary of cases which have prescribed and action being taken to finalize the case
- f. Details of unauthorized, irregular, fruitless and wasteful expenditure reported

And a summarized report shall be provided to the Accounting Officer on a quarterly basis.

9.15 IMPLEMENTATION OF CONTROL MEASURES

- 9.15.1 Officials shall always safeguard Departmental assets including their personal belongings (at all times).
- 9.15.2 All movable and portable equipment shall be locked in a secure and safe place when not in use. The keys to such place shall also be secured at all times.
- 9.15.3 Prior written permission/approval shall be obtained from the Responsibility Manager (or supervisor in case of responsibility manager) to remove the Departmental assets from the premises of the Department. Removal permit form (obtainable from Asset Management Unit) shall be completed as proof of authorization.
- 9.15.4 The offices shall always be locked (especially after office hours) and at all times whilst not being occupied or in use, as part of securing the assets.
- 9.15.5 Any losses defined in this policy pertaining to private property will be for the account of the owner thereof and the Department will not be liable to any loss as explained in terms of this policy.
- 9.15.6 Equipment shall be handled with care to prevent unnecessary damages and should it be established that an individual has acted negligently he/she will be held liable for the damages/losses incurred.
- 9.15.7 The Departmental assets/equipment allocated to officials for official purposes (e.g. digital cameras, computer equipment, etc.) shall not be left/ kept exposed or in a vulnerable position whether in a vehicle, office or elsewhere as this is an invitation for theft or vandalism and such cases will result in an employee/ official being held liable for the loss/damage suffered by the Department. Such act constitutes negligence.

- 9.15.8 The Departmental assets shall be accounted for or managed in accordance with the approved Asset Management Policy. Where assets have been procured for employees or re-distribution in a project, the relevant Responsibility Manager shall ensure that such assets are stored in a safe and secured environment such as lockable cabinets or drawers or store-room/safe and create a register for the administration of such assets to maintain records. The Asset Management and Security can be consulted to advice accordingly.
- 9.15.9 All laptops issued to employees must be safeguarded by attaching them with a lockable chain/cable to the desk to prevent theft of such assets during the working hours. It is the responsibility of the employee/user to ensure that they initiate the process of procurement of the above-mentioned chain/cable if it was not supplied with the laptop.
- 9.15.10 Any official who becomes aware of irregularities which may result in losses or damages caused to the Departmental assets or relating to the abuse of resources/assets, shall bring such to the attention of the HOD.
- 9.15.11 Losses identified shall be reported and recorded within 24 hours into the loss register which shall be up-dated continuously.
- 9.15.12 Losses shall be written-off in accordance with the requirements and guidelines of the amended Treasury Regulations as well as the approved financial delegations.
- 9.15.13 The Director: Asset Management shall be responsible (on behalf of the Accounting Officer) for managing losses including maintaining the loss control register.

10 DEFAULT

Non-compliance and deviations from the Loss Control Policy is not acceptable. Should it be necessary from this policy, the written permission and motivation by the HOD will be required.

11 INCEPTION DATE

The date of inception of this Loss Control Policy is the date of approval.

12 TERMINATION AND REVIEW

The Loss Control Policy will be reviewed 2 years after the date of inception or as and when the need arise.

13 ENQUIRIES

Enquiries regarding the Loss Control Policy can be directed towards:

The Director

Asset Management

Limpopo Department of Agriculture and Rural Development

Private Bag X9487

POLOKWANE

0700

Tel: 015 294 3000

Recommended by:

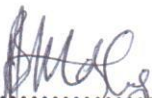


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Head of the Department
(Maisela, RJ)

2016-05-19

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Date

Approved by:



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Hon MEC for LDARD
(Matshoge, BAJ)

2016/05/19

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Date