



**arts, culture,  
sports & recreation**

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Arts, Culture, Sports and Recreation  
North West Provincial Government  
REPUBLIC OF SOUTH AFRICA

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**POLICY TITLE : LEGAL SERVICES POLICY AND PROCEDURE MANUAL**

**POLICY NUMBER: 2/2019 (5<sup>th</sup> VERSION)**

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## **1. PREAMBLE**

The Department of Arts, Culture, Sports and Recreation has a duty to maintain a comprehensive litigation management programme, the objective of which is to reduce litigation, litigation costs, negligence, acts and/ or omissions by staff employed by the Department and third parties. To draft and review contracts, provide legal opinions and deal with legal matters concerning the Department.

## **2. PURPOSE**

2.1 This policy seeks to:

- 2.1.1 Provide guidance on how to deal with legal matters, which includes legal opinions, contract drafting and vetting and dealing with litigious matters.
- 2.1.2 To develop guidelines and procedures to be followed by the Department to assist its Legal Service Directorate in the management of lawsuits and liaison between the Department and State Attorney including the Advocates appointed and the provision of all other legal matters.

## **3. SCOPE OF APPLICATION**

3.1 This policy applies to all employees within the North West Department of Arts, Culture, Sports and Recreation.

3.2 Legal Services Directorate shall provide but not limited to the following services:

- a) Litigation Management
- b) Legal Opinions
- c) Drafting and vetting of contracts

3.3 All instructions to the Legal Services Directorate should be in writing and only senior managers may write to legal services to request the above services.

## **4. LEGISLATIVE FRAMEWORK**

- 4.1 The Constitution of the Republic of South Africa, Act 1996;
- 4.2 Public Service Act, 1994 and related regulations;
- 4.3 Public Finance Management Act No. 1 of 1999 and related regulations;
- 4.4 State Liability Act, 20 of 1957;
- 4.5 Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002;
- 4.6 Prescription Act, 68 of 1969;

## **5. LITIGATION MANAGEMENT: CIVIL MATTERS**

5.1 Legal Services Directorate has a duty to manage the Litigation of the Department and liaise with the Office of the State Attorney regarding legal representation where necessary to avoid unnecessary delays and ensure a speedy resolution of disputes.

### **5.1.1 Letter of Demand**

5.1.1.1 Upon receipt of a Letter of Demand or Letter of Intent to Initiate Legal Proceedings, the relevant Directorate that has received it should immediately forward it to Legal Services Office (with a cover letter explaining when it was received and by who) for attention and further handling. The letter should clearly give the Legal Services Office the necessary instructions to handle same and to give advice to the relevant Directorate making the request.

5.1.1.2 Upon receipt of the Letter of Demand the Legal Services Office should do the following where applicable:

- a) Study the claim as set out in the Demand (Notice) and investigate the allegations contained in the Notice;
- b) The said investigations should be geared towards obtaining more information as well as documentation that would assist in dealing with the matter;
- c) The said information / documentation will assist the Directorate to draft a Legal Opinion addressed to the Head of Department advising the Department regarding the allegations contained in the Letter of Demand and the claim and when necessary instruct the State Attorney to handle the claim on behalf of the Department especially if the matter warrants a Legal Opinion either from the Office of the State Attorney or from Counsel or for them to represent the Department in negotiating a settlement;
- d) The State Attorney, in turn, will provide the Department (through the Directorate) with such a Legal Opinion or abreast of further developments on the matter if instructed to handle it;
- e) However, if the matter warrants to be settled, the Directorate will facilitate the process and see to it that a settlement has been reached between the parties without necessarily having to refer the matter to the State Attorney for assistance. The whole idea will be to avoid unnecessary litigation as this might have cost implications for the Department.

- f) The Directorate should submit a formal submission to the Head of Department requesting approval to have the matter settled out of Court which should include the estimated amount and reasons explaining why the matter should be settled out of court.
- g) The Directorate must keep a separate and accurate register for letters of demand and may close non-responsive claims within 90 days.

### **5.1.2 Summons or Applications**

- 5.1.2.1 Upon receipt of a Summons or Notice of Motion initiating Application Proceedings, the relevant Directorate that has received it should **immediately** forward it to Legal Services Office (with a cover letter explaining when it was received and by who) for attention and further handling. The letter should clearly give the Legal Services Office the necessary instructions to handle same and to give advice to the relevant Directorate making the request.
- 5.1.2.2 In the event the summons or Notice of Motion is served at the Office of the State Attorney in terms of the normal rules of Civil Procedure. After having been served with the Summons or Notice of Motion, the State Attorney shall refer same to the Department requesting the necessary instructions to deal with the matter.
- 5.1.2.3 Upon receipt of the Summons or Notice of Motion, the Legal Services Office shall respond as follows:
  - a) Study the claim as set out in the Summons or Notice of Motion and investigate the allegations contained therein;
  - b) The said investigations should be geared towards obtaining more information as well as documentation that would assist in dealing with the matter;
  - c) The said information / documentation will assist the Directorate to draft a Legal Opinion addressed to the Head of Department advising the Department regarding the allegations contained in the Summons or Notice of Motion and the claim and when necessary instruct the State Attorney to handle the claim on behalf of the Department either directly or through the use of briefed Counsel. The Opinion would either advise that the matter be defended or settled awaiting the Head of Department's approval;
  - d) During investigation the Legal Services Office would engage the relevant Directorate, which is directly involved or affected by the matter. The Directorate will compile the detailed information and/or documents that will the Legal Service Office to advise the Department and also to aid the case in the event it is being defended. In the case of a motor vehicle accident aid information should entail accident reports setting out the extent of the damages to the vehicle, a report on

how the accident happened, a copy of case docket (if any), sketch plan, trip authority and accident report;

- e) Legal Services Office may close file on advise from State Attorney for example, where the Applicant or Plaintiff has abandoned his/her claim, upon prescription, being informed that it would be uneconomic to pursue the matter where the Department initiated the Litigation proceedings.

### **5.1.3 Consultations**

5.1.3.1 All consultations with every official of the Department with respect to any claim, which is instituted, for and against the Department shall be arranged through the Directorate which shall, in turn, liaise with the Office of the State Attorney for that purpose. The following points should be noted:-

- a) It is the responsibility of the relevant Directorate which is directly involved in a claim of whatever nature to see to it that the officials concerned attend consultations on scheduled dates and times;
- b) The said consultations shall be held either at the Legal Services Directorate, the State Attorney's offices, the Advocates Chambers or any Expert's offices, with the exception of the MEC and the HOD who may elect to hold such consultations in their offices;
- c) Arrangements for such consultations shall be made timeously and it is expected that every official who is requested by the Office of the State Attorney or Advocate including the MEC, HOD, any Chief Director, District Director or Director of the Department to avail themselves and to attend such consultation.
- d) It is the responsibility of the relevant Directorate which is directly involved in a claim of whatever nature to see to it that officials who are to travel from the various regions to attend consultations as aforesaid are provided with adequate transport facilities to enable them to be in attendance;
- e) Should an Official be unavailable for such consultations, the relevant Directorate shall take responsibility for such non-attendance, as these might hamper progress regarding the preparations for the hearing of the matter;
- f) It should be noted that should the case be postponed with costs (against the Department) due to the unavailability of witnesses, the relevant Directorate will have to carry the responsibility regarding payment of legal costs.
- g) It is expected of every Official from the Department who has been called as a witness in a matter in which the Department has been sued or is suing a third party, to be in attendance in Court when the matter is to be heard;

- h) He / She is expected to co-operate with the Departmental Legal Team at all times when the matter is before Court until it has been finalized.

#### **5.1.4 Liability of Officials or Directorates**

- 5.1.4.1 The Directorate which is responsible for the event or occasion that led to the litigation shall bear the costs of such Litigation costs except legal costs which will be paid by the relevant Office.
- 5.1.4.2 If during the investigations, it is discovered that an Official of the Department through his or her negligent actions or omissions is the cause of such litigation, in the opinion to the Head of Department it shall be recommended that such an Official be referred to the Loss Control Committee for further investigation and where found to be liable, the official may be personally held accountable for such litigation costs or legal fees.

### **6. LITIGATION MANAGEMENT: CRIMINAL MATTERS**

- 6.1 The State bears the responsibility of reporting Employees who commit criminal offences whilst on State property or using State Resources. Such offences are reported to the relevant Stakeholder being the South African Police Services.
- 6.2 The officials who appear at Criminal Courts throughout the province and in other provinces for having committed certain criminal offences whilst negligently or maliciously acting within the course and scope of their employment or not cannot be represented by the Office of the State Attorney therefore will have to get their own legal representation at own cost to handle their matters.
- 6.3 It is further the responsibility of every official and or Directorate which becomes aware of such criminal behaviour to have it reported either to Legal Services Directorate or Risk and Ethics Directorate for further action to be taken against such conduct that is being reported.
- 6.4 There may be instances where an Official of the Department innocently performing the work of the Department is accused of criminal behaviour such as in Occupational Health and Safety Regulations for the State's failure to remedy any contraventions in terms of such Act or the Accounting Officer being reported to the South African Police Services for any Irregular Expenditure of the Department or other Financial matters as a result of how the Department handled the Public Finances, such matters will be referred to the Office of the State Attorney to be dealt with.
- 6.5 Upon receipt of such an instruction, the Legal Services Office shall:

- a) Shall furnish an opinion to the Department on how the matter should be handled including whether the matter should be referred to the Office of the State Attorney for representation or not;
- b) Should the incident in question result in damages being suffered by the third party and the latter institutes a civil action against the Department, Legal Services through the office of the HOD will instruct the State Attorney to defend the civil matter if the latter warrants to be defended alternatively initiate settlement negotiations with the third party;
- c) Should the Department become unsuccessful in that claim or the Department successfully negotiates a settlement, it will pay the amount claimed to the third party plus the legal costs and thereafter recover the loss from the State employee;
- d) Therefore, the normal steps as set out under Litigation Management and Consultations will be followed;
- e) The State Attorney shall keep Legal Services Office abreast of developments in the matter;
- f) In view of the fact that most criminal matters against State employees involve Collisions, the relevant information that are needed include the following: -
  - i. Statement of the driver and passengers;
  - ii. Sketch plan;
  - iii. Copy of case docket;
  - iv. Case Number;
  - v. Damages affidavit by panel beaters;
  - vi. A written request for legal representation by the office of the State Attorney;
  - vii. A duly completed accident report form;
  - viii. Full particulars of motor vehicles that are involved in an accident;
  - ix. The name of the Court where the matter will be heard;
  - x. Further or additional information to be furnished by the Directorate Motor Fleet;
  - xi. The name of the Investigating Officer
  - xii. Trip authority
  - xiii. Parking authority at home
  - xiv. Request to be assisted with a legal representation.

**NB:** Where the criminal matter will be heard outside Mafikeng, it will be the responsibility of the relevant Directorate to arrange transport for that official and witnesses to and from Court.

## **7. LITIGATION MANAGEMENT: LABOUR RELATED MATTERS**

7.1 Human Capital Management, Labour Relations Directorate to be specific is responsible to deal with all Labour related cases. However, there are instances where a Legal

Representative is required such as at Arbitration or Labour Court where the parties are allowed to use Legal Representation.

7.2 In such instances, the Legal Services Directorate with approval from the Head of Department will instruct the Office of the State Attorney to represent the Department alternatively to brief Counsel to represent the Department.

## **8. OPINIONS**

8.1 It is the function of the Legal Services Directorate to furnish the Department with written legal opinions as and when requested by or through Senior Managers in line with the Department's strategic objectives.

8.2 Therefore, it is incumbent upon all the Directorates within the Department to forward all requests for the drafting of legal opinions to the Legal Services Directorate for attention and further handling.

### **8.3 Instructions**

8.3.1 The request for legal opinion should be in writing and must include the following: -

- a) Background information, which must be clear and concise;
- b) Statement by the official from the relevant Directorate (if any);
- c) The record pertaining to the matter in question;
- d) The legal question to be looked into and the implications thereof;
- e) Whether the services of Counsel (an Advocate) should be engaged;
- f) Whether the services of an independent expert should be engaged;
- g) Clear and concise instructions to Legal Services Office;
- h) Personnel implications (if any);
- i) Any other information, which might be of assistance to the matter;
- j) Where Expert Legal opinion is necessary, the Directorate will draft a request to the Office of the Head of Department for a legal opinion to be requested from the Office of the State Attorney directly or from Counsel.
- k) The above-mentioned information will assist the Legal Services Directorate to open a file and to start dealing with the matter.

## **8.4 Consultations**

8.4.1 All consultations with every official of the Department with respect to any request shall be arranged as follows.

- a) All consultations must be arranged through the Legal Services Office Secretary;
- b) The purpose thereof would be to discuss the matter further and to clarify certain issues prior to the actual drafting of the opinion;
- c) If a consultation involves complex issues of a technical or legal nature, an expert opinion may be sought with the necessary approval of the HOD and the relevant Chief Directorate;
- d) If Legal Services Office requires additional information or documentation, the relevant Directorate should compile same soon as is reasonably possible;
- e) All consultations will have to be attended at the offices of the Legal Services, the Advocates Chambers, Office of State Attorney or an Expert's offices, with the exception of the MEC or HOD who can elect to hold a consultation in his / her office.

## **9. CONTRACTS**

9.1 The Legal Services Directorate is tasked with drafting and vetting the contracts of the Department. Under contracts there are Service Level Agreements, Memorandum of Agreements, Memorandum of Understandings, etc. Where such services are required, the relevant Directorate will write to the Legal Services Directorate and request such a service.

9.2 The request must be accompanied by source documents such as Tender Documents, Award letters, any submissions related to the contract, a detailed letter requesting assistance, etc. This shall apply both with drafting of the contract and with Vetting such a contract.

9.3 Only the Head of Department may terminate any contract that was entered into by the Department. Programmes wishing to terminate contracts should write to the Head of Department providing reasons they recommending that the contract be terminated having first sought legal opinion from the Legal Services.

9.4 Where a programme wishes to have the contract extended they must write to the Head of Department providing reasons to the request and this must be done before the contract expires because once it expires it cannot be extended.

9.5 Where consultations are necessary, the same provisions made above will be applicable.

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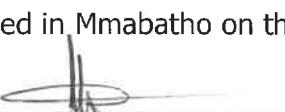
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## **10. POLICY REVIEW**

This policy shall be reviewed once a year or upon any developments that require policy shift, whichever comes first.

## **11. APPROVAL AND COMMENCEMENT**

Signed in Mmabatho on this 9 day of December 2025.

  
**MR. I. S. MOGOROSI**  
**HEAD OF DEPARTMENT**