



<i>Umhla</i> <i>Date:</i> <i>Datum</i>	12 JUNE 2015	<i>Ifoni</i> <i>Telephone:</i> <i>Telefoon</i>	040 101 0501
<i>Ireferensi</i> <i>Ref No:</i> <i>Verwysings</i>	FINANCIAL MISCONDUCT	<i>Ifaxi</i> <i>Facsimile</i> <i>Faksimile:</i>	043 605 5292
<i>Imibuzo</i> <i>Enquiries:</i> <i>Navrae</i>	MS. G. THOMAS	<i>Amakhasi:</i> <i>Pages:</i> <i>Bladsye:</i>	24
<i>Iposi</i> <i>E-mail:</i> <i>E-pos</i>	Vuyolwethu.Tshangana@ectreasury.gov.za		

TO ALL: ACCOUNTING OFFICERS

ACCOUNTING AUTHORITIES

CHIEF FINANCIAL OFFICERS

CIRCULAR NO. 3 OF 2015/16

EASTERN CAPE PROVINCIAL FINANCIAL MISCONDUCT GUIDELINE- 2015/16

1. Purpose

The purpose of this circular is to disseminate a guideline on financial misconduct to assist the Provincial Departments and Public Entities in implementing consequence management.

2. Background

The Eastern Cape Provincial Departments are faced with the task of implementing disciplinary action against officials who have caused Irregular, Fruitless & Wasteful



Expenditure thereby resulting in financial misconduct. Currently, there is no clear guide on the process to follow when an official has been charged with financial misconduct which leads to high number of cases that remain unresolved for long periods of time. It is for this purpose, that the following procedure manual was developed to assist departments and public entities to perform investigations into financial misconduct cases.

3. Authority

3.1 This circular is issued in terms of Provincial Treasury's responsibility as set out in Section 18 (2) of the PFMA.

4. Scope and application

4.1 The circular is applicable to all Eastern Cape Provincial Departments, Public Entities and Schedule 3C and 3D entities. However, the circular may also be utilized by any municipalities in order to enforce the implementation of financial misconduct processes.

5. Effective Date

5.1 The circular applies with immediate effect.

6. Dissemination of this Provincial Treasury Circular

6.1 Accounting Officers/ Authorities are kindly requested to ensure that the contents hereof are disseminated to all relevant officials.

6.2 Should there be any questions regarding the contents of this circular, please contact the Deputy Director: Norms and Standards, (040) 101 0501 or send an e-mail to Gincy.Thomas@ectreasury.gov.za.

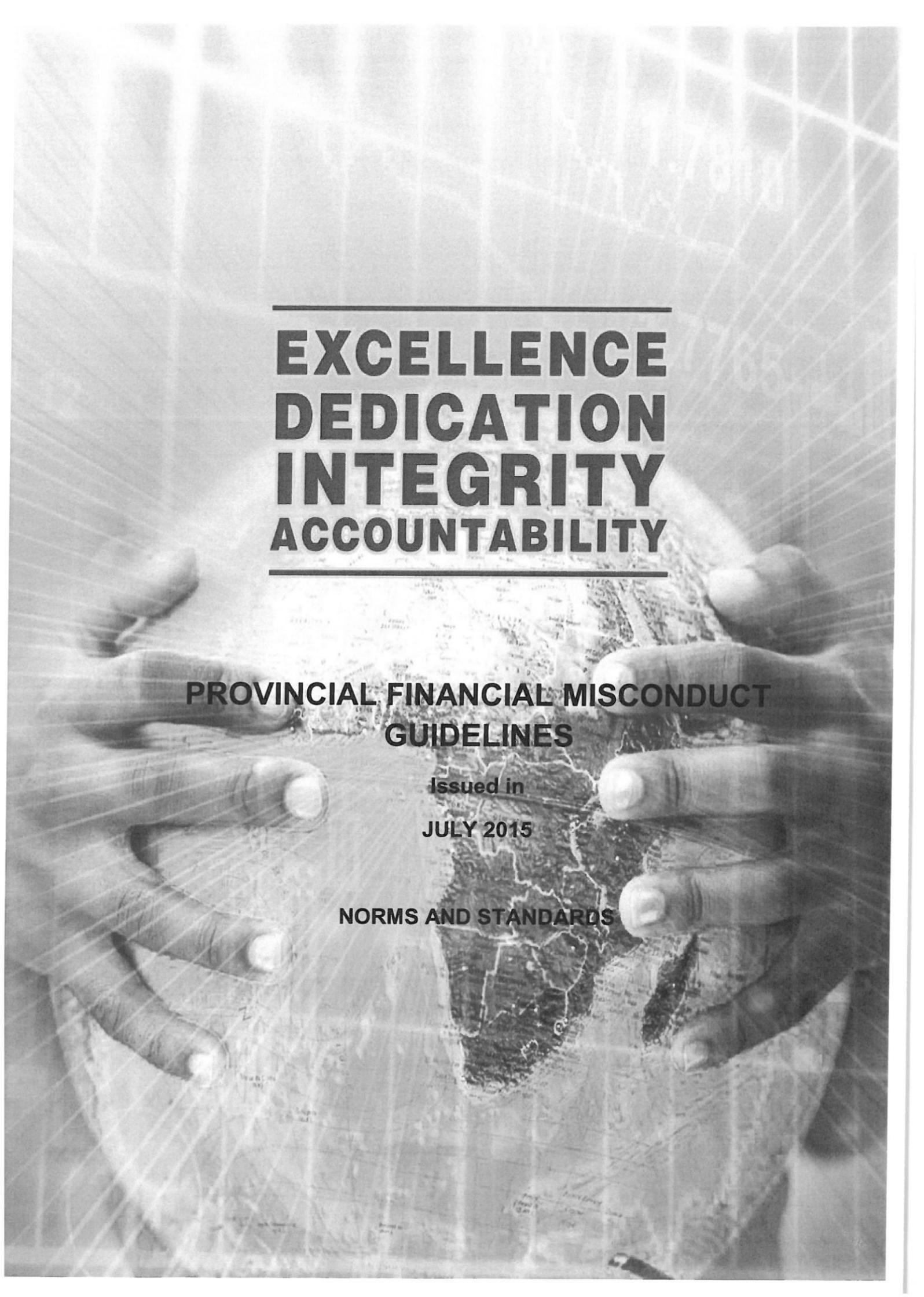
Ikhwezi Lomso greetings: Serving with Honesty, Humility and Integrity



MR. GLQ KALIMASHE

HEAD OFFICIAL OF TREASURY (ACTING)

17/06/2015.
Date



**EXCELLENCE
DEDICATION
INTEGRITY
ACCOUNTABILITY**

**PROVINCIAL FINANCIAL MISCONDUCT
GUIDELINES**

**Issued in
JULY 2015**

NORMS AND STANDARDS

DOCUMENT CONTROL

Document information

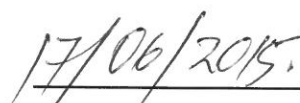
Document title	Financial Misconduct Procedures
Distribution	Eastern Cape Provincial Government Departments and Schedule 3C and 3D Public Entities
Annexure	"A, B & C " PAGES 17-20
Prepared by	Director: Norms and Standards
Date	12/06/2015
Approved by	Head Official: Eastern Cape Provincial Treasury
Revision Period	Annually

Approved by:



Mr. GLQ Kalimashe

**Head Official of Provincial
Treasury (Acting)**



Date

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1. Vision and Mission

We envision a prosperous province supported by sound financial and resource management.

Our mission is to provide strategic and technical leadership in the allocation, management and utilization of financial resources in order to improve the quality of life in the province.

2. Batho Pele Principles

The Batho Pele principles aim to enhance the quality and accessibility of government services by improving efficiency and accountability to the recipients of public goods and services.

Batho Pele requires that eight service delivery principles be implemented:-

- Regularly consult with customers;
- Set service standards;
- Increase access to services;
- Ensure higher levels of courtesy;
- Provide more and better information about services;
- Increase openness and transparency about services;
- Remedy failures and mistakes – Accountability;
- Give the best possible value for money.

Batho Pele means “People First”. The Batho Pele principles are set out in the White Paper on Transforming Public Service Delivery.

Implementation of the Batho Pele principles is compulsory for all departments.

3. Purpose of the Financial Misconduct Guidelines

The purpose of the guideline is to provide guidance in enforcing the implementation of financial misconduct processes as a result of non-compliance with applicable laws and regulations.

The non-compliance with laws and regulations commonly results in irregular expenditure, fruitless & wasteful expenditure and unauthorized expenditure and is often a source of fraud and corruption.

4. Definitions and abbreviations

In this document, unless the context indicates otherwise:-

“Accounting Officer (AO)” means the Head of Department or an official duly appointed to act in that capacity as envisaged in Section 36 of the PFMA.

“Accounting Authority (AA)” means a body or person mentioned in section 49 of the PFMA.

“CFO” means the Chief Financial Officer of the Department or entities, including an official duly appointed to act in that capacity.

“AG” means Auditor General of South Africa.

“Department” means the Eastern Cape Provincial Government Departments and Schedule 3C and 3D public entities.

“Financial Misconduct” means an act of misconduct by an employee as envisaged in section 81, 82 and 83 of the PFMA or a member of the accounting authority as envisaged in section 83 (2) of the PFMA.

“Fruitless and wasteful expenditure” means expenditure which was made in vain and would have been avoided had reasonable care been exercised.

“Irregular expenditure” means expenditure, other than unauthorized expenditure, incurred in contravention of or that is not in accordance with requirements of any legislation including –

(a) The PFMA;

- (b) The State Tender Board Act or any regulations made in terms of that Act or
- (c) Any Provincial Legislation providing for Procurement procedures within that Provincial Government;

“MEC” means Member of the Executive Council (of Eastern Cape Province);

“Official / employee” means a person who-

- a. Has been appointed permanently, notwithstanding that such appointment may be on probation, to a post contemplated in section 8 (1) (a) of the Public Service Act, and includes a person contemplated in section 8 (1) (b) or 8 (2) of that Act; or
- b. Has been appointed on contract in terms of section 8 (1) (a) and (b) of the Public Service Act;

“Unauthorized expenditure” means-

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

5. Legislative framework

5.1 Section 81(1) of the PFMA states that an accounting officer for a department commits an act of financial misconduct if that accounting officer wilfully or negligently –

- (a) fails to comply with the requirements of section 38, 39, 40, 41, or 42,
- (b) makes or permits an unauthorized expenditure, an irregular expenditure or fruitless and wasteful expenditure.

5.2 Section 81 (2) of the PFMA, states that an official of a department, 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;

5.3 Section 45 and 83 (3) of the PFMA outlines the responsibilities of other officials in departments and public entities in relation to their areas of responsibility.

5.4 Section 83 (1) of the PFMA states that the accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently:

- a. Fails to comply with a requirement of section 50, 51, 52, 53, 54 or 55;
or
- b. Makes or permits an irregular expenditure or a fruitless or wasteful expenditure.

5.5 Section 83 (4) of the PFMA states that financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation.

5.6 Section 84 of the PFMA states that a charge of financial misconduct against an accounting officer or official referred to in section 81 or 83, or an accounting authority or a member of an accounting authority or an official referred to in section 82, must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer or authority, or member or official, and any regulations prescribed by the Minister in terms of section 85.

5.7 Treasury Regulation (NTR) 4.1.1 requires the accounting officer to ensure that an investigation is conducted into the matter and if confirmed, must ensure that a disciplinary hearing is held in accordance with relevant prescripts.

5.8 NTR 4.2.1 requires the accounting officer to ensure that such investigation is instituted within 30 days from the date of discovery of the alleged financial misconduct.

- 5.9 NTR 4.2.1 requires the accounting officer to advise treasury and Auditor-General of any criminal charges it has laid against any person in terms of section 86 of the PFMA.
- 5.10 NTR 4.3.1 requires the accounting officer of a department, as soon as the disciplinary action is completed, report on the outcome.
- 5.11 NTR 9.1.3 requires that the accounting officer must take into account the following:
- a. the circumstance of the transgression;
 - b. the extent of the expenditure involved; and
 - c. the nature and seriousness of the transgression
- when determining the appropriateness of disciplinary steps against an official in terms of section 38 (1) (g) of the PFMA.
- 5.12 NTR 12.5.1 require that when it appears that the state has suffered losses or damages through criminal acts or omissions, the matter must be reported, in writing, to the accounting officer and the South African Police Service. If liability can be determined, the accounting officer must recover the value of the loss or damage from the person responsible.
- 5.13 NTR 12.7.1 requires that losses or damages suffered by an institution because of an act committed or omitted by an official, must be recovered from such an official if that official is liable in law.
- 5.14 NTR 33.1.1 requires that if an employee is alleged to have committed financial misconduct, the accounting authority of the public entity, must ensure that an investigation is conducted into the matter and if confirmed, must ensure that a disciplinary hearing is held in accordance with the relevant prescripts.

5.15 NTR 33.1.2 requires that the accounting authority ensure that an investigation is instituted within 30 days from the date of discovery of the alleged financial misconduct.

5.16 Section 34 (1) of the Prevention and Combating of Corrupt Activities Act, no 12 of 2004 (PCCA) states any person who holds a position of authority and who knows or who ought reasonably to have known or suspected that any person has committed:-

- an offense under Parts 1, 2, 3 or 4 or section 20 or 21 of Chapter 2 of the PCCA; or
- the offense of theft, fraud, extortion, forgery or uttering a forged document;

involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official. Failure to report such knowledge or suspicion will render the person guilty of an offence in terms of section 34 (2) of the PCCA.

5.17 Eastern Cape Provincial Treasury Instruction No 3 of 2011/12 on staff debt recovery

5.18 Eastern Cape Provincial Treasury Instruction No 5 of 2010/11 requires that provincial departments submit quarterly reports on financial misconduct cases that contain the following details:

- name and rank of officials involved;
- nature of financial misconduct;
- amount involved;
- financial year or date under which the financial misconduct took place;
- charges, indicating the financial misconduct the official is alleged to have committed
- any further action to be taken against the official, including criminal charges or civil proceedings;
- sanctions imposed on finalized matters

- 5.19 National Treasury has also issued a guideline on Financial Misconduct. This guideline must be read and applied in conjunction with and subject to any applicable prescripts issued by National Treasury;

6. Scope and Applicability

This guideline is applicable to all Eastern Cape Provincial Government Departments, Public Entities and Schedule 3C and 3D entities. However, this guideline may also be utilized by any municipalities in order to enforce the implementation of financial misconduct processes.

7. Provincial Treasury Responsibility

- 7.1 Section 18 (1) (c) of the Public Finance Management Act, PFMA, Act No.1 of 1999 requires provincial treasury to promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities in provincial departments and public entities.
- 7.2 In addition, section 18 (2) (b) of the PFMA requires provincial treasury to enforce the PFMA and any prescribed national and provincial norms and standards.

8. Roles and Responsibilities

Accounting Officer

- 8.1 The Accounting Officer has the overall responsibility to ensure that effective and appropriate steps are taken against officials who have contravened sections of the PFMA.

Chief Financial Officer (CFO)

- 8.2 The CFO of the institution has the following responsibilities which may be delegated in line with Section 44 of the PFMA:
- a. Detect financial misconduct

- b. Report it to the Accounting Officer/Manager/Labour Relations Officer for investigation and resolution
- c. Report to Treasury (on a quarterly basis) and the Auditor General (on an annual basis).

Managers

- 8.3 Managers have the responsibility of ensuring that they report to the Accounting Officer and Labour Relations officer the financial misconduct cases that are of a serious nature for investigation.
- 8.4 The managers are required to perform the following for those financial misconduct cases that are of a less serious nature:
- a. Conduct a meeting with the employee concerned to alert them of the misconduct and to provide them with the opportunity to respond to the allegations.
 - b. If the employee is found guilty, there should be an agreement between manager and employee on the warning provided and this should be documented and kept on record (period of 6 months if a written warning given)
 - c. Employee concerned needs to be informed that future misconduct committed (even of similar nature) may result in serious disciplinary action.

Financial Misconduct/Internal Control Committee

- 8.5 The role of this committee is to serve as an advisory role to the Accounting Officer.
- 8.6 The committee will be responsible for advising on matters such as drafting or reviewing financial misconduct policy and standards to be applied by the institution. The committee should also be able to report on the implementation of the financial misconduct policy.

- 8.7 The committee will play an oversight role and monitor and report on the role of managers in maintain discipline to their respective officials.
- 8.8 For those cases that are of a more serious nature, the committee may provide advice to the Accounting Officer on the sanctions to be imposed.
- 8.9 The committee should also provide recommendations on controls that can be put in place to prevent recurrence of similar cases.

9. Investigation of Financial Misconduct allegations

- 9.1 Any allegation of financial misconduct must be reported to the AO/AA. The AO/AA may delegate the responsibility of receiving, recording and investigating allegations of financial misconduct to an official of the institution, preferably in the Labour Relations Office (LRO). Where there is no LRO, the AO/AA may delegate this function to an official within the confines of the department.
- 9.2 In line with whistleblowing practises, a person making the allegation of financial misconduct does not have to disclose their names nor be an official of the institution.
- 9.3 The AO/AA or delegated official should record all verbal or written allegations of financial misconduct received in a register. The LRO must ensure that an investigation is initiated within a reasonable period, but not later than 30 days from date of discovery.
- 9.4 The AO/AA or delegated official must decide whether to hold formal or informal disciplinary hearings, based on how serious the nature of the allegations. Some of the factors to be considered include:
 - a. Level and rank of official involved;
 - b. Nature of offense (e.g. act of dishonesty will be more serious than negligence);

- c. Amount involved; and
- d. Whether it is a repeat offense.

9.5 Should the AO/AA or their delegate decide to take disciplinary action against the responsible official, and the matter is of a serious nature a formal disciplinary process should be followed in accordance with the Labour Relations Act (Act No 66 of 1995). An investigator should be appointed to conduct investigations of a serious nature. Clearly defined and documented terms of references with stipulated timeframes needs to be signed by the investigator and AO/AA or their delegate. Based on their investigation, an investigation report, containing the following details, should be prepared and submitted:

- a. The circumstance of the transgression;
- b. The extent of the expenditure involved;
- c. The nature and seriousness of the transgression; and
- d. The name of the alleged official.

9.6 Based on the investigation report, the AO/AA or duly delegated official must determine the appropriate disciplinary steps to be taken against responsible official, in terms of section 38 (1) (g) of the PFMA. Consultations may be sought from the Financial Misconduct Committee/Internal Controls Committee on possible sanctions, for cases that are of a serious nature.

9.7 If the investigation report received reveals that alleged fraudulent activities have occurred, the AO/AA must report this matter immediately to SAPS in terms of the PCCA. The referral of fraudulent activities to SAPS may not constitute reason not to proceed with the department's own internal disciplinary processes.

9.8 In minor offences (offence that will not lead to a dismissal), the line manager or human resource official must issue a written request for explanation to the relevant official. The official must be requested to report

reasons on alleged transgression within stipulated timeframes. A report will then be submitted to the AO/AA informing them of outcome and actions taken on the misconduct.

- 9.9 The investigation report will also reveal the extent of loss incurred as a result of the transgression. The AO has a duty to recover the loss from the responsible official by requesting them to pay the amount within 30 days or in reasonable instalments. This can only be done, if the responsible official was liable in law. The Accounting Officer may consider writing off the loss or damage from criminal acts or omissions, if after a thorough investigation has revealed the loss is irrecoverable. Recovery of staff debt should follow the process prescribed in Provincial Treasury Instruction No 3 of 2011/12.
- 9.10 All decisions made by the AO/AA must be recorded in the financial misconduct register maintained by the AO/AA or delegate. Outcomes of the disciplinary process should also be recorded in the quarterly register for financial misconduct cases. AO/AA decisions needs to be reported in annual report.
- 9.11 Where the Accounting Officer or Accounting Authority is implicated, the above responsibility shall be carried out by the office of the relevant MEC.

10. Confidentiality

- 10.1 The Accounting Officer, CFO and any other official of the departments shall treat all information received and the source thereof as confidential.
- 10.2 Reporting procedures, such as whistleblowing, must be established to allow persons to report allegations of financial misconduct on a confidential basis.
- 10.3 No official who in good faith reports any allegation of financial misconduct against any official or disclose any information regarding any alleged financial misconduct in the institution, may be dismissed, harassed, or prejudiced in any way because of such report or disclosure.

11. Disciplinary hearing

11.1 A disciplinary hearing must be held in line with the disciplinary code and procedures of the public service for each instance where an investigation has confirmed an alleged financial misconduct to be of a serious nature and that if an employee is found guilty, it may lead to a dismissal. A formal procedure, as detailed in the departmental disciplinary code of conduct should be followed in the disciplinary hearings.

11.2 Refer to *Annexure B* for diagrammatic representation of disciplinary procedure in the public service.

12. Reporting Requirements

12.1 The Accounting Officers/Accounting Authority shall as soon as disciplinary proceedings are completed report to the following institutions in line with National Treasury regulation 4.3:-

- the MEC;
- the Provincial Treasury;
- the Auditor-General;
- Department of Public Service and Administration; and
- Public Service Commission
- National Treasury

12.2 The Accounting Officer/ Accounting Authority must submit the report to the above individuals that contains the following details:

- the name and rank of the official against whom the proceedings were instituted;
- the charges, indicating the financial misconduct the official is alleged to have committed;
- the findings;
- any sanction imposed on the official; and
- any further action to be taken against the official, including criminal charges or civil proceedings.

- 12.3 In terms of Provincial Treasury Instruction Number 5 of 2010/11 on a quarterly basis, the Accounting Officer must report all cases of financial misconduct in a department.
- 12.4 A copy of the amended register on Financial Misconduct is attached as *Annexure C* and must be applied to all identified cases of financial misconduct and submitted to Provincial Treasury on a quarterly basis.
- 12.5 The Accounting Officer has a duty to consider the possibility that the financial misconduct may result in an act of corruption and should this be the case, the PCCA and NTR 12.5.1 requires it to be reported to the South African Police Service.

13. Review and adoption of procedures

- 13.1 This procedure manual may be used to assist departments and public entities in developing their own policies on financial misconduct. The procedure manual should be reviewed and adopted annually by the Accounting Officer of the Department/ Accounting Authority for public entities or any duly appointed committee. Departments and public entities are required to indicate in their annual reports, the extent they have adopted and/or applied the contents of this guideline and the reasons for not doing so, if applicable.


HEAD OFFICIAL
PROVINCIAL TREASURY

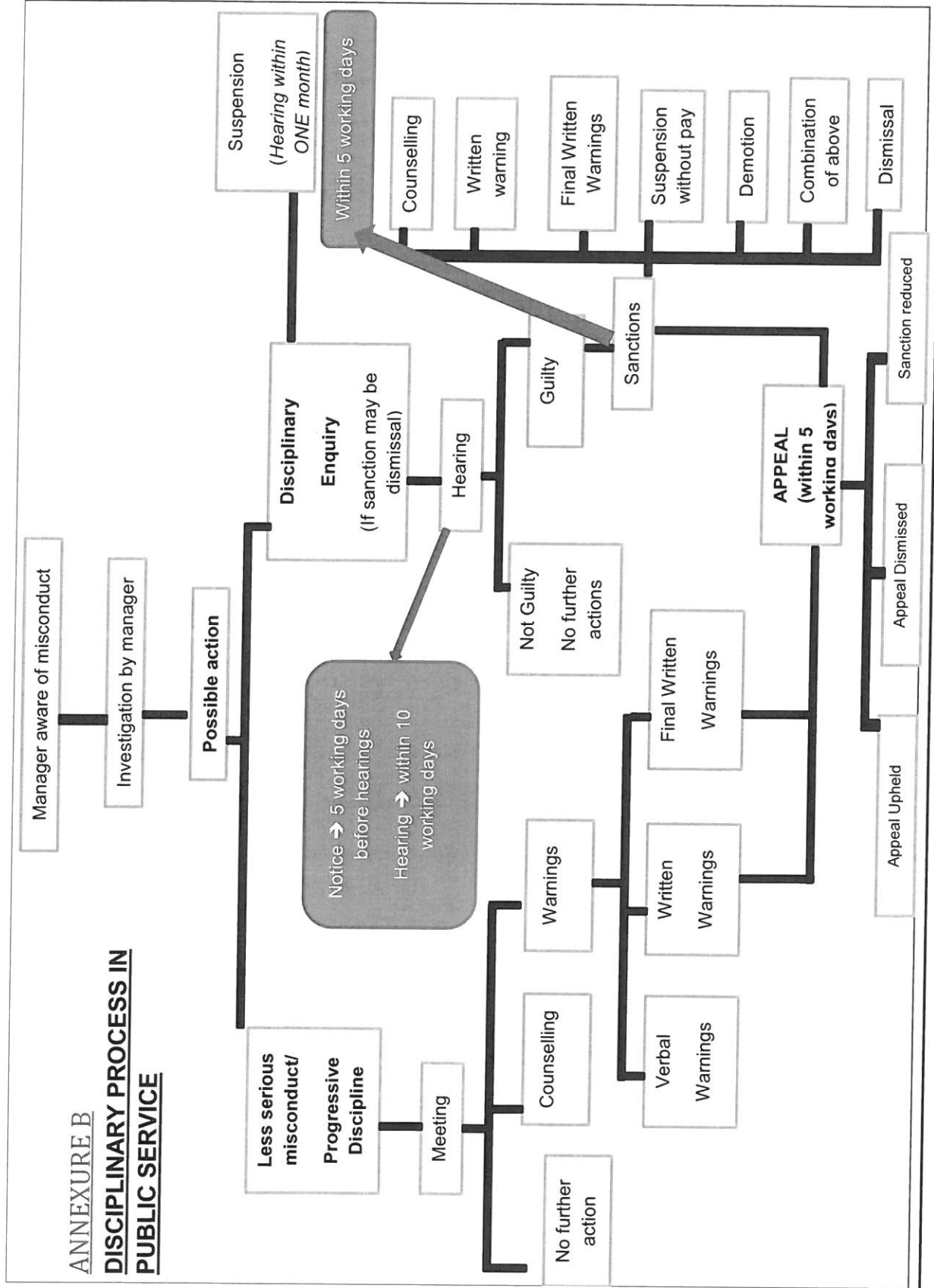
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DATE

ANNEXURE A

Actions constituting financial misconduct

1. The following is a list of known acts of financial misconduct, the list is not exhaustive:-
 - 1.1 breach of internal controls relating to financial transactions;
 - 1.2 profiteering as a result of insider trading (disclosing critical information to third parties for gain);
 - 1.3 failure to disclose knowledge of fraudulent activities;
 - 1.4 false claims for officials;
 - 1.5 failure to submit leave application for absenteeism (with the intention to defraud the department);
 - 1.6 unauthorized alteration to suppliers invoices and failure to ensure payment of invoices within 30 days without notification;
 - 1.7 falsification of any signature on any document with an intention to commit fraud;
 - 1.8 accepting or seeking anything of material value from contractors, suppliers or any persons providing goods and services to the Department;
 - 1.9 swapping of personal assets or equipment with that of Department;
 - 1.10 using Departmental systems and procedures to purchase items for personal use i.e. stationery, consumables, fuel, and clothing, books, building materials, furniture and equipment, act.
 - 1.11 destruction, removal or inappropriate use of documents, furniture, fixtures, equipment or employee time;
 - 1.12 personal use of Department's property, assets, equipment, employee's time, furniture or fixtures to further personal benefits / income or reducing of personal debts / expense;
 - 1.13 run own private business from office without prior approval;
 - 1.14 failure to disclose conflict of interest in terms of relationship and business interest;
 - 1.15 knowingly assisting another official to perform any act of fraud or misconduct;

- 1.16 committing a service provider to service the Department without an official order;
- 1.17 committing the Department to a transaction without authorization or prior approval;
- 1.18 engagements of service providers not registered on the supplier's database;
- 1.19 affecting changes on official orders without prior approval from Director of Supply Chain Management;
- 1.20 assisting suppliers in splitting of orders into parts or items of lesser value to avoid complying with the requirements of the Supply Chain Management regulations;
- 1.21 viewing of prohibited website during working hours;
- 1.22 Overpayment of suppliers;
- 1.23 transferring funds to a beneficiary entity in order to conceal under-spending in the Department (fiscal dumping);
- 1.24 failure on insisting that measures be put in place at the beneficiary entity before a transfer payment is made, in the event where the beneficiary entity can't provide the Department with written assurance that the entity has implemented effectively, efficient and transparent financial management and internal controls and any other conduct undermining the provisions of section 45 of the PFMA.



ANNEXURE C
FINANCIAL MISCONDUCT REGISTER

NAME OF DEPARTMENT:

FINANCIAL YEAR:

QUARTER:

0	1	2	3	4	5	6	7	8	9	10	11
No	Name of Responsible Official	Rank of responsible official	Nature of Alleged Financial Misconduct	Date identified	Amount Involved	Any civil or criminal action taken against official involved?	Status of case (Pending/ Finalized)	Challenges in resolving PENDING cases	Outcome on FINALIZED cases (Dismissal/Suspension/ Warning or Acquittal)	Date Case Finalized	How long has the case been PENDING?

SUMMARY OF INFORMATION REPORTED ABOVE:

Detail	TOTAL NUMBER OF CASES	
	PENDING	FINALIZED
Total Number of cases		

Other Comments:

DATE

NAME OF OFFICIAL:
RANK: HEAD OF DEPARTMENT

DESCRIPTION OF COLUMN HEADINGS

COLUMN NO	COLUMN DESCRIPTION	REQUIRED INFORMATION
<p>COMPLETION OF ALL INFORMATION IN COLUMNS IS COMPULSORY</p> <p>INFORMATION ON REGISTER SHOULD BE <u>CUMULATIVE</u> IN NATURE</p>		
0	No.	Numeric Sequence
1	Name of Responsible Official	Document name of official who was responsible for the incurrance of financial misconduct
2	Rank of responsible official	Document responsible official's designation/rank in the department.
3	Nature of Alleged Financial Misconduct	Include details of the financial misconduct
4	Date identified	Document date financial misconduct initially identified.
5	Amount Involved	Include amount in Rands for the financial misconduct
6	Any civil or criminal action taken against official involved?	Indicated whether any civil or criminal action has been instituted against responsible official.
7	Status of case (Pending/ Finalized)	Document whether case is pending or finalized.

COLUMN NO	COLUMN DESCRIPTION	REQUIRED INFORMATION
8	Challenges in resolving PENDING cases	Indicate for ALL PENDING cases, reasons why case remains pending for a period longer than 30 days. What are the challenges in resolving the case?
9	Outcome on FINALIZED cases (Dismissal/Suspension/Warning or Acquittal)	Document for cases that are finalized, the outcome.
10	Date Case Finalized	Indicate date case was finalized.
11	How long has the case been PENDING?	Document the length of time the case has been pending since first identified.
Summary of information table	The table is a summary of the number of cases identified and reported from the information recorded in the register. 1. Document the NUMBER of cases reported that are Pending and Finalized.	