

LITIGATION POLICY FRAMEWORK



agriculture & rural development
 Department:
 Agriculture and Rural Development
 North West Provincial Government
 REPUBLIC OF SOUTH AFRICA

HEAD OF DEPARTMENT
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Organisation	North-West Department of Agriculture and Rural Development		
Programme	Legal Services		
Policy	FRAMEWORK FOR AN EFFICIENT AND EFFECTIVE HANDLING OF LITIGATION MATTERS WITHIN THE DEPARTMENT		
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LITIGATION POLICY FRAMEWORK

1. VISION

- 1.1 To provide legal support service to the Department of Agriculture and Rural Development.

2. MISSION

- 2.1 To enable a policy guideline for the effective and efficient handling of litigious matters within the Department of Agriculture and Rural Development.

3. PREAMBLE

- 3.1 The Department of Agriculture and Rural Development has a duty to maintain a comprehensive litigation management programme.
- 3.2 The objective to aim this achievement is to reduce litigation and the swift handling of litigious matters as far as practically possible.

4. PURPOSE

- 4.1 The purpose is to develop appropriate methods and relevant procedures to assist the legal service programme in the management of litigious matters referred to the State Attorney, Private Attorney's appointed on behalf of the department.
- 4.2 To keep updated and accurate records of all litigious matters within the legal service programme to enable the management and progress thereof.

5. SCOPE OF APPLICATION

- 5.1 This Legal policy framework shall apply to all employees within the North-West Department of Agriculture and Rural Development.

6. LEGISLATIVE FRAMEWORK

- 6.1 A basic synopsis:
 - 6.1.1 The Constitution of the Republic of South Africa, (Act no 108 of 1996).
 - 6.1.2 Public Service Act of 1994.
 - 6.1.3 Public Service Amendment Act 30 of 2007.
 - 6.1.4 Public Service Laws Amendment Act 47 of 1997.

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- 6.1.5 The Public Service Regulations as amended in 2016.
- 6.1.6 The Public Finance Management Act 1 of 1999 and related Practice notes and prescripts.
- 6.1.7 Common Law principles.
- 6.1.8 Contractual Law.
- 6.1.9 Law of Delict.
- 6.1.10 State liability Act 20 of 1957.
- 6.1.11 State liability Act 14 of 2011.
- 6.1.12 High Court uniform rules and practice notes 2020.
- 6.1.13 Magistrate Court uniform rules and Practice notes 2022.
- 6.1.14 Regional Court Practice directives 2022.
- 6.1.15 The Public Protector Act no. 23 of 1994 as amended in 2016 and its regulations.
- 6.1.16 The Public Service Commission Act 46 of 1997.
- 6.1.17 The Labour Relations Act 66 of 1995.
- 6.1.18 Companies Act 71 of 2008 and its regulations.
- 6.1.19 Civil proceedings evidence Act 25 of 1965.
- 6.1.20 Criminal procedure Act 51 of 1977.
- 6.1.21 Relevant Policies and directives of the Department of Agriculture and Rural Development.
- 6.1.22 Constitutional Court case law, including other case law.

7. INTRODUCTION

- 7.1 The legal service programmes aim is to enable DARD to comply with the legal requirements guiding litigious matters and to demonstrate improved mechanisms to ensure the effective and efficient handling of litigious matters for and on behalf of the department.
- 7.2 To pronounce efficiency and effectiveness whether it be internal or external to the institution and vigorously pursue any prospective party by all legal means available to the department in attempting to deal with such litigious matters.
- 7.3 Its aim is to transform DARD into an efficient and responsible litigant.

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8. OBJECTIVE OF THIS POLICY FRAMEWORK

- 8.1 The core responsibility of the Legal Services is supportive in nature.
- 8.2 Thus, its ability to discharge its responsibility depends entirely on the cooperation of other programmes.
- 8.3 The primary objective of this framework is to provide the required guidelines on the responsibility of all individuals towards the mandate of Legal Services, thereby promoting the efforts for an efficient, coordinated legal services.
- 8.4 This litigation framework is based on the recognition that Government and its various agencies are the pre-dominant litigants in courts and tribunals in the country.
- 8.5 This litigation framework is also based on the recognition that it is the responsibility of Government to protect the rights of citizens, to respect fundamental rights and those in charge with the conduct of Government litigation, which should never forget this basic principle.
- 8.6 The approach will further promote the values and obligations arising from the Constitution of the Republic of South Africa (Act no. 108 of 1996).

9. DEFINITIONS AND MEANINGS:

9.1 "EFFICIENT LITIGANT" MEANING:

- 9.1.1 It is a focus on the core issues involved in the litigation and addressing of such litigious matters.
- 9.1.2 Managing and conducting litigation in a cohesive, coordinated, and timely manner.
- 9.1.3 Ensuring that good cases are won, and bad cases are not needlessly pursued.
- 9.1.4 A litigant who is represented by competent and sensitive legal persons, being competent in their skills and sensitive to the fact that Government is not an ordinary litigant, and that litigation does not have to be won at any cost.

9.2 "RESPONSIBLE LITIGANT" MEANING:

- 9.2.1 That litigation will not be resorted to for the sake of litigating.
- 9.2.2 That false pleas and technical points will not be taken and should be discouraged.

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- 9.2.3 Ensuring that the correct facts and all relevant documents will be placed before the court.
- 9.2.4 That nothing will be suppressed from the court and there will be no attempt to mislead any court or Tribunal.

10. HEAD OF DEPARTMENT IN LITIGATION MATTERS

- 10.1 The authority to institute, defend and/or settle any legal action by/against the Member of Executive Council, lies with the Head of Department or any other delegated official.
- 10.2 The authority must be reduced to in writing except, where such is not possible due to the urgency of the matter and the delay may have an adverse effect on the department.
- 10.3 In the event where the authority is obtained contrary to the provisions of sub-clause 10.2, a written brief shall be prepared for the Head of Department for formal sign off, of the decision for authorization.
- 10.4 The Head of Department or his delegation shall by virtue of his/her office or delegation, be the relevant individual to sign any applications, pleadings, notices and sworn affidavits in connection with such legal action contemplated in sub-clause 10.1.
- 10.5 Court Orders, Warrant of execution, Judgements etc. where payment are concerned it is best to pay, in avoiding additional cost or attachment of assets.

11. CAUSES FOR LITIGATION

- 11.1 DARD ought to refrain from temptations to be a compulsive or an irresponsible litigant.
- 11.2 The philosophy that matters should be left to the courts for ultimate decision, must be avoided.
- 11.3 The easy approach, "Let the court decide," must be abandoned and condemned, if the matter is able to be dealt with internally by the legal service programme.
- 11.4 The responsible officials vested with the powers to make decisions must do so having considered governing legislation, available facts and applied his/her mind properly.
- 11.5 The Department of Agriculture and Rural Development is a compliance department, due to the highly regulated agricultural mandate.
- 11.6 Majority of both criminal and civil litigations emanates from agricultural matters, thus necessitating a close cooperation between legal services, and other programmes of the

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department, in an effort of identify mechanisms, to reduce litigation by and against the state.

12. ALTERNATIVE DISPUTE RESOLUTION

12.1 INTRODUCTION

- 12.1.1 In respect of litigation, the nominal winner often is a real loser in fees, expenses, and waste of time.
- 12.1.2 This motivates for considerations of alternative dispute resolution methods, as the initial approach to a dispute.
- 12.1.3 Litigation has the ability to completely destroy the prospective business relationship between the parties.
- 12.1.4 While in the 20th Century it may no longer be typical for people to resort to weapons as a means of resolving their disputes, most will agree that litigation is, to a lesser degree, aggression played out in the dignified theatre of the courts with words as the weapon of choice.
- 12.1.5 It is thus advisable that amicable solutions should where possible, be sought before engagements into the litigation process.

12.2 MEDIATION

- 12.2.1 Mediation proceedings will be the first resort to try and resolve the dispute between parties.
- 12.2.2 Mediation proceedings can be executed internally by those with the authority to engage in resolving the dispute between the parties.
- 12.2.3 Any resolutions taken by those with the authority to engage in a mediation process, if such dispute have been effectively resolved by the two parties, the resolutions should be put in writing and signed by both parties to ensure that it is the resolutions agreed upon.
- 12.2.4 Where applicable, such resolutions will form part of the contractual agreement signed by the two parties and were applicable will replace such clauses in the contract as appropriate and executed in writing.

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13. ARBITRATION

13.1 INTRODUCTION

- 13.1.1 Careful drafting of commercial contracts, including arbitration agreements must be given utmost priority.
- 13.1.2 The resort to arbitration as an alternative dispute resolution mechanism must be encouraged at every level, but this entails the responsibility that such arbitration will be cost effective, efficacious, expeditious, and conducted with high rectitude.
- 13.1.3 In most cases arbitration has become a mirror of court litigation.
- 13.1.4 Utmost care shall be taken that unnecessary postponements of arbitration proceedings are avoided.
- 13.1.5 Care must be taken whilst drafting an arbitration agreement.
- 13.1.6 It must correctly and clearly reflect the intention of the parties particularly if certain items are required to be left to the decision of named persons such as engineers are not meant to be referred to arbitration.

13.2 APPOINTMENT OF ARBITRATORS

- 13.2.1 Arbitration agreements must reflect a well-defined procedure for appointment of arbitrators.
- 13.2.2 Sole arbitrator may be preferred over a Panel of three Arbitrators.
- 13.2.3 In technical matters, reference may be made to trained technical persons instead of retired judicial persons.
- 13.2.4 The arbitrator must be chosen solely based on knowledge, skill, and integrity and not for extraneous reasons.
- 13.2.5 It must be ascertained whether the arbitrator will be able to devote time for expeditious disposal of the reference.

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14. REFERRAL OF CASES

14.1 IN GENERAL:

- 14.1.1 Matters may be referred to the legal services for its consideration by employees of any level.
- 14.1.2 To attain efficiency and effectiveness in dealing with matters referred, an orderly and more consistent process of referring matters to the Legal Services should be adopted.
- 14.1.3 All new referral matters that requires formal attention of the legal services directorate shall be in writing and emailed or submitted by hand to the administration office of the legal directorate.
- 14.1.4 The written request must have adequate details of the instruction and relevant source documents shall be attached to it.
- 14.1.5 Any legal request or legal instruction must go through the legal administration office, for recording and referencing.
- 14.1.6 No legal requests or legal instructions will be excepted or dealt with, if such new referrals are directly emailed to the legal personnel of any level within the legal services without addressing it first to the administration office.
- 14.1.7 This system is to ensure that all litigation matters received are managed within the legal service programme and that the tracking of cases concluded is feasible.

14.2 ASSIGNMENT OF A CASE:

- 14.2.1 The Director legal services or his delegated official will as soon as possible but not later than seven (7) days from the date of receipt of a claim, assign an official to deal with the case received.
- 14.2.2 The Director Legal Services or his delegated official will as soon as possible draft instructions on a new case for referral to the State Attorney or an alternative panel of attorney's, advocates as per the prerogative of the Accounting Officer or the Executive Authority, depending on the nature of the referral at hand.

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14.3 ACKNOWLEDGEMENT OF CASES:

- 14.3.1 The Director Legal services or his delegated official shall acknowledge cases received from the Public Protector of South Africa (PPSA) upon receipt of the allegation.
- 14.3.2 The Director Legal Services or his delegated official shall execute all reasonable steps as far as possible to provide responses to the PPSA with authorization from the Accounting Officer.
- 14.3.3 The State Attorney must apply a written acknowledgement of all cases referred for their attention and action.

14.4 STATUS REPORTS RELATING TO PROGRESS:

- 14.4.1 Quarterly status or progress reports will be provided by the Director of Legal Services to the Chief Director Corporate Services.
- 14.4.2 The Quarterly status or progress report will amongst other matters incorporate the following:
 - 14.4.2.1 APP Target progress
 - 14.4.2.2 EID Cluster inputs
 - 14.4.2.3 AFS related inputs
 - 14.4.2.4 Progress on all litigious matters as at the quarter.
 - 14.4.2.5 Challenges that may be of significance.
- 14.4.3 The final report will be concluded at the end of the financial period.
- 14.4.4 All litigious matters shall be cleared up that was dealt with in the particular financial year and a register shall be kept for every new financial period.

14.5 LETTERS OF DEMAND:

- 14.5.1 Upon receipt of a letter of demand from a third party, the relevant Director / official or programme that has received such letter of demand should immediately forward it to the Legal Service Directorate Office, with a cover letter and further details to the matter of relevance for attention and processing.
- 14.5.2 The letter to the Legal Service Directorate Office should clearly give the necessary information and clear instructions for further processing.

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- 14.5.3 The Legal Service Directorate will enquire more information as well as alternative documentation that will assist the Legal Service programme, including consultations to instruct the State Attorney or alternative panel of attorneys / advocates to handle the matter on behalf of the department especially if the matter requires to be defended.

15. ROLES AND RESPONSIBILITIES

15.1 HEAD OF DEPARTMENT (HOD) / ACCOUNTING AUTHORITY

- 15.1.1 The office of the HOD as the Accounting Officer of the Department is the relevant office to receive summons, notice of motion or enquiries from the office of the Public Protector unless otherwise stated.
- 15.1.2 Litigation matters are time bound and should be referred to the office of Legal Services immediately upon receipt or within a period of 24 hours where immediate referral is impossible.
- 15.1.3 Notices received shall be submitted to the administration office of the Legal Services for proper recording and monitoring.
- 15.1.4 Notwithstanding the deadline contemplated in clause 15.1.2, the process flow of legal or potential legal matters shall be subjected to reasonable processes applicable within the Office of the HOD.

15.2 RESPONSIBILITY OF PROGRAMME MANAGERS

- 15.2.1 A request for further information should within 24 hours of receipt of a matter that gave rise to the request or inquiry be submitted by the relevant Programme Manager to the Legal Service programme.
- 15.2.2 The relevant programme manager will personally or through a delegated official within a period of three (3) days identify officials with knowledge of the matter in question and submit such information to the Legal service programme as requested.
- 15.2.3 It remains the responsibility of the Programme Manager to monitor compliance with the information in question, whether the inquiry was given to a delegated official / or not.

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- 15.2.4 Programme Managers shall facilitate a swift identification of relevant officials and efficient submission of documentary evidence to legal services for the purpose of discharging its mandate to enable an adequate response or submission on behalf of the department to any inquiry, letter of demand, or information required towards the effective drafting of pleadings in litigious matters etc.
- 15.2.5 Legal Services shall be notified in writing or in whichever manner convenient of the identity of relevant officials to provide the information.
- 15.2.6 It remains the responsibility of the relevant programme manager to ensure that adequate information is provided to the legal service programme, subject to the time frames and guidelines provided for in this framework or by separate request by legal services.

16. APPEAL PROCEDURES

16.1 TO THE SUPREME COURT (EXTERNAL)

- 16.1.1 Appeals will not be filed in the Supreme Court unless there are prospects of success on either of the following or alternative justifiable grounds:
- 16.1.1.1 The case involves a question of law.
 - 16.1.1.2 If it is a question of fact, the conclusion of the fact is so perverse that an honest judicial opinion could not have arrived at that conclusion.
 - 16.1.1.3 Where public finances are adversely affected.
 - 16.1.1.4 Where there is substantial interference with public justice.
 - 16.1.1.5 Where there is a question of law arising under the Constitution.
 - 16.1.1.6 Where the High Court has exceeded its jurisdiction.
 - 16.1.1.7 Where the High Court has struck down a statutory provision as ultra vires.
 - 16.1.1.8 Where the interpretation of the High Court is plainly erroneous.
 - 16.1.1.9 Where the prospect of success is not feasible.
 - 16.1.1.10 Where the cost of an appeal will outweigh the judgement in terms of value for money.
 - 16.1.1.11 Where a legal opinion outlines that it is better to lay the matter at rest.

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- 16.1.2 In each case, there will be a proper certification of the need to file an appeal on merit.
- 16.1.3 Such a certification will contain a brief but cogent reason in support or by a proper legal opinion or memorandum.
- 16.1.4 The appeal shall consist of all relevant documents and a response to the grounds of the appeal.
 - 16.1.4.1 The submission shall set out the potential justifiable grounds whether an appeal can be instituted.
 - 16.1.4.2 All reasons as to why it may not be considered fit or proper to file an appeal.
 - 16.1.4.3 The grounds for justification for an appeal or not to appeal will be guided by legal opinion or legal memorandum from Counsel.
 - 16.1.4.4 The request will be based on grounds for either opposing or conceding the appeal in simple matters or upon complex matters.
- 16.1.5 Legal services shall, upon receipt of a Judgement require the necessary legal opinion, or memorandum from counsel.
- 16.1.6 Legal services shall prepare a submission for consideration of a potential appeal process by the Head of Department for further consideration and discussion with the Executive Authority.
- 16.1.7 Legal Services will execute the decision of the Head of Department whether to appeal or not to appeal a Judgement and prepare the instruction for approval by the Head of Department for further processing to either instruct the State Attorney or an Attorney of choice suitably skilled to carry out the mandate on behalf of the Department.
- 16.1.8 In the event the appeal process is found to be out of time the appeal will be changed to seek relief on a notice of intent to appeal by condonation.

16.2 DEPARTMENTAL APPEALS (INTERNAL) /GRIEVANCES

- 16.2.1 Internal Appeal procedures are subjected to the formal grievance process prescribed within the Human Resource policies and practices when an official is aggrieved.
- 16.2.2 Prior any Appeal process, the official who feels aggrieved, should first file a grievance process at the Labour Relations unit on the appropriate forms available.

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- 16.2.3 The normal grievance process will follow, and an Appeal process will only be allowed, once all grievance procedures have been followed to the latter, and the matter had not yet been resolved, between the employee and employer.
- 16.2.4 When all resorts have been sought by the aggrieved employee, he/she may launch an Appeal against the decision to the Member of Executive Council as the appropriate delegated authority who may:
- 16.2.4.1 Grant or not grant the appeal.
 - 16.2.4.2 Revoke the decision or reinstate the decision made against the official.
- 16.2.5 The general rule for an internal appeal process is to submit the appeal within a period of five (5) working days upon the final decision received, to which the employee seeks relief.
- 16.2.6 The failure to submit an appeal against a decision within the required timeline will be concluded as the final decision of the employer.
- 16.2.7 Any internal grievance launched by an employee shall consist of all relevant documents and a proper detailed response to the grounds thereof raised by the applicant.
- 16.2.8 A grievance submitted by any employee will not be considered if it does not comply with the requirements of paragraph 16.2.7 hereto and shall not be further entertained.
- 16.2.9 A grievance launched by an employee that does not comply with paragraphs 16.2.7 and paragraph 16.2.8 hereto will be considered concluded as the final decision of the employer.
- 16.2.10 Requests for further information or engagements with the relevant programme shall be made on receipt of any grievance or in the event of an appeal to enable the employer to deal with the matter swiftly and responsibly.
- 16.2.11 Employees should note that legal services are not employees internal legal Counsel and should request the assistance of a shop steward of choice according to the grievance procedures.

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17. CIVIL LITIGATION MATTERS

17.1 The litigation process can be two-fold.

17.2 It may be initiated by another party against the department or by the department against another party.

17.1.1 LITIGATION AGAINST THE DEPARTMENT

17.1.1.1 The first document that should be received ideally is a notice in terms of section 3, which is our typical notice of demand.

17.1.1.2 The notice is followed by a summons which details the facts that gave rise to the prayer against the department.

17.1.1.3 The relevant Programme manager shall upon receipt of either of the two documents mentioned above be engaged to act in accordance with the provisions of clause 12.

17.1.1.4 The relevant officials shall write a submission in response to the allegations averted in the summons.

17.1.1.5 The written response shall be submitted to legal services within a period of five (5) days of receipt of the notice/summons from the Programme Manager.

17.1.1.6 The requirement for a written submission should not replace the initial consultation with legal services which shall be arranged immediately upon receipt of the knowledge of the matter in any manner, including from the Programme Manager.

17.1.1.7 Initial consultation is vital for the purpose of determining the instruction to the State Attorney or panel of attorneys to either defend or negotiate a settlement.

17.1.1.8 All potential witnesses shall be available for consultation and the subsequent submission of a testimony in court irrespective of their employment status with the department unless the circumstances dictate otherwise.

17.1.2 LITIGATION BY THE DEPARTMENT

17.1.2.1 The official who intends to approach the legal services with a request for instituting a litigation process shall write a comprehensive submission detailing the grounds for such request.

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- 17.1.2.2 Potential witnesses and relevance of their knowledge to the matter shall be stipulated in the submission.
- 17.1.2.3 The submission must be accompanied by supporting documents.
- 17.1.2.4 Upon receipt of the submission, the official that reverted the request shall be invited for a consultation to obtain further information or clarity as or if required.

18. CRIMINAL LITIGATION MATTERS

- 18.1 Programmes should report all criminal matters instituted on behalf of the department to the Head of Department.
- 18.2 Matters contemplated in sub clause 16.2.1 are those reported in execution of the departmental mandate (e.g., contravention of financial prescripts) or any criminal acts committed against the properties of the department or its employees during the course of their duties and or where actions are executed outside the normal scope of their duties relating to an act of abuse of power or corruption whatever the situation may be.
- 18.3 Matters related to criminal litigation internally will be executed by the Executive Authority as per her prerogative as the relevant authority in such matters.

19. PROMOTION OF ACCESS TO INFORMATION ACT (PAIA)

- 19.1 In terms Section 17 of the Promotion of Access to Information Act (PAIA Act 2 of 2000) and Section 56 of the Promotion of Personal Information Act (POPIA Act 3 of 2013), DARD appointed as designated Information Officer, the Chief Director Corporate Services to serve as POPIA/PAIA Information Officer (IO).
- 19.2 In addition to Section 17 of the Promotion of Access to Information Act (PAIA Act no 2 of 2000) and Section 56 of the Promotion of Personal Information Act (POPIA Act no 3 of 2013), the Director Information Communication Technology of DARD, had been appointed as the designated Deputy Information Officer (DIO) and has been registered with the Information Regulatory as instructed by section 55(2) of POPIA.

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- 19.3 The designated DIO Directorate Information Communication Technology is mandated to develop the POPIA/PAIA manual, its compliance strategy, and the submission of the annual report to the Information Regulatory, in terms of Section 32 of PAIA, through the office of DARD's designated Information Officer.
- 19.4 The primary objective of PAIA is to give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and /or to provide for matters connected therewith.
- 19.5 The request for access to information shall be forwarded to the Accounting Officer or relevant authority within a period of 48 hours of the receipt or as soon thereafter.
- 19.6 The requested information accompanied by a submission in response to the request must be forwarded to the Information Officer (IO) within five (5) working days regarding simple matters or ten (10) working days where a complex matter is involved, or an alternative designated officer assigned as per the prerogative of the Accounting Officer or relevant authority in validating the information and the response for consideration by the Accounting Officer to the requester.
- 19.7 A report regarding the inability to comply with the request shall be reduced to writing and submitted to the Accounting Officer within a period of 48 hours of the discovery of the reason for such inability.

20. LEGAL ADVICE AND LEGAL OPINIONS

20.1 LEGAL ADVICE

- 20.1.1 Request for legal advice shall be reduced to in writing and submitted to the Directorate legal services office, with relevant supporting documents attached and clear instructions of the request by the requesting programme or requesting official.
- 20.1.2 It remains the responsibility of the requesting programme to follow up and to further process the legal advice upon receipt.

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20.2 LEGAL OPINIONS / LEGAL MEMORANDUMS:

- 20.2.1 It is the function of the Legal Service Directorate to furnish the department with written legal opinions / Legal memorandums as and when requested.
- 20.2.2 It is the responsibility of all programmes to forward such requests for the drafting of legal opinions / legal memorandums to the Legal Service office, which will be reverted for further attention and processing by the requesting programme.
- 20.2.3 The Directorate of Legal Services has an obligation to refer the request for a legal opinion or a legal memorandum to the State Attorney or private attorney pending the nature of the request.
- 20.2.4 The request for a legal opinion / legal memorandum should be in writing and it should at least include the following:
- 20.2.4.1 Background information, which must be clear and concise.
 - 20.2.4.2 Statement of the official from the relevant programme (if any).
 - 20.2.4.3 The records pertaining to the matter in question.
 - 20.2.4.4 The legal issue to be looked into and the implications thereof.
 - 20.2.4.5 Whether the services of Counsel (an Advocate) should be engaged.
 - 20.2.4.6 Whether the services of an independent expert should be engaged.
 - 20.2.4.7 Clear and concise instructions to the Legal Services Office.
 - 20.2.4.8 Personal implications (if any).
 - 20.2.4.9 Private matters should be disregarded and reverted to its origin.
 - 20.2.4.10 Any other information which may be of assistance to the matter in question.
- 20.2.5 The above information will assist the legal service office to open a file and obtain a legal opinion on the legal question at hand.
- 20.2.6 It remains the instructing programme responsibility to make follow-ups and to submit the completed legal opinion for further processing.

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21. CONTRACTS, MEMORANDUMS OF AGREEMENTS, LEASE AGREEMENTS, MEMORANDUM OF UNDERSTANDING

- 21.1 The request for a drafting/correction or amendment of any form of an agreement shall be made in writing to the Directorate Legal Services.
- 21.2 Adequate background to the agreement shall be provided to enable legal services to assess the legal exposure of the department regarding the agreement.
- 21.3 A request for consultation to supplement the written submission may be made upon receipt of the request.
- 21.4 The request for assessment of an already drafted agreement shall be finalized within seven (7) working days subject to the reasonable extension upon request to the Director Legal Services.
- 21.5 The drafting of a new agreement shall be finalized within a period of ten (10) working days or if more complex in nature as soon as possible, subject to the reasonable extension upon request to the Director Legal Services office.
- 21.6 The responsibility to ensure proper capturing of the technical aspects of the agreement and further information to enable a proper contract, remains with the relevant Programme.
- 21.7 All types of agreement requests to the Directorate Legal Services must be sent in writing and in an electronic format, to enable ease of working operations.
- 21.8 All types of agreements instructed by a programme to the Directorate Legal Services office, shall be issued with a certificate by legal services, after which the relevant programme have the responsibility to obtain approval from the Accounting officer as the only legal authority to enter and bind the department in any type of contractual obligation.
- 21.9 No contractual obligation will be signed and entered without the certification of the Directorate Legal Services Office and the signature of the Accounting Officer.

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- 21.10 It remains the sole responsibility of each programme to follow up on their documents as and when it had been submitted to the various divisions in the department including but not limited to the approval of the agreement from the Accounting Officer's office.
- 21.11 A contractual agreement that was not vetted and certified by the Legal Service programme and signed by both parties to the agreement of which the relevant authority being the Accounting Officer as legal signatory party to any departmental agreement shall not be binding to the department and will be seen as null and void.
- 21.12 Only contractual agreements that was properly vetted and signed by the Accounting Officer shall be a binding agreement.
- 21.13 All valid approved contractual agreements as per clause 21.12 above, shall be kept on record for its duration by the requesting programme.

22. COMPANY SCREENING FOR CONTRACTORS SUPPLYING SERVICES TO PROVINCIAL DEPARTMENTS

- 22.1 As per the Provincial Circular approved 26 July 2022 with reference 2/14/1 on the subject matter above, Supply Chain Management with the relevant programme is obligated to ensure that company screening is executed by the relevant authorities before actual appointment.
- 22.2 This screening procedures is inline with the following legislative provisions:
- 22.2.1 The State Security Agency (SSA) requirements.
 - 22.2.2 The National Strategic Intelligence Act (Act no 39 of 1994) as amended by (Act 67 of 2002) the State Security Agency (SSA).
 - 22.2.3 National Key Point Act, 1980 (Act no 102 of 1980).
- 22.3 The purpose is to ensure that the companies is able to render the service of their appointment.
- 22.4 In addition, it ensures that companies that are granted access to potential classified information, that such information is secured and protected from exploitation.
- 22.5 The screening process is normally valid for the period of the contract of services.

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- 22.6 Ideally it will be preferred that there is a certificate issued on the screening process executed before the department sign a contract or appoint a service provider to render services to an organ of state as it may potentially minimize the possibility of suppliers that are not able to render the services that they are appointed to.
- 22.7 Service providers that are not able to render the service to an organ of state within the appointed period should only be compensated for the actual work executed, after which their services will be terminated, and the suppliers should be blacklisted.

23. MATTERS FROM THE OFFICE OF THE PUBLIC PROTECTOR

- 23.1 Public Protector is a Chapter 9 institution established in terms of section 181 of the Constitution of the Republic of South Africa with a mandate in terms of the Public Protector Act, 23 of 1994 to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged to be improper or result in any impropriety or prejudice; to report on such conduct and to take appropriate remedial action.
- 23.2 Office of the Public Protector and the Department of Rural and Agricultural Development signed a Response Protocol agreement to formalize their interactions and support their respective mandates and quality service to their employees / clients / stakeholders and the public. The signed agreement greatly informs this cooperation framework.
- 23.3 Upon receipt of the enquiry from the Public Protector, the same shall be forwarded to the relevant programme manager within the first 48 hours of receipt or within a reasonable period prior or thereafter. The enquiry shall be dealt with as follows:
- 23.3.1 A final response on simple matters be submitted to the legal services programme within a period of five (5) working days from the receipt date of the enquiry.
 - 23.3.2 A preliminary response on complex matters shall be submitted to the legal services within a period of five (5) working days from the receipt date of the enquiry.

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- 23.3.3 The final response shall be submitted within a period identified by the legal services programme as the deadline provided by the Public Protector for the submission of the aforementioned information to enable the consideration of the final response with evidential proof were applicable for signature by the Accounting Officer.
- 23.3.4 The signed response will be regarded as the final response to be submitted to the Public Protector prior to or within the required deadline provided.
- 23.3.5 Legal Services have a responsibility to assess the requests in terms of the deadline provided by the Public Protector, if such timeline is sufficient to provide an adequate response, if not, and extension can be requested from the Public Protector to allow an adequate response as required.
- 23.3.6 The successful application of a response to the Public Protector Inquiry, depends on the cooperation of the relevant programme from which information is required.

24. CONSULTATIONS AT VARIOUS LEVELS

- 24.1 All consultations required with every official of the department with respect of any claim, legal matter instituted against the department shall be arranged through the Directorate Legal Services office in turn to liaise with not only the counsel appointed, but also to obtain further particulars of the matter prior to an instruction or advice to the accounting officer on the recommended approach.
- 24.2 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 all consultations as scheduled and arranged.
- 24.3 The said consultations shall be held either at the Directorate Legal Services office, the State Attorney, the Advocate Chambers, or any counsel appointed as an expert's office, or an office location of their choice.
- 24.4 Arrangements for such consultations shall at all times, be made timeously where feasible.

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- 24.5 Traveling and S&T expenses etc. for such consultations were applicable shall be at the official required for the consultation process programme account, the Directorate Legal Services Office shall not be held liable for such budget implications.
- 24.6 It is of utmost dependance of the officials that are involved in a case to be responsible in attending these consultations as the success of the case depends on the valuable information shared with the Directorate Legal Services Office and that of the legal counsel appointed.
- 24.7 If the case is in Court and such witness is not available during trail that officials programme will be liable for the payment of the legal cost if the case was postponed due to the unavailability of such witness/es in court.
- 24.8 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 before Court until the matter is finalized, no exceptions.

25. DEBT COLLECTION

- 25.1 Due to the nature of a debt incurred by an official in the department, including but not limited to an act of omission could attract liability by the Department.
- 25.2 If the nature result out of an act or omission of a state employee who has been acting outside the normal scope or authority of his employment, such incident could attract liability that could cause harm to the department and if such arise the Accounting Officer, Legal Counsel, State Attorney etc. will advise on the extend of the liability incurred and the legal action that will be taken to recover such losses from the official concerned.
- 25.3 If it is a debt by disciplinary, or other nature of an omission, the department can recover or institute recovery against such official for such losses suffered to be recovered in full either by legal action or if possible and feasible by an AOD agreement that could be dealt with internally, which the official in omission will have to comply with.
- 25.4 Instances where an AOD agreement in omission can be applied internally as follows:
- 25.4.1 If the employee is still working within the Department.
 - 25.4.2 If the employee is still working for the Government.

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- 25.4.3 If the employee has been found guilty of any conduct or omission in this regard.
 - 25.4.4 If the employee disciplinary matter concluded recovery of such amounts.
- 25.5 Alternative legal action or legal avenues will be instituted against any employee in conduct or omission resulting in a debt recovery owed to the state.

26. SETTLEMENT AUTHORITY

- 26.1 If the matter requires to be settled, the Directorate Legal Services will facilitate the process and see to it that the matter is dealt without necessarily having to engage the state attorney or alternative a panel of attorney's / advocates depending on the nature and value of the matter referred, if such can be executed internally, with the approval of the relevant authority.
- 26.2 This is a manner to avoid unnecessary litigious matters, which is either not a defensible matter, value for money and legal cost implications to be considered if it is based on a small amount and the nature of the matter referred.
- 26.3 Any settlement and the grounds for such shall be submitted for approval by the Director Legal Services to the Accounting Officer, and such shall be communicated to the relevant programme that referred the matter for payment.
- 26.4 Such payments made by settlement approval from a relevant programme shall provide the Director of Legal Services with the necessary receipts as to finalization of the matter.
- 26.5 In case the matter of a settlement was engage with an appointed counsel or the state attorney' advice, such settlement discussion will be authorized by the Accounting Officers directive and payment will be made in accordance.

27. LITIGATION REGISTER FOR ALL LITIGATION MATTERS

- 27.1 A litigation register shall be kept by the Legal Services Office, for record purposes, tracking and tracing of information and monitoring of progress on cases.
- 27.2 This litigation register will incorporate all litigious matters received.

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27.3 The Litigation register is a highly confidential document and shall not be given to anyone on request, with exception of the Executive Authority, Accounting Officer, the Chief Director Corporate Services and or the Auditor-General in terms of AFS reporting when and if requested.

28. PRACTICALITY IN THE APPLICATION OF THE PROMOTION TO ADMINISTRATIVE JUSTICE ACT (ACT NO 3 OF 2000) (PAJA)

- 28.1 PAJA promotes and complements the provisions of transparent procedures and guidance in lawful decision-making processes.
- 28.2 PAJA can be customized for an Organs of State to the specific mandate of a department.
- 28.3 This is normally when programmes introduce decisions in line with a policy, framework, manual, business plan etc. in the normal execution of their duties, including the Batho-Pele Principles. Examples the introduction of a particular deadline that applies to an application, the setting of compliance criteria and the reasons as to why an application is compliant or not, or the non-responsiveness of a tender or bid etc.
- 28.4 Programme managers must understand the importance of their actions and decisions in the normal execution of their duties.
- 28.5 Clear criteria are required for decisions on funding, tenders, bid applications etc.
- 28.6 When receiving any application, it is a courtesy of Batho-Pele and PAJA requirement to acknowledge receipt of any correspondences or applications.
- 28.7 PAJA and the Batho-Pele Principles places a duty of care in processing applications / decisions etc.
- 28.8 PAJA places a responsibility to provide written feedback to all applicants, whether they were non-compliant, compliant, or non-response or acceptable to the department.
- 28.9 These decisions much be clear and transparent when communicated.
- 28.10 The application of the case on merits and facts must be considered in the final decision.
- 28.11 In the stating of subordinate decisions, prior to the final decision the following considerations are applicable:
- 28.11.1 The conditions attached to the main decision.

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- 28.11.2 Time limits attached to the main decision.
- 28.11.3 Exceptions attached to the main decision.
- 28.11.4 Exemptions attached to the main decision.
- 28.11.5 Potential assessments when a payment is required etc.
- 28.11.6 Any history of the matter at hand.
- 28.11.7 The facts on which the decision is based.
- 28.11.8 Any regulations or policies that are applicable etc.
- 28.11.9 Were reasons being not a requirement, the application will follow the right to request written reasons through PAIA and POPIA.

28.12A practical roadmap in the application process is:

- 28.12.1 Assessment of the type of application received.
- 28.12.2 Understanding the request by identification of the information in line with the set criteria, whether the information is adequate or not.
- 28.12.3 Test the identification of the information against any relevant legal provisions, helpful material, such as internal policies, delegations, financial legislation (PFMA, DORA, Treasury Regulations, SCM Practice notes, internal controls, manuals, forms, templates etc.), that were developed, to ensure your decision is compliant with the applicable rules of the department to arrive at an easier transparent decision.

28.12.3.1 When looking at information the following will usually be applicable:

- 28.12.3.1.1 Am I the delegate authority to take a decision?
- 28.12.3.1.2 Am I competent to take a decision, (If the authority to take a decision had been delegated to you by virtue of your duties)?
- 28.12.3.1.3 Am I potentially biased, if so, revert from further interaction.
- 28.12.3.1.4 Are there procedural requirements, regulations etc.?
- 28.12.3.1.5 What are the substantive requirements for compliance with the set criteria?
- 28.12.3.1.6 Are there any other concerns that must be taken into consideration, for example?

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- (a) Incomplete information submitted by the applicant?
- (b) What are the documents that were to be submitted?
- (c) Minimum age required?
- (d) Is the applicant a South African Citizen?
- (e) Does the applicant live in South Africa?
- (f) Is the applicant locally based and regularly accessible pending the required project?
- (g) Is there a need for State Support, for example assets or resources above a set criterion for State Support?
- (h) What is the closing deadline of the application?
- (i) Was the advertisement outlining the set criterion in the local newspaper?
- (j) Did the applicant comply with all necessary pre-requisites?
- (k) Is the applicant VAT registered and does the requirement set VAT registration?
- (l) Is it a valid VAT certificate?
- (m) Was the VAT pin provided?
- (n) What type of entity is applying in line with the set criterion?
- (o) Does the type of entity fall within the criterion as outlined in the advertisement for legitimate consideration? If not, why not?
- (p) Is there an available approved budget?
- (q) In the event of a supplier/ contractor etc. if prior work were provided, did they properly execute the project or not?
- (r) In the event of suppliers/ contractors were they adequately vetted?
- (s) Were all suppliers / contractors etc. been requested to provide quotations if it is a bid application, if not, why not?
- (t) Did the applicant receive any previous funding, in the past?
- (u) Is the applicant a first-time funding applicant?
- (v) Is this a potential double dipping application?

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- (w) Has the tender or funding application been approved or not approved?
- (x) Written reasons must be provided in line with the policies and relevant requirements etc. including any additional internal departmental rules, however this is not a conclusive list and not limited to the set examples above as programme managers should consider their policies, frameworks, criteria for a limitation of the scope towards the application of the budget across the targeted area etc.

29. ROAD MAP IN CONCLUSION

- 29.1 This framework constitutes a roadmap towards the attainment of the immediate and long-term goals.
- 29.2 Every effort should as a matter of departure be made to avoid litigation.
- 29.3 The Legal Services programme and with the cooperation of the departmental management will be responsible for ensuring compliance with this guideline as a road map towards all litigious matters governing the department as and when it may occur.

30. LEGAL LAW LIBRARY

- 30.1 Legal Services are in constant need of an online law library for legal research in the daily execution of their mandate.
- 30.2 Legislation and legal practices are ever evolving, and an online law library is more effective, affordable and takes up lessor space towards research of litigious matters.
- 30.3 This requires an online legal prescription that is annually renewable.

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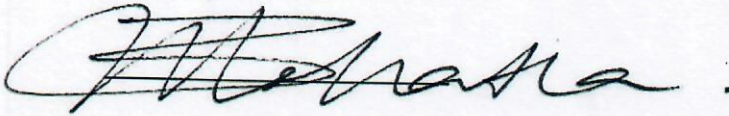
31. REVISION DATE OF THE LITIGATION POLICY FRAMEWORK

31.1 Given the changing legal environment and its evolution regulatory nature, it may be necessary to review the litigation policy framework as and when required to ensure it stays relevant to the current legal position.

32. APPROVAL

32.1 This litigation policy framework will become effective from the date of approval by the Head of Department or otherwise stated as per his directive or prerogative.

SIGNED AT MAMHILENE ON 17th THIS DAY OF MAY 2023.



SIGNATURE

HEAD OF DEPARTMENT

NORTH-WEST DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT