



PROVINCE OF KWAZULU-NATAL
ISIFUNDAZWE SAKWAZULU-NATALI
PROVINSIE KWAZULU-NATAL

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Date: 10 September 2008
Usuku:
Datum

**TO: ALL SENIOR GENERAL MANAGERS
ALL GENERAL MANAGERS
ALL HEAD OFFICE MANAGERS AND STAFF
SERVICE CENTRE MANAGERS AND STAFF
DISTRICT MANAGERS AND STAFF
HEADS OF INSTITUTIONS**

FINANCE CIRCULAR NO. 3

POLICY AND PROCEDURE TO DEAL WITH CLAIMS AGAINST THE STATE THROUGH ACTS OR OMISSIONS AND RECOVERY OF MONIES DUE TO THE STATE

1. PURPOSE

The purpose of this circular is:

- (a) To make officials aware of the circumstances under which an official is liable for the loss by the department due to their acts or omissions;
- (b) To give examples that may give rise to claims against the state.
- (c) To inform employees on the process to be followed in recovering losses due to the state.

2. BACKGROUND

- 2.1 Section 12.2 of the Treasury Regulations deals with claims against the state through acts or omissions of officials as per the (Section 76(1)(h) of the PFMA.
- 2.2 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 an 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 and intentionally;
- e) without prior consultation with the State Attorney, made an admission that was detrimental to the state; or
- f) failed to comply 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 a state vehicle and
- g) in the case of a loss, damage or claim arising from the use of 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 or
 - v. deviated materially from the official journey or route without prior authorization.

2.3 Where an official has forfeited his or her cover in terms of paragraph 12.2.1, the amount paid by the institution for the loss, damage or claim arising from an act or omission must be recovered from the official concerned.

2.4 The accounting officer must determine the amount of the loss or damage and, in writing, request that official to pay the amount within 30 days or in reasonable installments.

2.5 If the official fails to comply with the request, the matter must be handed to the State Attorney for the recovery of the loss or damages.

3. EXAMPLES OF CLAIMS AGAINST THE DEPARTMENT THROUGH ACTS OR OMISSIONS

The following are examples of how claims against the department may arise, however, the list is not exhaustive.

3.1 Where an official fails to lodge pension documents with National Treasury on time and the department is required to pay interest as a result of the delay;

3.2 Where fruitless and wasteful expenditure which could have been avoided has been incurred

3.3 Where irregular expenditure, though condoned, if it occurred due to negligence of one's duties or intentional omission or act.

3.4 Where irregular expenditure has occurred and is not condoned.

3.5 Where an official fails to submit a telephone or electricity account on time and interest is accrued.

4. PROCESSES TO DEAL WITH CLAIMS AGAINST THE DEPARTMENT AND RECOVERY OF MONIES FROM OFFICIALS

- 4.1 The Chief Financial Officer is delegated to settle the claims against the department in conjunction with Legal Services.
- 4.2 By way of procedure, all claims against the department will come to the Office of the Chief Financial Officer for settling via a submission or via the Bid Adjudication Committee if irregular, unauthorised, fruitless and wasteful expenditure has been incurred.
- 4.3 On receipt of such submission, the Chief Financial Officer shall apply her mind to the case at hand and make a determination whether the case should be settled or not or may call for additional information. More often than not, such claims generally accrue interest on a daily basis, so it might be prudent for the Chief Financial Officer to settle the claim whilst awaiting for additional information.
- 4.4 The Chief Financial Officer shall then write to the concerned official through the Branch Head and advise him/her of the extent of his /her liability as a result of the act or omission and the period within which the official is expected to pay in the amount.
- 4.5 A debt will be raised on that official and monies may be recovered through PERSAL as per normal.

5. EFFECTIVE DATE


This circular is effective immediately.

6. APPLICATION OF THE CIRCULAR

This circular applies to all employees of the department

Should you have any queries in relation to this circular, kindly contact the Office of the Chief Financial Officer.

Yours Faithfully



R.C. Lubisi, PhD
Superintendent-General

Date: 11/09/2023