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TREASURY CIRCULAR NO. 27/2020 (SUPPLEMENTARY 2 OF 2021)

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THE MINISTER OF AGRICULTURE

THE MINISTER OF COMMUNITY SAFETY

THE MINISTER OF CULTURAL AFFAIRS AND SPORT

THE MINISTER OF EDUCATION

THE MINISTER OF FINANCE AND ECONOMIC OPPORTUNITIES

THE MINISTER OF HEALTH

THE MINISTER OF HUMAN SETTLEMENTS

THE MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

THE MINISTER OF SOCIAL DEVELOPMENT

THE MINISTER OF TRANSPORT AND PUBLIC WORKS

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UPDATED TRANSVERSAL STANDARD OPERATING PROCEDURES ON IRREGULAR AND FRUITLESS AND WASTEFUL EXPENDITURE FOR DEPARTMENTS AND PUBLIC ENTITIES

1. PURPOSE

- 1.1. The purpose of this circular is to disseminate the updated Transversal Standard Operating Procedures to provide guidance to departments with the implementation of the Irregular Expenditure Framework and Fruitless and Wasteful Expenditure Framework.

2. BACKGROUND

- 2.1. On 16 May 2019 and 27 August 2019, the Office of the Accountant General issued National Treasury Instruction No.2 and No.3 of 2019/20 respectively, together with concomitant Frameworks, to further regulate irregular expenditure and fruitless and wasteful expenditure for institutions subject to the Public Finance Management Act of 1999 (Act No. 1 of 1999), as set out in the Frameworks.
- 2.2. To assist accounting officers to manage irregular and fruitless and wasteful expenditure, Provincial Treasury drafted the attached Standard Operating Procedures (SOP's) - Annexure A: Transversal SOP on irregular expenditure and Annexure B: Transversal SOP on fruitless and wasteful expenditure to ensure that officials within departments timeously prevent, detect, assess, determine and correct alleged irregular and fruitless and wasteful expenditure in accordance with the general responsibilities of the accounting officer as per section 38 of the PFMA, which amongst others, requires accounting officers to take effective and efficient steps to prevent irregular and fruitless and wasteful expenditure.

3. REQUIRED

- 3.1. Accounting officers are required to review and update Annexure A: Transversal SOP on irregular expenditure and Annexure B: Transversal SOP on fruitless and wasteful expenditure, in line with the structural arrangements of the department in dealing with irregular and fruitless and wasteful expenditure, prior to the adoption of the SOP's.
- 3.2. Accounting officers may utilise Appendix D: Reporting in the note to the AFS and IFS, to disclose all irregular expenditure and fruitless and wasteful expenditure in the note to the AFS and the quarterly IFS.
- 3.3. Accounting officers must ensure that the content of this Circular is brought to the attention of all relevant officials within their institution.
- 3.4. Should you require any further information, clarity or assistance on the content of the Circular, please contact Franklin Links at Franklin.Links@westerncape.gov.za.

MS A ABOO

DIRECTOR: PROVINCIAL GOVERNMENT ACCOUNTING AND COMPLIANCE

Annexure A

Standard Operating Procedure (SOP) IRREGULAR EXPENDITURE				
Department:	Western Cape Department of			
SOP Group:	Financial Management: Internal Control			
SOP Number:				
Version Number:	1			
	Initial & Surname	Position	Signature	Date
Prepared by:				
Checked by:				
Approved by:				
Revision History:				
Effective Date:	Date of signature by the Accounting Officer.			

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1. BACKGROUND

- 1.1 On 20 May 2019, National Treasury issued and published National Treasury instruction No. 2 of 2019/20 in terms of section 76(2)(e) and 76(4)(a) of the Public Finance Management Act No. 1 of 1999 (hereafter the PFMA), and concomitant Irregular Expenditure Framework with the purpose, to further regulate irregular expenditure in provincial departments and public entities, subject to the PFMA and as set out in the Irregular Expenditure Framework, which outlined generic procedures for accounting officers and accounting authorities when dealing with irregular expenditure.
- 1.2 Previously, irregular expenditure was dealt with in terms of National Treasury practice note 4 of 2008/09 and the 2018 Irregular Expenditure Framework, which has now been rescinded. Furthermore, National Treasury has delegated the power and/or duty to condone irregular expenditure to provincial treasuries, effective from 17 May 2019.

2. PURPOSE

- 2.1 The purpose of the SOP is to outline the procedures for Departmental officials when dealing with irregular expenditure in order to assist the officials in timeously preventing, detecting, determining, investigating and correcting alleged irregular expenditure in accordance with the general responsibilities of accounting officer as per section 38 of the PFMA, Treasury Regulations 9.1 and National Treasury instruction No. 2 of 2019/20, which amongst others, requires an accounting officer to implement effective, efficient and transparent processes of financial and risk management to prevent and detect irregular expenditure.

3. APPLICABILITY

- 3.1 This SOP applies to all employees of the Department.

4. GENERAL DEFINITIONS

WORD/ACRONYM	MEANING
Assessment	A test conducted by the IC function or another relevant function to identify possible irregularities in transactions processed and to confirm the alleged non-compliance and/or irregular expenditure;
AO	The Accounting Officer in the Department;
AFS	Annual Financial Statements;
BAS	Basic Accounting System;
Condonation	A process whereby the delegated authority acknowledges the irregular expenditure and pardons the action that has resulted in the incurrence of irregular expenditure;
CFO	Chief Financial Officer;
CWC	Condonation Working Committee established within Provincial Treasury;
Determination	An informal assessment conducted by the Internal Control unit or another relevant function to examine or analyse the particular instance of non-compliance relating to the irregular expenditure to establish the facts and losses related to the transaction;
Discovery	Identification of alleged irregular expenditure by the Internal Control function or another relevant function via compliance checking or upon report by an official/s or financial staff;

WORD/ACRONYM	MEANING
FA	The Financial Accounting function in the Department;
Head Official: PT	The Head of the Department - Provincial Treasury;
Financial Misconduct	The wilful or negligent making of or permitting irregular expenditure or failing to exercise a power or perform a duty to, amongst others, take effective and appropriate steps to prevent irregular expenditure within an area of responsibility;
IC	The Internal Control function of the Department;
IFS	Interim Financial Statements;
Investigation	A formal probe conducted by a function performing investigations to analyse the particular instance of non-compliance to establish the facts about the transaction. An investigation must be instituted, if there is a suspicion of fraud, corruption or other criminal conduct emanating from the incurrence of irregular expenditure
Checklist & lead schedule	A list of non-compliance and irregular expenditure matters in progress to be disclosed in the notes to the annual financial statements. It also outlines the progress related thereto;
Loss	An instance of losing money or financial value in a transaction
Transgression	An act that goes against a law, rule, or code of conduct;
MCS	Modified Cash Standards;
MEC	Member of Executive Committee or Executive Authority of the Department;
Non-compliance	The failure to comply with a specific legal requirement;
NTR	National Treasury Regulations;
NTI	National Treasury Instruction;
Removal	The process of eliminating the irregular expenditure from the notes to the annual financial statements, provided the process was followed;
Relevant authority	The person or institution whose approval would have been required prior to entering into that transaction or incurring such expenditure or the institution responsible for the legislation that was transgressed. In terms of paragraph 7.2 of National Treasury instruction no. 2 of 2019/20, all requests for condonation of irregular expenditure from provincial departments must be submitted to their relevant Provincial Treasury;
Recording	The process of capturing the financial information relating to a particular transaction, event, asset or liability in the electronic or manual accounting records of the department for the purposes of disclosure as secondary financial information;

WORD/ACRONYM	MEANING
Recognition	The process of incorporating in the statement of financial position or statement of financial performance an item that meets the definition of an element and satisfies the criteria for recognition set out in paragraph 66 of the Modified Cash Standards. It involves the depiction of the item in words, and in monetary amounts, and the inclusion of those amounts in the statement of financial position or financial statement of financial performance totals;
SAPS	South African Police Service;
SCM	The Supply Chain Management function of the Department;
PAG	The Provincial Accountant General within the Provincial Treasury;
PFS	Provincial Forensic Services;
PFMA	Public Financial Management Act of 1999; and
PT	Provincial Treasury.

5. LEGISLATIVE AND REGULATORY FRAMEWORK

- 5.1 In terms of section 38(1)(c)(ii) of the PFMA, the accounting officer of an institution must take effective and appropriate steps to, amongst others, prevent irregular expenditure.
- 5.2 In terms of sections 38(1)(g) of the PFMA, accounting officers on discovery of any irregular expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury.
- 5.3 In terms of section 38(1)(h)(iii) of the PFMA, accounting officers must take effective and appropriate disciplinary steps against any official in the service of the department who makes or permits irregular expenditure.
- 5.4 In terms of section 40(3)(b) of the PFMA, the annual report and audited AFS that the accounting officer must submit within five (5) months of the end of the financial year to the relevant treasury and to the executive authority responsible the department as per section 40(1)(d), must include:
- (i) any losses through criminal conduct and irregular expenditure that occurred during the financial year;
 - (ii) any criminal or disciplinary steps taken as a result of such losses and irregular expenditure; and
 - (iii) any material losses recovered or written off.
- 5.5 In terms of section 45(c) of the PFMA, an official in a department must take effective and appropriate steps to prevent irregular expenditure within that official's areas of responsibility.
- 5.6 In terms of section 76(2)(e), the National Treasury may make regulations or issue instructions applicable to departments, concerning irregular expenditure.
- 5.7 In terms of section 81(1)(b) of the PFMA, an accounting officer commits an act of financial misconduct if that accounting officer wilfully or negligently -
- (i) Fails to comply with requirements of amongst others, section 38 and 40; or
 - (ii) makes or permits irregular expenditure.

- 5.8 In terms of section 81(2) of the PFMA, an official of a department to whom a power or duty is assigned in terms of section 44 of the PFMA commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.
- 5.9 In terms of NTR 9.1.1, the accounting officer of an institution must exercise all reasonable care to prevent and detect irregular expenditure, and must for this purpose implement effective, efficient and transparent processes of financial and risk management.
- 5.10 In terms of NTR 9.1.2, when an official of an institution discovers irregular expenditure, that official must immediately report such expenditure to the accounting officer. Such expenditure must also be reported in the monthly report, as required by section 40(4)(b) of the PFMA.
- 5.11 In terms of NTR 9.1.3, when an accounting officer determines the appropriateness of disciplinary steps against an official in terms of section 38(1)(g) of the PFMA, the accounting officer must take into account -
- (a) the circumstances of the transgression;
 - (b) the extent of the expenditure involved; and
 - (c) the nature and seriousness of the transgression.
- 5.12 In terms of NTR 9.1.4, the recovery of losses or damages resulting from irregular expenditure must be dealt with in accordance with NTR 12.
- 5.13 In terms of NTR 9.1.5, the amount of the irregular expenditure must be disclosed as a note to the annual financial statements of the department.

6. DEFINITION AND RECOGNITION OF IRREGULAR EXPENDITURE

6.1 Definition

- 6.1.1 Irregular expenditure is expenditure that is incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including:
- (a) The PFMA*,
 - (b) The State Tender Board Act, 1968 (act no. 86 of 1968) or any regulations in terms of that act, and
 - (c) Any provincial legislation providing for procurement in that provincial government.

- 6.1.2 The definition of irregular expenditure extends over the term contravention of "any applicable legislation" as the term "contravention" **must relate to the incurrence of a financial transaction** by the Department.

**Regulations and instructions issued in terms of section 76 of the PFMA e.g. the National Treasury Regulations, Provincial Treasury Instructions and the Cost Containment Measures. **

6.2 Examples of irregular expenditure

- 6.2.1 The late submission of the AFS to PT is a contravention of section 40(1)(c)(ii) of the PFMA; however, the contravention does not relate to the incurrence of a financial transaction. Therefore, such a contravention will not meet the definition of irregular expenditure. A transaction for catering cost relating to a year-end function will be considered irregular as it is in contravention with the Cost

Containment Measures issued in terms of Section 76 of the PFMA that determines that year-end functions may not be funded from government funds.

6.3 Recognition of irregular expenditure

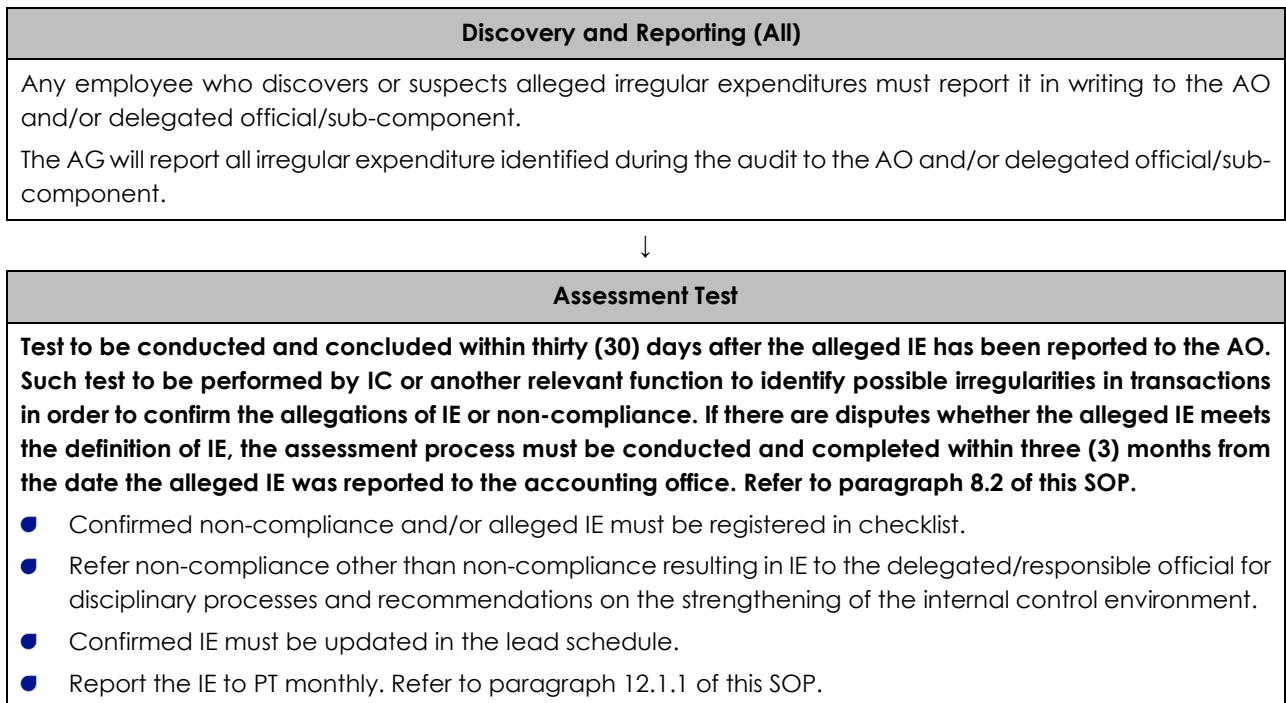
6.3.1 In terms of the MCS, a non-compliance must be linked to a financial transaction for the Department to incur irregular expenditure. Although a transaction may trigger possible irregular expenditure, the Department will only record irregular expenditure when a payment pertaining to the non-compliance is made (i.e. when the expenditure is recognised in accordance with the MCS).

6.4 Fruitless and Wasteful Expenditure vs Irregular Expenditure

6.4.1 Fruitless and Wasteful expenditure is defined as expenditure which was made in vain and that could have been avoided had reasonable care been exercised. Irregular expenditure refers to a transaction for e.g. where the prescribed procurement processes was not followed, or the goods or service was procured in contravention with a stipulation of the PFMA or instruction issued in terms of the PFMA.

6.4.2 If catering was procured for an official meeting and all the correct procurement procedures were followed but it was later discovered that 5 officials who R.S.V.P. prior to the event as required by the SOP for Catering Expenditure did not attend the event without any acceptable reason, the expenditure relating to the 5 meals will be fruitless and wasteful expenditure as the expenditure could have been avoided had the caterer been informed prior to the event. The transaction is thus not irregular as the procurement processes are not in contravention with any stipulations of the PFMA or instruction issued in terms of the PFMA.

7. DEPARTMENTAL PROCESS FLOW FOR IRREGULAR EXPENDITURE



Determination Test and/or Investigation

Analysing the particulars of non-compliance relating to the IE of each case by the IC unit or another relevant function, in order to establish the facts and to determine any losses related to the transaction. Refer to paragraph 8.3 of this SOP.

- The determination test must commence and be finalised within 30 days after assessment of IE. If there are any disputes, the determination process must be completed within four (4) months after the assessment of IE.
- After the determination test has been finalised and fraud or corruption is suspected, the AO must within 30 days, refer the case to PFS for investigation.
- Investigations must be instituted within 30 days or as soon as reasonably possible upon referral of the matter.
- For less serious cases, the Department may select to conduct their own investigation.
- If fraud is not suspected, the Department must determine if any loss has been suffered by the Department and quantify the amount.
- The Department must make recommendations on the findings, recovery of losses and possible referral for instituting disciplinary procedures to the CFO, for recommendation to the AO.
- The CFO will inform the relevant delegated/responsible official on these findings and disciplinary procedures as recommended by the AO.
- Update the lead schedule and Loss Control system, where applicable. Refer to paragraph 8.5 of this SOP.

Recording and condonation

- Update the Loss Control System and lead schedule with all new cases or information received.
- Follow-up on the status of outstanding disciplinary proceedings or investigations on cases.
- Inform the FA unit in writing of losses for recovery.
- Compile submission to request for condonation of IE for approval by AO.
- Request condonation from PT.
- Cases not condoned by PT must be referred to the AO for approval, to remove these cases from the lead schedule. (Only cases where no losses were identified).
- Update the lead schedule with condoned/not condoned cases and report progress on irregular expenditure to PT by the 20th of each month.

Recovery and Reporting

- FA unit to create debt on BAS and recover loss.
- Report new irregular cases and movements on existing cases to PT on a monthly basis and report quarterly in the IFS and at year-end in the AFS.

8. DISCOVERY, ASSESSMENT, DETERMINATION OR INVESTIGATIONS RELATED TO IRREGULAR EXPENDITURE

8.1 Discovery of alleged irregular expenditure

8.1.1 An employee who becomes aware of or suspects the occurrence of irregular expenditure must immediately, in writing, report such alleged irregular expenditure to either:

- a. the AO in terms of Treasury Regulation 9.1.2; or
- b. IC unit/delegated official in terms of the AO's delegations
- c. For this purpose, the form "Reporting of Alleged Irregular Expenditure" - **APPENDIX E** should be used.

8.1.2 If the alleged irregular expenditure is reported directly to the AO:

- a. the AO must forward all the reported cases, immediately to the IC unit or another relevant function via the CFO; and
- b. the discovery date is the date on which the alleged irregular expenditure was reported to the AO.

8.1.3 Financial staff must immediately report the details and forward all relevant documentation directly to the IC unit or other relevant function for assessment, upon becoming aware of alleged irregular expenditure.

8.1.4 Irregular expenditure is also identified via the post audit testing, hence the date the alleged irregular expenditure is identified via post audit testing, is the date of discovery.

8.2 Conducting the Assessment Test (IC)

8.2.1 Upon discovery or receipt of notification of non-compliance and alleged irregular expenditure, the IC unit must record the non-compliance in the "checklist" - **APPENDIX A**.

8.2.2 The IC unit must conduct an assessment test on the non-compliance/alleged irregular expenditure, to identify possible irregularities in transactions that have been processed to confirm whether:

- (a) irregular expenditure was incurred; or
- (b) the incident was the result of non-compliance with legislation that did not relate to the incurrence of a financial transaction or non-compliance of a departmental instruction/policy*.

*the PFMA definition of irregular expenditure does not include departmental instructions/policies when considering instances of irregular expenditure. E.g. if the AO issues a Departmental instruction/policy which prescribes a cost limit lower than the limit prescribed in terms of NT's Cost Containment Measures, a transgression of the limit prescribed in terms of the Departmental instruction/policy would not be regarded as irregular expenditure based on the PFMA definition.

8.2.2.1 Confirmation of irregular expenditure

- a) If a transaction has been processed in contravention of legislation (non-compliance) and the same transaction has a financial implication (payment was made or a liability was recognised in the accounting records), it must be recorded as irregular expenditure.
- b) The IC unit should consult with the relevant parties involved e.g. SCM, FA, etc. and consider all relevant information prior to making a final recommendation, on a case by case basis.
- c) If the irregular expenditure has been confirmed, the details must be recorded/updated in the "checklist", accordingly.
- d) The details of the confirmed irregular expenditure should also be recorded in the "lead schedule" - for monitoring purposes.
- e) The IC unit or another relevant function must in addition to the monthly reporting on irregular expenditure as outlined in Treasury Circular 9 of 2020, complete and submit "Appendix C": In-Year Monitoring (IYM) report on a monthly basis, in accordance with section 38(1)(g) and (h) of the PFMA.

8.2.2.2 Confirmation of Non-compliance

If during the assessment it has been confirmed that the identified non-compliance does not constitute irregular expenditure, the IC unit must -

- (a) Make recommendations to strengthen the internal control environment where the non-compliance was identified and confirmed;
- (b) Liaise with the responsible component to agree the steps to be taken to address the non-compliance;
- (c) Refer the non-compliance matter to the delegated/responsible official upon approval by the AO or CFO, to consider disciplinary processes against the employee responsible for the non-compliance in terms of paragraph 20(b) of the Irregular Expenditure Framework (also see paragraph 11 of this SOP);
- (d) AO's must be guided by their internal policies and the PSA, when referring minor non-compliance issues for disciplinary steps as per paragraph 44(a) of the Framework, which requires the AO to refer irregular expenditure matters to the Human Resource function for assistance with the disciplinary processes; and
- (e) Update the details of the confirmed non-compliance in the lead schedule accordingly.

8.2.2.3 Assessments must be completed within 30 days, from the date of discovery of the alleged irregular expenditure or non-compliance. If there are any disputes, the assessment must be completed within three (3) months after the assessment of IE.

8.3 Conducting the Determination Test (IC)

8.3.1 Upon confirmation of the irregular expenditure as per paragraph 8.2, the IC unit must conduct a determination test to analyse the particulars of non-compliance (which has resulted in irregular expenditure being incurred) to establish the facts and losses, if any, related to the transaction.

- 8.3.2 The determination test must confirm the facts and losses associated with the transaction and to provide information related to the identification including:
- (a) root causes that led to the transgression;
 - (b) employee(s) responsible for the irregular expenditure;
 - (c) whether the department suffered a loss; and
 - (d) any breakdown in the designed internal controls.
- 8.3.3 The determination test must commence and be finalised within 30 days after assessment of IE. If there are any disputes, the determination process must be finalised within four (4) months after the assessment of IE in accordance with paragraph 21 of the Irregular Expenditure Framework.
- 8.3.4 If fraud, corruption or other criminal conduct is suspected at any point while conducting the determination test, the IC unit must refer the case for investigation as per paragraph 8.4.
- 8.3.5 If fraud is not suspected, the IC unit must document their findings and make recommendations on possible disciplinary steps as well as the recovery of losses where applicable, for approval by the AO.
- 8.3.6 The IC unit or another relevant function must inform the delegated/responsible official where the transgression originated to institute disciplinary process in line with paragraph 8.2.2.2 (d) of this SOP and make recommendations on any breakdown of internal controls as prescribed by the AO. Refer to paragraph 11 of this SOP for the management of financial misconduct.
- 8.3.7 If the determination test confirms that a loss was incurred by the Department, the Loss Control section in the Department must be informed to update the Loss Control system and proceed with the monitoring of the outstanding actions as per paragraph 8.5 of this SOP.
- 8.3.8 If the determination test confirms that the Department did not suffer a loss and value for money was achieved, the IC unit or another relevant function must:
- a. refer the matter related to irregular expenditure to the delegated/responsible official to institute disciplinary processes upon approval by the AO or CFO;
 - b. update the checklist & lead schedule accordingly;
 - c. follow up on outstanding actions as per the approved recommendations; and
 - d. institute the condonation process.
- 8.3.9 The determination test must commence and be finalised within 30 days after the assessment of IE. If there are any disputes, the determination process must be completed within four (4) months after the assessment of IE.
- 8.3.10 In the event the Internal Control unit or another relevant function is unable to meet the timeframes for the commencement and/or completion of assessments and determination tests, as stipulated in paragraphs 8.2.2.3, 8.3.3 and 8.3.9 of this SOP, the Internal Control unit or any relevant function are required to inform the AO, in writing, of the risk of non-compliance and the reasons for the non-compliance.

8.4 **Investigation into fraudulent cases and referral to the SAPS**

- 8.4.1 An investigation must be instituted, if there is a suspicion of fraud, corruption or other criminal conduct emanating from the incurrence of irregular expenditure.
- 8.4.2 The IC unit must recommend that the AO refer the case to PFS for investigation if fraud, corruption or criminal activities are suspected during the execution of the determination test.
- 8.4.3 If the AO refers the case to PFS for investigation, the IC unit must assist PFS by providing the PFS with all the details pertaining to the case in line with the Departmental Fraud Prevention and Implementation Plan.
- 8.4.4 If the AO is implicated in an alleged economic offence or irregularity during the execution of the determining test, the alleged fraudulent, corrupt or criminal activities must be reported in accordance with the Protected Disclosures Act and WCG Whistle-blowing Policy:
- a) by the Head of the IC unit or via the CFO's office;
 - b) directly to the National Anti-Corruption Hotline; and/or
 - c) the MEC of the Department.
- 8.4.5 The PFS has the mandate to conduct forensic investigations into allegations relating to economic offences (fraud, theft, corruption, etc.) committed against any WCG Department. However, when an AO is implicated in the alleged economic offence or irregularity, PFS may only investigate upon instruction by the Premier or relevant MEC after consultation with the Premier.
- 8.4.6 In the absence of approval from the Premier and/or the relevant MEC, and in accordance with the Protected Disclosures Act and WCG Whistle-blowing Policy, if PFS is the recipient of such an allegation, PFS will refer the matter to an appropriate body (for instance the Public Protector or Auditor-General) for investigation.
- 8.4.7 The investigation by PFS must commence within 30 days or as soon as reasonably possible after the matter has been referred for investigation. Where the AO is implicated in the allegation, the PFS investigation will commence as soon as possible after instruction from the Premier or relevant MEC, after consultation with the Premier.
- 8.4.8 The investigation by PFS may provide the following facts about the transaction to the referring authority, the AO, MEC or Premier -
- (a) root causes that led to the transgression;
 - (b) impact of the transgression;
 - (c) information on fraudulent, corrupt or criminal conduct;
 - (d) employee(s) responsible for the irregular expenditure;
 - (e) if the Department suffered a loss;
 - (f) if the matter must be referred to SAPS; and
 - (g) any breakdowns in the designed internal controls and the impact thereof.

- 8.4.9 On the conclusion of the PFS investigation, they will issue a report on the outcome of their investigation as per paragraph 8.4.7, to the AO or directly to the Premier and/responsible MEC, where the AO was implicated in the allegation. Where PFS do not address all the facts mentioned in paragraph 8.4.8 as part of its investigation, the outstanding facts will be determined by the Department's IC unit or other relevant function.
- 8.4.10 Once the investigation confirms that the irregular expenditure is related to a fraudulent, corrupt or criminal conduct or activity:
- a. the matter will be registered by PFS with SAPS within 7 days after the report has been issued to and consulted with the AO;
 - b. PFS will inform the AO once the case has been registered and provide the case number to the Department;
 - c. the AO must inform the MEC, PT and the Auditor-General within seven (7) after the matter has been reported to SAPS; and
 - d. With respect to the AO (acts as discussed in paragraph 8.4.4), the MEC must inform PT and the Auditor- General within seven (7) days after the matter has been reported to SAPS.
- 8.4.11 For less serious cases, the Department may select to conduct an internal investigation by the IC unit or other relevant function. It is the AO's duty to refer these cases to the relevant function for investigation within 30 days after the determination test has been finalised (if required).
- 8.4.12 The IC unit must update the lead schedule with all the details of the fraudulent, corrupt, and criminal acts reported to law enforcement agencies.

8.5 **Monitoring and Evaluation**

- 8.5.1 Upon completion of the determination test and/or investigation, the IC unit must:
- a. register any new cases/information in the Loss Control system;
 - b. update the lead schedule and Loss Control system accordingly;
 - c. follow-up on the status of outstanding disciplinary proceedings referred to the delegated/responsible official as per paragraph 8.2.2.2 (c) and 8.3.6 of this SOP;
 - d. follow-up on the implementation of steps taken to address the breakdown of internal controls to correct and prevent the reoccurrence of control weaknesses;
 - e. inform the FA unit in writing to recover any losses as identified during the determination test, as per paragraph 9 of this SOP;
 - f. Compile a submission for approval by the AO, to request PT to condone irregular expenditure as per paragraph 10.1 of this SOP;
 - g. obtain approval from the AO to remove those cases not condoned by PT from the lead schedule, as per paragraph 10.2 of this SOP; and
 - h. report monthly on the status of irregular expenditure to the Provincial Treasury by submitting a signed copy of **Appendix C: In-Year Monitoring (IYM) Report**, as prescribed in terms paragraph 70 - 71 of the Framework.

9. RECOVERY OF IRREGULAR EXPENDITURE

9.1 Informing Financial Accounting of recoveries to be instituted

- 9.1.1 If the results of the determination test conducted confirms that the Department suffered a loss from the incurrence of irregular expenditure and no fraudulent, corrupt or other criminal conduct was involved, the IC unit must inform the AO in writing to institute a claim against the responsible employee for recovery of the loss.
- 9.1.2 If the loss is emanating from a fraudulent, corrupt or other criminal conduct as determined by the investigation, the IC unit must after conclusion of the criminal case, inform the AO in writing, to institute a civil claim for the recovery of the loss.
- 9.1.3 The IC unit must update the checklist & lead schedule and the Loss Control System and notify the FA unit of the loss and to proceed with the recovery process.
- 9.1.4 The recovery of losses emanating from the incurrence of irregular expenditure must be performed in accordance with the Departmental Debt Management Policy. The FA unit should consider the steps referred to in paragraphs 9.2 to 9.6, when recovering any losses from officials.

9.2 Quantifying the debt/loss

- 9.2.1 The amount of debt recoverable from the responsible employee may equate to:
- (a) the value of the debt incurred as a consequence of his or her action(s) that led to the incurrence of irregular expenditure, or
 - (b) a lesser amount determined by the AO in accordance with the Debt Management Policy of the Department.
- 9.2.2 In a case where the AO is responsible for the debt, PT must determine –
- a) the value of the debt incurred as a consequence of his or her action(s) that led to the incurrence of irregular expenditure; or
 - b) a lesser amount.

9.3 Raising a debt

- 9.3.1 NTR 11.2 requires an AO to take effective and appropriate steps to timeously collect all money due to the Department.
- 9.3.2 A debt must be identified, reported and recorded in the books of the Department where such a debt arose from losses incurred as a result of irregular expenditure.

9.4 Informing the responsible employee of the debt

- 9.4.1 As soon as the FA unit becomes aware of the debt, the official responsible for the debt must be requested in writing, to pay the amount involved within thirty (30) days or within reasonable instalments. The “request in writing” essentially means that the debtor is placed “*in mora*”.
- 9.4.2 All debts incurred from losses emanating from the incurrence of irregular expenditure shall be interest bearing at the uniform interest rate prescribed in terms of section 80(1)(b) of the PFMA and shall be calculated using the simple interest method.

9.4.3 In cases where the employee has left the service of the Department, the FA unit must follow processes to recover the debt which may include, amongst others, engaging private debt management agencies on a no trace, no pay basis.

9.5 Liability in law (if there are disputes)

9.5.1 If the employee responsible for the debt is still in the employ of the Department and denies liability for the debt, the FA unit may refer the matter to the State Attorney to confirm the debtor's liability in law.

9.5.2 If the person responsible for the debt has left or is not in the employ of the Department and denies liability for the debt, the FA unit must refer the matter to the State Attorney to confirm the debtor's liability in law.

9.5.3 Prior to referring the case to the State Attorney, the FA unit should:

- a. conduct a cost versus benefit analysis by weighing the cost of soliciting the legal opinion from the State Attorney against the benefit to be derived in terms of the Departmental debt in dispute; and
- b. take a final decision based on the outcome of this analysis prior to proceeding to incur the additional expense.

9.6 Irrecoverable debt

9.6.1 If the debt becomes irrecoverable, the AO may write-off the debt in terms of NTR 11.4.

9.6.2 Where the AO is responsible for the debt and is unable to re-pay the debt, the AO must report the inability to pay to PT for consideration for the write-off of the debt.

10. CONDONATION AND REMOVAL

If the recommendation of the determination test confirms that no loss was incurred as a result of the contravention of legislation, and that value for money was achieved, the IC unit must refer the irregular expenditure to:

- a) PT for condonation upon approval by the AO; or
- b) AO for removal, if the irregular expenditure was not condoned by PT.

10.1 Referring irregular expenditure for condonation

10.1.1 Request for the condonation of irregular expenditure referred to PT must be addressed to the Head Official: PT for attention of the PAG.

10.1.2 The request for condonation of irregular expenditure may only be submitted to the AO or PT upon confirmation that the Department did not suffer a loss and value for money was achieved.

10.1.3 When preparing a submission for condonation, the IC unit must, as minimum, include the following information when requesting condonation -

- a) confirmation that a determination test was conducted;
- b) findings and recommendations of the IC unit that conducted the determination test;
- c) confirmation that an Investigation was conducted in cases of identified fraudulent, corrupt or other criminal conduct;

- d) confirmation that a criminal charge has been laid in the case of alleged fraudulent, corrupt or other criminal conduct;
 - e) finding and recommendations of a functionary that conducted the investigation;
 - f) confirmation that no losses were incurred and that value for money was achieved;
 - g) confirmation that disciplinary action was taken against the responsible employee(s); and
 - h) confirmation of remedial actions taken as recommended by the IC unit and confirmed by the AO to prevent the recurrence of such irregular expenditure in similar circumstances.
- 10.1.4 The IC unit must submit a soft copy of the AO's request for condonation of irregular expenditure together with the required supporting information addressed to the Head Official: Provincial Treasury and send to the PAG's Office at PT.helpme@westerncape.gov.za.
- 10.1.5 After obtaining PT's recommendation on the condonation of the case or not condoned, the IC unit must update the lead schedule accordingly;
- 10.1.6 The IC unit must submit a request to the AO to remove cases from the lead schedule, which were not condoned by PT.
- 10.2 **Referring cases not condoned to the AO for removal**
- 10.2.1 The AO may consider removing irregular expenditure that was not condoned by PT.
- 10.2.2 When preparing a submission to the AO to remove the case from the lead schedule, the IC unit must include the recommendations of the IC unit (in a case of a determination test) or PFS (in a case of an investigation) confirming that –
- a) the matter is free from fraudulent, corrupt or criminal acts;
 - b) disciplinary action was taken against the responsible employee(s);
 - c) the Department did not suffer any losses;
 - d) the non-compliance that led to the irregular expenditure has been addressed to ensure that such expenditure does not reoccur under similar circumstances; and
 - e) transactions of a similar nature are regularly reviewed to ensure compliance with the relevant prescripts.
- 10.2.3 On receipt of the AO's approval, the IC unit must update lead schedule and inform the FA unit to proceed with the removal of irregular expenditure from the notes to the annual financial statements.
- 10.3 **Condonation by the Provincial Treasury**
- 10.3.1 A CWC has been established by PT which is coordinated by the PAG's office, to assist the Head Official: PT in discharging his responsibility in terms of NTI 2 of 2019, which states that "all request for condonations of irregular expenditure of provincial departments and public entities listed in Schedule 3C or 3D of the PFMA must be submitted to their relevant provincial treasury".
- 10.3.2 The CWC will provide clarity and guidance to the delegated PT official, entrusted with the responsibility to consider request for the condonation of irregular expenditure and provide reasons and recommendations to AO's, when irregular expenditure is not condoned.

- 10.3.3 The PAG is the Chairperson of the CWC and the Financial Compliance unit within the Directorate: Provincial Government Accounting and Compliance is responsible for the secretariat function of the CWC.
- 10.3.4 The CWC shall convene every second (2nd) month and will consider all requests for condonation of irregular expenditure from provincial departments regardless of the value involved, excluding cases that are related to fraudulent, corrupt or other criminal conduct.
- 10.3.5 The CWC shall amongst others:
- a. recommend to the delegated PT official to grant or to decline a request to condone irregular expenditure via a departmental response letter, after giving due consideration to all relevant information;
 - b. recommend to the delegated PT official to refer an application to condone an irregular expenditure back to the requesting department to reconsider the outcomes/recommendations emanating from the determination test or investigation;
 - c. recommend to the delegated PT official to refer an application to condone irregular expenditure to any other official authority for advice; and to consider feedback reports for noting; and
 - d. respond timeously to all condonation requests and substantiate with reasons when irregular expenditure is not condoned.
- 10.3.6 The Financial Compliance unit shall provide AO's with PT's approved response within two(2) months of receiving the request to condone irregular expenditure, provided the departmental request complies with the minimum requirements as outlined in paragraph 56 of the Irregular Expenditure Framework and paragraph 10.1.3 of this SOP.

11. FINANCIAL MISCONDUCT

- 11.1 In terms of section 38(1)(h)(iii) of the PFMA, an accounting officer must take effective and appropriate disciplinary steps against any employee who makes or permits irregular expenditure.
- 11.2 Sections 38(1)(c)(ii) of the PFMA require accounting officers to take effective and appropriate steps to, amongst others, prevent irregular expenditure and losses resulting from criminal conduct.
- 11.3 In terms of section 85 of the PFMA and NTR 4.1:
- a. If the allegation of financial misconduct is confirmed, accounting officers must ensure that disciplinary processes are initiated against the employee concerned in accordance with the relevant prescripts and agreements regulating the employment of the applicable category of employees
 - b. if the allegation of financial misconduct committed by an accounting officer is confirmed, the executive authority must hold a disciplinary hearing in accordance with the prescripts applicable and agreements applicable in the public service.
- 11.4 In terms of NTR 4.2.1, the accounting officer must advise the executive authority, relevant treasury and the Auditor-General of any criminal charges it has laid against any person in terms of section 86 of the PFMA.
- 11.5 In terms of NTR 4.2.2, the relevant treasury may direct an institution to lay criminal charges against any person should an accounting officer fail to take appropriate action.

- 11.6 The accounting officer must, as soon as the disciplinary proceedings are completed, report to the executive authority, the Department of Public Service and Administration and the Public Service Commission on the outcome, including -
- a. the name and rank of the official against whom the proceedings were instituted;
 - b. the charges, indicating the financial misconduct the official is alleged to have committed;
 - c. the findings;
 - d. any sanction imposed on the official; and
 - e. any further action to be taken against the official, including criminal charges or civil proceedings.

12. REPORTING AND RECORDING

12.1 Reporting of Irregular Expenditure

12.1.1 If it is confirmed that a transaction constitutes irregular expenditure during the Assessment by the IC unit, the following reporting must be conducted by the relevant managers, approved by either the CFO or AO in accordance with paragraph 72 of the Irregular Expenditure Framework -

- a) IC unit to report the irregular expenditure to PT on a monthly basis, in accordance with section 38(1)(g) and (h) of the PFMA - **APPENDIX C**;
- b) FA unit to report the irregular expenditure to PT in the monthly report on revenue and expenditure required in terms of section 40(4)(b) of the PFMA, as outlined in Treasury Circular No. 9 of 2020; and
- c) FA unit to report in terms of section 40(3)(b)(i) of the PFMA, the annual report and financial statements of the Department must include particulars of any irregular expenditure that was incurred during the year.

12.1.2 The FA unit must also disclose all irregular expenditure in the note to the AFS and the quarterly IFS - as prescribed by Treasury Regulations 9.1.5 and 28.2.1. **APPENDIX D** may be utilised in this regard.

12.2 Recording in the checklist and lead schedule

12.2.1 The checklist maintained by the IC unit must contain:

- a. all non-compliance not resulting in irregular expenditure;
- b. all confirmed irregular expenditure; and
- c. the status of the non-compliance.

12.2.2 The lead schedule must contain information related to the processes taken as per the recommendations of the Determination Test or Investigation in relation to -

- a. Irregular expenditure referred to the relevant relevant/ delegated official - **Disciplinary processes and Financial Misconduct**;
- b. Irregular expenditure referred to the FA unit for recovery, if results of the Determination or Investigation conducted revealed that a loss was incurred - **Recovery process**;

- c. Irregular expenditure referred to the SAPS (if there were fraudulent, corrupt or criminal acts and losses identified) - **Criminal charges**;
- d. Irregular expenditure referred to PT for condonation (if disciplinary processes were instituted against the responsible employee(s) and no losses were suffered) - **Condonation**; or
- e. Irregular expenditure is referred to the AO for removal (if the irregular expenditure was not condoned by the relevant authority) - **Removal**.

12.2.3 The checklist and lead schedule must be updated continuously to track all the alleged and confirmed irregular expenditure to ensure correct and accurate information for purposes of an audit trail.

12.2.4 The lead schedule must also serve as a lead for the irregular expenditure and losses to be disclosed in the note to the AFS, to ensure its accuracy and completeness.

13. REVIEW

13.1 This SOP shall be reviewed annually or when necessary to ensure compliance with the relevant prescripts and principles of good governance.

14. IMPLEMENTATION

14.1 This SOP is effective as from the date signed by the AO.

14.2 Responsibility for the implementation of this SOP rests with the CFO.

14.3 Any deviation from the prescripts contained in this policy and procedure must immediately be reported in writing to the AO via the CFO.

14.4 The content of this SOP must be brought to the attention of all the officials in the Department.

AZIZ HARDIEN

PROVINCIAL ACCOUNTANT GENERAL: PROVINCIAL TREASURY

DATE: _____

Checklist

Case No/ Ref No.	Discovery Date	Payment Date	Payment Number	Description of the transgression	Amount	Service Provider	Is the transgression 1. Assessment in progress 2. Non-compliance 3. Irregular Expenditure 4. Compliant/ Resolved	Confirmed amount of non-compliance	Actions taken/ to be taken to improve internal controls	Disciplinary Process (HRF)	Recovery process (LCF)	Criminal Charges (SAPS)

LEAD SCHEDULE

							Status of Irregular Expenditure						
Case no/ Ref no	Date Reported to AO/AA	Payment Number	Description of the transgression	Service Provider	Confirmed Amounts of IE	Confirmed Amount of loss (if applicable)	Under Determination/ Investigation	Loss Recovery (LCF)	Disciplinary Process (HRF)	Criminal Charges (SAPS)	Condoned (PT)	Removed (AO/AA)	Actions taken/ to be taken to improve internal controls

Irregular Expenditure In-Year-Monitoring and Reporting

Total Amounts of unauthorised, irregular, fruitless and wasteful expenditure	Total Amount
Total Amount of Irregular Expenditure	-
Total Amount of Fruitless and Wasteful Expenditure	-
Total Amount Unauthorised Expenditure: Overspending of vote or main division within a Vote	-
Total Amount Unauthorised Expenditure: Expenditure not in accordance with purpose of vote or main division Vote	-

Report Date	Irregular Expenditure, Fruitless & Wasteful Expenditure and Unauthorised Expenditure	Date Incurred	Date Identified	Date of Discovery (Reported to AO/AA)	Incident Description	Amount (R)	Payment date	Payment number	Status	Steps taken to prevent future occurrence of irregular, fruitless & wasteful and unauthorised expenditure

Reporting in the note to the AFS and IFS

Description	Stage of completion	No of cases	Total
Alleged irregular expenditure - identified by Institution (A)	Stage 1		
Current year occurrences			
Prior year occurrences			
Alleged irregular expenditure - identified by Auditors (B)	Stage 1		
Current year occurrences			
Prior year occurrences			
Total Alleged Irregular Expenditure			
Total confirmed irregular expenditure	Stage 2		
IE - no losses incurred	Stage 3		
IE - resulted in losses	Stage 3		
IE - determination in-progress	Stage 3		
IE - recovered/referred for recovery	Stage 5		
IE - irrecoverable and written-off	Stage 5		
IE - referred to PFS for further investigation	Stage 4		
IE - referred to HRF for disciplinary process	Stage 6		
IE - referred for condonation/condoned	Stage 7		
IE - not condoned and removed by AO/AA	Stage 7		
The bulk of the irregular expenditure is as a result of supply chain procedures not being followed. At year end, there were X cases outstanding, totalling Rxxxx. These cases are in various stages of investigation and report. The average case takes xxx days from identification to final resolution.			
Notes			
"irregular expenditure" means expenditure, other than unauthorised expenditure, incurred in contravention of or that that is not in accordance with a requirement of any applicable legislation, including-			
(a) This Act; or			
(b) The State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of that Act; or			
(c) Any provincial legislation providing for procurement procedures in that provincial government;			
Stage 1 - Discovery			
Stage 2 - Assessment			
Stage 3 - Determination			
Stage 4 - Investigation			
Stage 5 - Recovery of Losses			
Stage 6 - Disciplinary			
Stage 7 - Condonement/Removal			

Enquiries: Internal Control

For Attention: The CFO

REPORTING OF ALLEGED IRREGULAR EXPENDITURE IN ACCORDANCE WITH THE IRREGULAR EXPENDITURE SOP

Irregular expenditure has been incurred when the transaction was in contravention with any of the following:

- (a) Public Finance Management Act (PFMA) including any regulations and instructions issued in terms of sections 69, 76, 85, and 91 of this act;*
- (b) The State Tender Board Act, 1968 (act no. 86 of 1968);*
- (c) Any provincial legislation providing for procurement in that provincial government.*

Hereby, I wish to report alleged irregular expenditure.

Incident description:

Alleged amount involved: R

Programme and sub-programme where the alleged irregular expenditure occurred or about to occur:
.....

Name of person in the relevant programme who can provide more information regarding the alleged irregular expenditure:

Reason why irregular expenditure is suspected:

Name of supplier/company contracted:

My Name and contact number (Non-compulsory):

Case number as registered in the Check List. _____
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Table: Process to be followed in relation to the disclosure of irregular expenditure identified in the current and previous financial year(s)

Description	Transgression took place in the current financial year	Transgression took place in the previous financial year
ASSESSMENT		
Alleged transaction related to irregular expenditure was identified and in the process of confirmation.	No disclosure in the irregular expenditure note (main); however, the amount(s) of the alleged irregular expenditure must be disclosed in the irregular expenditure sub-note.	No disclosure in the irregular expenditure note (main); however, the amount(s) of the alleged irregular expenditure must be disclosed in the irregular expenditure sub-note.
DETERMINATION		
Alleged transaction was confirmed as irregular expenditure; and	Disclose amount(s) of irregular expenditure confirmed in the irregular expenditure main note; and	Disclose amount(s) of irregular expenditure confirmed in the irregular expenditure note; and
Further determination to identify facts and losses related to the transaction.	Disclose progress of irregular expenditure in the sub-note Irregular Expenditure under Determination.	Disclose progress of irregular expenditure in the sub-note Irregular Expenditure under Determination.
	Include supplementary disclosure on disciplinary steps taken.	Include supplementary disclosure on disciplinary steps taken.
INVESTIGATION		
Confirmed irregular expenditure is investigated in-order to establish facts whether the transgression is related to fraudulent, corrupt and other criminal conduct.	Disclose amount(s) of irregular expenditure in the irregular expenditure main note; and	Disclose amount(s) of irregular expenditure in the irregular expenditure note; and
	Disclose progress of irregular expenditure in the sub-note - Irregular Expenditure under Investigation.	Disclose progress of irregular expenditure in the sub-note - Irregular Expenditure under Investigation.
ADDRESSING IRREGULAR EXPENDITURE		
Losses incurred and irrecoverable		
If losses were incurred and the state did not achieve value for money.	Determine amount(s) of losses to be recovered and recover in the current financial year (if practical); and	Determine amount(s) of losses paid from the date the irregular expenditure was incurred to the end of the of the reporting period; and
	Disclose amount(s) of losses recovered in the irregular expenditure note under Amount(s) not Condoned and Recoverable.	Disclose amount(s) of losses recovered in the irregular expenditure note under Amount(s) not Condoned and Recoverable.
	If it can be demonstrated that it is impractical to determine total losses incurred, disclose the details and reasons as to why the amount cannot be quantified.	If it can be demonstrated that it is impractical to determine total losses incurred, disclose the details and reasons as to why the amount cannot be quantified.

Description	Transgression took place in the current financial year	Transgression took place in the previous financial year
If losses were incurred are irrecoverable.	Determine amount(s) of losses that are irrecoverable and consider writing off such amount(s) in terms of Treasury Regulation 11.4.1 (a) and (b) for departments and constitutional institutions and in terms of a Debt Write Off Policy for public entities; and	Determine amount(s) of losses that are irrecoverable from the date the irregular expenditure was incurred to the end of the reporting period and consider writing off such amount(s) in terms of legislation; and
	Disclose amount(s) of losses irrecoverable in the irregular expenditure note under Amount(s) not Condoned and not Recoverable.	Disclose amount(s) of losses irrecoverable in the irregular expenditure note under Amount(s) not Condoned and not Recoverable.
Condonation of Irregular Expenditure		
If losses were not incurred and value for money was achieved and the transgression was free of fraudulent, corrupt or other criminal conduct;	Disclose amount(s) in the irregular expenditure note as Current year amount(s) Condoned.	Disclose amount(s) in the irregular expenditure note as Prior year amount(s) Condoned.
Request condonation of irregular expenditure; and		
If amount(s) of irregular expenditure are condoned by the relevant authority disclose.	↑	↑
If irregular expenditure was not condoned by the relevant authority.	Refer the irregular expenditure to the accounting officer or accounting authority for removal; and	Refer the irregular expenditure to the accounting officer or accounting authority for removal; and
	Disclose amount(s) of losses irrecoverable in the irregular expenditure note under Amount(s) not Condoned and not Recoverable.	Disclose amount(s) of losses irrecoverable in the irregular expenditure note under Amount(s) not Condoned and not Recoverable.
Criminal Proceeding		
If fraudulent, corrupt or other criminal conduct is alleged or confirmed.	Follow the relevant steps required in terms of Treasury Regulations 4, 9 and 12 (for departments, constitutional institutions and trading entities), in a case of public entities, follow Treasury Regulations 33 and the debt management policy of the public entity;	Follow the relevant steps required in terms of Treasury Regulations 4, 9 and 12 (for departments, constitutional institutions and trading entities), in a case of public entities, follow Treasury Regulations 33 and the debt management policy of the public entity;
	Report in terms of section 34 of the Prevention and Combating of Corrupt Activities Act; and	Report in terms of section 34 of the Prevention and Combating of Corrupt Activities Act; and
	Include supplementary disclosure on criminal proceedings instituted.	Include supplementary disclosure on criminal proceedings instituted.



ANNEXURE B

Standard Operating Procedure (SOP)				
FRUITLESS AND WASTEFUL EXPENDITURE				
Department:	Western Cape Department of			
SOP Group:	Financial Management: Internal Control			
SOP Number:				
Version Number:	1			
	Initial & Surname	Position	Signature	Date
Prepared by:				
Checked by:				
Approved by:				
Revision History:				
Effective Date:	Date of signature by the Accounting Officer.			

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1. BACKGROUND

- 1.1 On 27 August 2019, National Treasury issued and published National Treasury instruction no. 3 of 2019/ 20 in terms of section 76(2)(e) and 76(4)(a) of the Public Finance Management Act No. 1 of 1999 (hereafter the PFMA), and concomitant Fruitless and Wasteful Expenditure Framework with the purpose, to further regulate fruitless and wasteful expenditure in provincial departments and public entities, subject to the PFMA and as set out in the Fruitless and Wasteful Expenditure Framework, which outlined generic procedures for accounting officers and accounting authorities when dealing with fruitless and wasteful expenditure.
- 1.2 Previously, fruitless and wasteful expenditure was dealt with in terms of the Guideline on Fruitless and Wasteful Expenditure issued in May 2014, which has now been rescinded.

2. PURPOSE

The purpose of the SOP is to outline the procedures for departmental officials when dealing with fruitless and wasteful expenditure in order to assist the officials in timeously preventing, detecting, determining, investigating and correcting alleged fruitless and wasteful expenditure in accordance with the general responsibilities of the accounting officer in accordance with section 38 of the PFMA, Treasury Regulations 9.1 and National Treasury instruction no. 3 of 2019/ 20, which amongst others, requires an accounting officer to implement effective, efficient and transparent processes of financial and risk management to prevent and detect fruitless and wasteful expenditure.

3. APPLICABILITY

This SOP applies to all employees of the Department.

4. GENERAL DEFINITIONS

WORD/ ACRONYM	MEANING
AGSA	Auditor General South Africa
AFS	Annual Financial Statements;
AO	Accounting Officer in the Department;
Assessment	A test conducted by the Loss Control Function or another relevant function to assess whether the expenditure meets the definition of fruitless and wasteful expenditure;
BAS	Basic Accounting System;
CFO	Chief Financial Officer;
Checklist	List of alleged cases of fruitless and wasteful expenditure that are in the process of being dealt with;

WORD/ ACRONYM	MEANING
Lead schedule	A summary of fruitless and wasteful expenditure to be disclosed in the notes to the annual financial statements and the progress related thereto;
Determination	An informal assessment to be conducted by the Loss Control Function or another relevant function to examine or analyse particulars of the expenditure and quantify amount(s) of fruitless and wasteful expenditure;
Discovery	Identification of alleged fruitless and wasteful expenditure by the Internal Control function or another relevant function via compliance checking or upon report by an official/s or financial staff;
FA	The Financial Accounting function in the Department;
Financial Misconduct	The wilful or negligent making of or permitting fruitless and wasteful expenditure or failing to exercise a power or perform a duty to, amongst others, take effective and appropriate steps to prevent fruitless and wasteful expenditure within an area of responsibility;
Head Official: PT	Head of the Department – Provincial Treasury;
IC	Internal Control function of the Department;
IFS	Interim Financial Statements;
Investigation	A formal probe conducted by a function performing investigations to analyse the particular instance of non-compliance to establish the facts about the transaction. An investigation must be instituted, if there is a suspicion of fraud, corruption or other criminal conduct emanating from the incurrence of fruitless and wasteful expenditure
Loss	An instance of losing money or financial value in a transaction;
MCS	Modified Cash Standards;
MEC	Member of Executive Committee or Executive Authority of the Department;
Non-compliance	Failure to comply with a specific legal requirement;
NT	National Treasury
NTI	National Treasury Instruction;
NTR	National Treasury Regulations;
Reasonable care	Applying due diligence and exercising control (careful application, attentiveness, caution) to ensure that the probability of a transaction, event or condition not being achieved as planned is being managed;
Transgression	An act that goes against a law, rule, or code of conduct;
Recording	The process of capturing the financial information relating to a particular transaction, event, asset or liability in the electronic or manual accounting records of the department for the purposes of disclosure as secondary financial information;

WORD/ ACRONYM	MEANING
Recognition	The process of incorporating in the statement of financial position or statement of financial performance an item that meets the definition of an element and satisfies the criteria for recognition set out in paragraph 66 of the Modified Cash Standards. It involves the depiction of the item in words, and in monetary amounts, and the inclusion of those amounts in the statement of financial position or financial statement of financial performance totals;
SAPS	South African Police Service;
SCM	Supply Chain Management function of the Department;
PAG	Provincial Accountant General within the Provincial Treasury;
PFS	Provincial Forensic Services;
PFMA	Public Financial Management Act of 1999;
PT	Provincial Treasury;
Vain	An expenditure which was undertaken without value or substance and which did not yield any desired results or objectives.

5. LEGISLATIVE AND REGULATORY FRAMEWORK

- 5.1 In terms of section 38(1)(c)(ii) of the PFMA, the AO of an institution must take effective and appropriate steps to, amongst others, prevent fruitless and wasteful expenditure.
- 5.2 In terms of sections 38(1)(g) of the PFMA, AO's on discovery of any fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to PT.
- 5.3 In terms of section 38(1)(h)(iii) of the PFMA, AO's must take effective and appropriate disciplinary steps against any official in the service of the department who makes or permits fruitless and wasteful expenditure.
- 5.4 In terms of section 40(3)(b) of the PFMA, the annual report and audited AFS that the AO must submit within five (5) months of the end of the financial year to PT and to the MEC responsible for the department as per section 40(1)(d), must include:
- (i) any losses through criminal conduct and fruitless and wasteful expenditure that occurred during the financial year;
 - (ii) any criminal or disciplinary steps taken as a result of such losses and fruitless and wasteful expenditure; and
 - (iii) any material losses recovered or written off.
- 5.5 In terms of section 45(c) of the PFMA, an official in a department must take effective and appropriate steps to prevent fruitless and wasteful expenditure within that official's areas of responsibility.
- 5.6 In terms of section 76(2)(e), NT may make regulations or issue instructions applicable to departments, concerning fruitless and wasteful expenditure.

- 5.7 In terms of section 81(1)(b) of the PFMA, an AO commits an act of financial misconduct if that AO wilfully or negligently -
- (i) Fails to comply with requirements of amongst others, section 38 and 40 of the PFMA; or
 - (ii) makes or permits fruitless and wasteful expenditure.
- 5.8 In terms of section 81(2) of the PFMA, an official of a department to whom a power or duty is assigned in terms of section 44 of the PFMA commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.
- 5.9 In terms of NTR 9.1.1, the AO of an institution must exercise all reasonable care to prevent and detect fruitless and wasteful expenditure, and must for this purpose implement effective, efficient and transparent processes of financial and risk management.
- 5.10 In terms of NTR 9.1.2, when an official of an institution discovers fruitless and wasteful expenditure, that official must immediately report such expenditure to the AO. Such expenditure must also be reported in the monthly report, as required by section 40(4)(b) of the PFMA.
- 5.11 In terms of NTR 9.1.3, when an AO determines the appropriateness of disciplinary steps against an official in terms of section 38(1)(g) of the PFMA, the AO must take into account –
- (a) the circumstances of the transgression;
 - (b) the extent of the expenditure involved; and
 - (c) the nature and seriousness of the transgression.
- 5.12 In terms of NTR 9.1.4, the recovery of losses or damages resulting from fruitless and wasteful expenditure must be dealt with in accordance with NTR 12.
- 5.13 In terms of NTR 9.1.5, the amount of the fruitless and wasteful expenditure must be disclosed as a note to the AFS of the department.

6. DEFINITION AND RECOGNITION OF FRUITLESS AND WASTEFUL EXPENDITURE

6.1 Definition

6.1.1 Fruitless and wasteful expenditure is expenditure which was made in vain and would have been avoided had reasonable care been exercised.

6.2 Fruitless and wasteful expenditure must fulfil the following conditions in the definition -

- (a) expenditure must be made in vain; and
- (b) such expenditure would have been avoided had reasonable care been exercised.

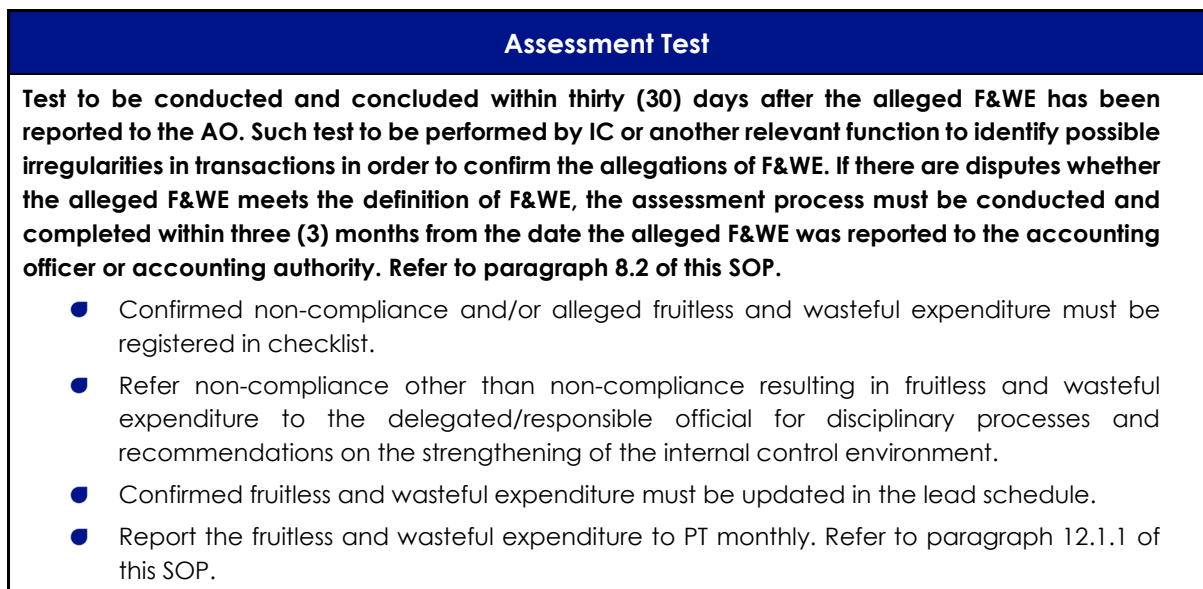
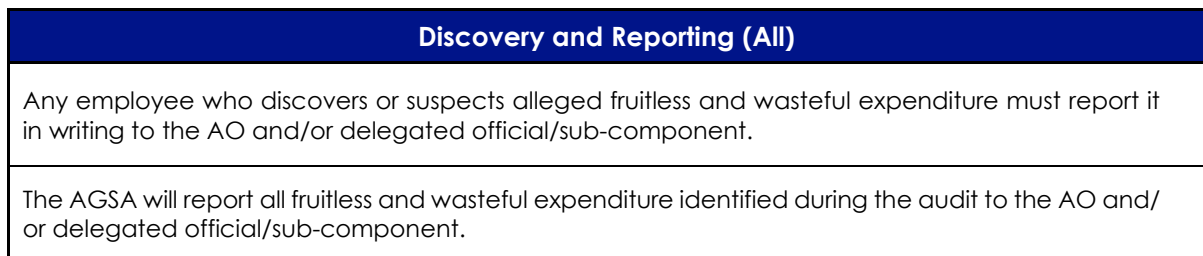
6.3 Examples of fruitless and wasteful expenditure

6.3.1 An expenditure which resulted from payment of interest and penalties on overdue accounts and late payments will meet the definition of fruitless and wasteful expenditure.

6.4 Fruitless and Wasteful Expenditure vs Irregular Expenditure

- 6.4.1 Fruitless and Wasteful expenditure is defined as expenditure which was made in vain and that could have been avoided had reasonable care been exercised. Irregular expenditure refers to transactions for e.g. where goods or service were procured in contravention of or not in accordance with any applicable legislation.
- 6.4.2 If catering was procured for an official meeting and all the correct procurement procedures were followed but it was later discovered that 5 officials who R.S.V.P. prior to the event as required by the SOP for Catering Expenditure did not attend the event without any acceptable reason, the expenditure relating to the 5 meals will be considered to be fruitless and wasteful expenditure as the expenditure could have been avoided had the caterer been informed prior to the event. The transaction is thus not irregular as the procurement processes are not in contravention with any stipulations of the PFMA or instruction issued in terms of the PFMA.

7. DEPARTMENTAL PROCESS FLOW FOR FRUITLESS AND WASTEFUL EXPENDITURE



Determination Test and/ or Investigation

Analysing the particulars of non-compliance relating to the fruitless and wasteful expenditure of each case by the IC unit or another relevant function, in order to establish the facts and to determine any losses related to the transaction. Refer to paragraph 8.3 of this SOP.

- The determination test must commence and be finalised within 30 days after assessment of the F&WE. If there are any disputes, the determination process must be completed within four (4) months after the assessment of F&WE.
- After the determination test has been finalised, and fraud or corruption is suspected, the AO must within 30 days, refer the case to PFS for investigation.
- Investigations must be instituted within 30 days or as soon as reasonably possible upon referral of the matter.
- For less serious cases, the Department may select to conduct their own investigation.
- If fraud is not suspected, quantify the amount of the loss suffered by the Department.
- The Department must make recommendations on the findings, recovery of losses and possible referral for instituting disciplinary procedures to the CFO, for recommendation to the AO.
- The CFO will inform the relevant delegated/responsible official on these findings and disciplinary procedures as recommended by the AO.
- Update the lead schedule and Loss Control system, where applicable. Refer to paragraph 8.5 of this SOP.



Recording

- Update the Loss Control System and lead schedule with all new cases or information received.
- Follow-up on the status of outstanding disciplinary proceedings or investigations on cases.
- Inform the FA unit in writing to institute recovery process.



Recovery and Reporting

- FA unit to create debt on BAS and recover loss.
- Report new fruitless and wasteful cases and movements on existing cases to PT on a monthly basis and report quarterly in the IFS and at year-end in the AFS

8. DISCOVERY, ASSESSMENT, DETERMINATION OR INVESTIGATIONS RELATED TO FRUITLESS AND WASTEFUL EXPENDITURE

8.1 Discovery of alleged fruitless and wasteful expenditure

8.1.1 An employee who becomes aware of or suspects the occurrence of fruitless and wasteful expenditure must immediately, in writing, report such alleged fruitless and wasteful expenditure to either:

- a. The AO in terms of NTR 9.1.2; or
- b. IC unit/ delegated official in terms of the AO's delegations;
- c. For this purpose, the form "Reporting of Alleged Fruitless and Wasteful Expenditure" - **APPENDIX E** should be used.

- 8.1.2 If the alleged fruitless and wasteful expenditure is reported directly to the AO:
- a. The AO must forward all the reported cases, immediately to the IC unit or another relevant function via the CFO;
 - b. The discovery date is the date on which the alleged fruitless and wasteful expenditure was reported to the AO.

8.1.3 Financial staff must immediately report the details and forward all relevant documentation directly to the IC unit or other relevant function for assessment, upon becoming aware of alleged fruitless and wasteful expenditure.

8.1.4 Fruitless and wasteful expenditure is also identified via the post audit testing; hence the date the alleged fruitless and wasteful expenditure is identified via post audit testing, is the date of discovery.

8.2 **Conducting the Assessment Test (IC)**

8.2.1 Upon discovery or receipt of notification of non-compliance and alleged fruitless and wasteful expenditure, the IC unit must record the non-compliance in the "Checklist" - **APPENDIX A**.

8.2.2 The IC unit must conduct an assessment test on the non-compliance/alleged fruitless and wasteful expenditure, to identify possible irregularities in transactions that may lead to the unintended occurrence of fruitless and wasteful expenditure by evaluating:

- (a) Exercising of reasonable care by official(s) – action, procedure or operation undertaken by the employee(s) or another relevant function in responding to the possibility of incurring fruitless and wasteful.
- (b) Examination of negligence – confirmation of whether the action, procedure or operation of exercising reasonable care was disregarded by employee(s) or another relevant function to prevent fruitless and wasteful expenditure

8.2.2.1 **Confirmation of fruitless and wasteful expenditure**

- a) If an expenditure was made in vain and would have been avoided had reasonable care been exercised, it must be recorded as fruitless and wasteful expenditure.
- b) The IC unit should consult with the relevant parties involved e.g. SCM, FA, etc. and consider all relevant information prior to making a final recommendation, on a case by case basis.
- c) If the fruitless and wasteful expenditure has been confirmed, the details must be recorded/updated in the "checklist", accordingly.
- d) The details of the confirmed fruitless and wasteful expenditure should also be recorded in the "lead schedule" - for monitoring purposes.
- e) The IC unit or another relevant function must in addition to the monthly reporting on fruitless and wasteful expenditure as outlined in Treasury Circular 9 of 2020, complete and submit "Appendix C": In-Year Monitoring (IYM) report on a monthly basis, in accordance with section 38(1)(g) and (h) of the PFMA.

8.2.2.2 Confirmation of Non-compliance

If during the assessment it has been confirmed that the identified non-compliance does not constitute fruitless and wasteful expenditure, the IC unit must -

- (a) Make recommendations to strengthen the internal control environment where the non-compliance was identified and confirmed;
- (b) Liaise with the responsible component to agree the steps to be taken to address the non-compliance.
- (c) Refer the non-compliance matter to the delegated/responsible official upon approval by the AO or CFO, to consider disciplinary processes against the employee responsible for the non-compliance in terms of paragraph 38(h) of the PFMA (also see paragraph 11 of this SOP);
- (d) AO's must be guided by their internal policies and the PSA, when referring minor non-compliance issues for disciplinary steps; and
- (e) Update the details of the confirmed non-compliance in the lead schedule accordingly.

8.2.2.3 Assessments must be completed within 30 days, from the date of discovery of the alleged fruitless and wasteful expenditure or non-compliance. If there are any disputes, the assessment must be completed within three (3) months after the assessment of F&WE.

8.3 Conducting the Determination Test (IC)

8.3.1 Upon confirmation of the fruitless and wasteful expenditure as per paragraph 8.2, the IC unit must conduct a determination test to analyse the particulars of non-compliance (which has resulted in fruitless and wasteful expenditure being incurred) to establish the facts and losses, if any, related to the transaction.

8.3.2 The determination test must confirm the facts and losses associated with the transaction and to provide information related to the identification including:

- (a) root causes that led to the transgression;
- (b) employee(s) responsible for the fruitless and wasteful expenditure;
- (c) confirmed amount of fruitless and wasteful expenditure to be recovered;
- (d) confirmed amount of fruitless and wasteful expenditure assessed to be irrecoverable; and
- (e) any breakdown in the designed internal controls.

8.3.3 If fraud, corruption or other criminal conduct is suspected at any point while conducting the determination test, the IC unit must refer the case for investigation as per paragraph 8.4.

8.3.4 If fraud is not suspected, the IC unit must document their findings and make recommendations on possible disciplinary steps as well as the recoverability of amounts of fruitless and wasteful expenditure, for approval by the AO.

- 8.3.5 The IC unit or another relevant function must:
- a. inform the Loss control section within the Department to update the Loss Control system and proceed with the monitoring of the outstanding actions as per paragraph 8.5. of this SOP;
 - b. refer the matter related to fruitless and wasteful expenditure to the delegated/responsible official to institute disciplinary processes in line with paragraph 8.2.2.2 (d) of this SOP, upon approval by the AO or CFO. Refer to paragraph 11 of this SOP for the management of financial misconduct;
 - c. make recommendations on any breakdown of internal controls as prescribed by the AO;
 - d. update the checklist & lead schedule accordingly; and
 - e. follow up on outstanding actions as per the approved recommendations.
- 8.3.6 The determination test must commence and be finalised within 30 days after the assessment of the F&WE. If there are any disputes, the determination process must be completed within four (4) months after the assessment of the F&WE.
- 8.3.7 In the event the Internal Control unit or another relevant function is unable to meet the timeframes for the commencement and/or completion of assessments and determination tests, as stipulated in paragraphs 8.2.2.3, 8.3.3 and 8.3.9 of this SOP, the Internal Control unit or any relevant function are required to inform the AO, in writing, of the risk of non-compliance and the reasons for the non-compliance.
- 8.4 Investigation into fraudulent cases and referral to the SAPS**
- 8.4.1 An investigation must be instituted, if there is a suspicion of fraud, corruption or other criminal conduct emanating from the incurrence of fruitless and wasteful expenditure.
- 8.4.2 The IC unit must recommend that the AO refer the case to PFS for investigation if fraud, corruption or criminal activities are suspected during the execution of the determination test.
- 8.4.3 If the AO refers the case to PFS for investigation, the IC unit must assist PFS by providing the PFS with all the details pertaining to the case in line with the Departmental Fraud Prevention and Implementation Plan.
- 8.4.4 If the AO is implicated in an alleged economic offence during the execution of the determining test, the alleged fraudulent, corrupt or criminal activities must be reported in accordance with the Protected Disclosures Act and WCG Whistle-blowing Policy:
- a) by the Head of the IC unit or via the CFO office;
 - b) directly to the National Anti-Corruption Hotline; and/or
 - c) the MEC of the Department.

- 8.4.5 The PFS has the mandate to conduct forensic investigations into allegations relating to economic offences (fraud, theft, corruption, etc.) committed against any WCG Department. However, when an AO is implicated in the alleged economic offence, PFS may only investigate upon instructed by the Premier or relevant MEC after consultation with the Premier.
- 8.4.6 In the absence of approval from the Premier and/or the relevant MEC, and in accordance with the Protected Disclosures Act and WCG Whistle-blowing Policy, if PFS is the recipient of such an allegation, PFS will refer the matter to an appropriate body (for instance the Public Protector or AGSA) for investigation.
- 8.4.7 The investigation by PFS must commence within 30 days or as soon as reasonably possible after the matter has been referred for investigation. Where the AO is implicated in the allegation, the PFS investigation will commence as soon as possible after instruction from the Premier or relevant MEC, after consultation with the Premier.
- 8.4.8 The investigation by PFS may provide at least the following facts about the transaction to the referring authority, the AO, MEC or Premier -
- a. root causes that led to the transgression;
 - b. employee(s) responsible for the fruitless and wasteful expenditure;
 - c. information on fraudulent, corrupt or other criminal activity;
 - d. if the matter must be referred to SAPS; and
 - e. any breakdowns in the designed internal controls and the impact thereof.
- 8.4.9 On the conclusion of the PFS investigation, they will issue a report on the outcome of their investigation as per paragraph 8.4.7, to the AO or directly to the Premier and/ or responsible MEC, where the AO was implicated in the allegation. Where PFS do not address all the facts mentioned in paragraph 8.4.8 as part of its investigation, the outstanding facts will be determined by the Department's IC unit or other relevant function.
- 8.4.10 Once the investigation confirms that the fruitless and wasteful expenditure is related to a fraudulent, corrupt or criminal conduct or activity:
- a. the matter will be registered by PFS with SAPS within 7 days after the report has been reviewed and accepted by the AO;
 - b. PFS will inform the AO once the case has been registered and provide the case number to the Department;
 - c. the AO must inform the MEC, PT and the AGSA within seven (7) after the matter has been reported to SAPS; and
 - d. With respect to the AO (acts as discussed in paragraph 8.4.4), the MEC must inform PT and the AGSA within seven (7) days after the matter has been reported to SAPS.
- 8.4.11 For less serious cases, the Department may select to conduct an internal investigation by the IC unit or other relevant function. It is the AO's duty to refer these cases to the relevant function for investigation within 30 days after the determination test has been finalised (if required).

- 8.4.12 The AO must refer fruitless and wasteful expenditure matters to the Human Resource Function within the Department or within the Corporate Service Centre where applicable, to assist the AO with disciplinary processes.
- 8.4.13 The IC unit must update the lead schedule with all the details of the fraudulent, corrupt and criminal acts reported to law enforcement agencies.

8.5 **Monitoring and Evaluation**

- 8.5.1 Upon completion of the determination test and/or investigation, the IC unit must:
- a. register any new cases/ information in the Loss Control system;
 - b. update the lead schedule and Loss Control system accordingly;
 - c. follow-up on the status of outstanding disciplinary proceedings referred to the delegated/responsible official as per paragraph 8.2.2.2 (c) and 8.3.6 of this SOP;
 - d. follow-up on the implementation of steps taken to address the breakdown of internal controls to correct and prevent the reoccurrence of control weaknesses;
 - e. inform the FA unit to institute the recovery process, as per paragraph 9 of this SOP; and
 - f. report monthly on the status of fruitless and wasteful expenditure to the Provincial Treasury by submitting a signed copy of **Appendix C: In-Year Monitoring (IYM) Report**, as prescribed in terms paragraph 54 - 56 of the Framework.

9. **RECOVERY OF FRUITLESS AND WASTEFUL EXPENDITURE**

9.1 **Informing Financial Accounting of recoveries to be instituted**

- 9.1.1 If it has been confirmed that the expenditure is fruitless and wasteful expenditure, the IC unit must inform the AO in writing to recover such amounts of fruitless and wasteful expenditure from the responsible employee.
- 9.1.2 If the fruitless and wasteful expenditure is emanating from a fraudulent, corrupt or other criminal conduct as determined by the investigation, the IC unit must after conclusion of the criminal case, inform the AO in writing, to institute a civil claim to recover such amounts.
- 9.1.3 The IC unit must update the checklist & lead schedule and the Loss Control System and notify the FA unit to proceed with the recovery process.
- 9.1.4 The recovery of losses emanating from the incurrence of fruitless and wasteful expenditure must be performed in accordance with the Departmental Debt Management Policy. The FA unit should consider the steps referred to in paragraphs 9.2 to 9.6 of this SOP, when recovering any losses from officials.

9.2 **Quantifying the debt/loss**

- 9.2.1 The amount of debt recoverable from the responsible employee may equate to:
- (a) the value of the debt incurred as a consequence of his or her action(s) that led to the incurrence of fruitless and wasteful expenditure, or
 - (b) a lesser amount determined by the AO in accordance with the Debt Management Policy of the Department.
- 9.2.2 In a case where the AO is responsible for the debt, PT must determine –
- a) the value of the debt incurred as a consequence of his or her action(s) that led to the incurrence of fruitless and wasteful expenditure; or
 - b) a lesser amount.

9.3 **Raising a debt**

- 9.3.1 NTR 11.2 requires an AO to take effective and appropriate steps to timeously collect all money due to the Department.
- 9.3.2 A debt must be identified, reported and recorded in the books of the Department where such a debt arose from losses incurred as a result of fruitless and wasteful expenditure.

9.4 **Informing the responsible employee of the debt**

- 9.4.1 As soon as the FA unit becomes aware of the debt, the official responsible for the debt must be requested in writing, to pay the amount involved within thirty (30) days or within reasonable instalments. The “request in writing” essentially means that the debtor is placed “*in mora*”.
- 9.4.2 All debts incurred from fruitless and wasteful expenditure shall be interest bearing at the uniform interest rate prescribed in terms of section 80(1)(b) of the PFMA and shall be calculated using the simple interest method.
- 9.4.3 In cases where the employee has left the service of the Department, the FA unit must follow processes to recover the debt which may include, amongst others, engaging the State Attorney or private debt management agencies on a no trace, no pay basis.

9.5 **Liability in law (if there are disputes)**

- 9.5.1 If the employee responsible for the debt is still in the employ of the Department and denies liability for the debt, the FA unit must refer the matter to the State Attorney to confirm the debtor's liability in law.
- 9.5.2 If the person responsible for the debt has left or is not in the employ of the Department and denies liability for the debt, the FA unit must refer the matter to the State Attorney to confirm the debtor's liability in law.

- 9.5.3 Prior to referring the case to the State Attorney, the FA unit should:
- a. conduct a cost versus benefit analysis by weighing the cost of soliciting the legal opinion from the State Attorney against the benefit to be derived in terms of the Departmental debt in dispute; and
 - b. take a final decision based on the outcome of this analysis prior to proceeding to incur the additional expense.

9.6 Irrecoverable debt

- 9.6.1 If the debt becomes irrecoverable, the AO may write-off the debt in terms of NTR 11.4.
- 9.6.2 Where the AO is responsible for the debt and is unable to re-pay the debt, the AO must report the inability to pay to PT for consideration for the write-off of the debt.

10. FINANCIAL MISCONDUCT

- 10.1 In terms of section 38(1)(h)(iii) of the PFMA, an AO must take effective and appropriate disciplinary steps against any employee who makes or permits fruitless and wasteful expenditure.
- 10.2 Sections 38(1)(c)(ii) of the PFMA require AO's to take effective and appropriate steps to, amongst others, prevent fruitless and wasteful expenditure and losses resulting from criminal conduct.
- 10.3 In terms of section 85 of the PFMA and NTR 4.1:
- a. If the allegation of financial misconduct is confirmed, AO's must ensure that disciplinary processes are initiated against the employee concerned in accordance with the relevant prescripts and agreements regulating the employment of the applicable category of employees;
 - b. If the allegation of financial misconduct committed by an AO is confirmed, the MEC must hold a disciplinary hearing in accordance with the prescripts applicable and agreements applicable in the public service.
- 10.4 In terms of NTR 4.2.1, the AO must advise the MEC, PT and the AGSA of any criminal charges it has laid against any person in terms of section 86 of the PFMA.
- 10.5 In terms of NTR 4.2.2, PT may direct an institution to lay criminal charges against any person should an AO fail to take appropriate action.
- 10.6 The AO must, as soon as the disciplinary proceedings are completed, report to the MEC, the Department of Public Service and Administration and the Public Service Commission on the outcome, including:
- a. the name and rank of the official against whom the proceedings were instituted;
 - b. the charges, indicating the financial misconduct the official is alleged to have committed;
 - c. the findings;

- d. any sanction imposed on the official; and
- e. any further action to be taken against the official, including criminal charges or civil proceedings.

11. REPORTING AND RECORDING

11.1 Reporting of Fruitless and Wasteful Expenditure

11.1.1 If it is confirmed that a transaction constitutes fruitless and wasteful expenditure during the assessment by the IC unit, the following reporting must be conducted by the relevant managers, approved by either the CFO or AO in accordance with paragraph 51 of the Fruitless and Wasteful Expenditure Framework –

- a) IC unit to report the fruitless and wasteful expenditure in the monthly IYM report to PT in terms of section 38(1)(g) and (h) of the PFMA - **APPENDIX C**;
- b) FA unit to report the fruitless and wasteful expenditure to PT in the monthly report on revenue and expenditure required in terms of section 40(4)(b) of the PFMA, as outlined in Treasury Circular No. 9 of 2020; and
- c) FA unit to report in terms of section 40(3)(b)(i) of the PFMA, the annual report and financial statements of the Department must include particulars of any fruitless and wasteful expenditure that was incurred during the year.

12.1.1 The FA unit must also disclose all fruitless and wasteful expenditure in the note to the AFS and the quarterly IFS, as prescribed by Treasury Regulations 9.1.5 and 28.2.1. **APPENDIX D** may be utilised in this regard.

11.2 Recording in the checklist and lead schedule

11.2.1 The checklist maintained by the IC unit must contain:

- a. all non-compliance not resulting in fruitless and wasteful expenditure;
- b. all confirmed fruitless and wasteful expenditure; and
- c. the status of the non-compliance.

11.2.2 The lead schedule must contain information related to the processes taken as per the recommendations of the Determination Test or Investigation in relation to –

- a. Fruitless and wasteful expenditure referred to the relevant/delegated official - **Disciplinary processes and Financial Misconduct**;
- b. Fruitless and wasteful expenditure referred to the FA unit for recovery - **Recovery process; and**
- c. Fruitless and wasteful expenditure referred to the SAPS (if there were fraudulent, corrupt or criminal acts and losses identified) – **Criminal charges**.

11.2.3 The checklist and lead schedule must be updated continuously to track all the alleged and confirmed fruitless and wasteful expenditure to ensure correct and accurate information for an audit trail.

11.2.4 The lead schedule must also serve as a lead for the fruitless and wasteful expenditure and losses to be disclosed in the note to the AFS, to ensure its accuracy and completeness.

12 REVIEW

12.1 This SOP shall be reviewed annually or when necessary to ensure compliance with the relevant prescripts and principles of good governance.

13 IMPLEMENTATION

13.1 This SOP is effective as from the date signed by the AO.

13.2 Responsibility for the implementation of this SOP rests with the CFO.

13.4 Any deviation from the prescripts contained in this policy and procedure must immediately be reported in writing to the AO via the CFO.

13.4 The content of this SOP must be brought to the attention of all the officials in the Department.

AZIZ HARDIEN

PROVINCIAL ACCOUNTANT GENERAL: PROVINCIAL TREASURY

DATE: _____

Checklist

Case No/ Ref No.	Discovery Date	Payment Date	Payment Number	Description of the transgression	Amount	Service Provider	Is the transgression 1. Assessment in progress 2. Non-compliance 3. Fruitless and Wasteful 4. Compliant/ Resolved	Confirmed amount of non-compliance	Actions taken/ to be taken to improve internal controls	Disciplinary Process (HRF)	Recovery process (LCF)	Criminal Charges (SAPS)

LEAD SCHEDULE

						Status of Irregular Expenditure				
Case no/ Ref no	Date Reported to AO/AA	Payment Number	Description of the transgression	Service Provider	Confirmed Amounts of F&WE	Under Determination/ Investigation	Loss Recovery (LCF)	Disciplinary Process (HRF)	Criminal Charges (SAPS)	Actions taken/ to be taken to improve internal controls

Fruitless and Wasteful Expenditure In-Year-Monitoring and Reporting

Total Amounts of unauthorised, irregular, fruitless and wasteful expenditure	Total Amount
Total Amount of Irregular Expenditure	-
Total Amount of Fruitless and Wasteful Expenditure	-
Total Amount Unauthorised Expenditure: Overspending of vote or main division within a Vote	-
Total Amount Unauthorised Expenditure: Expenditure not in accordance with purpose of vote or main division Vote	-

Report date	Irregular Expenditure, Fruitless and Wasteful, or Unauthorised Expenditure	Date Incurred	Date Identified	Date of discovery (reported to the AO)	Incident description	Amount R (i.e. not R000s)	Payment date YYYY/MM	Payment number	Status	Steps taken to prevent future occurrence of irregular, fruitless and wasteful expenditure (e.g. new policy, control measures, monitoring)

Reporting in the note to the AFS and IFS

Description	Stage of completion	No of cases	Total
Alleged irregular expenditure - identified by Institution (A)	Stage 1		
Current year occurrences			
Prior year occurrences			
Alleged irregular expenditure - identified by Auditors (B)	Stage 1		
Current year occurrences			
Prior year occurrences			
Total Alleged Irregular Expenditure			
Total confirmed irregular expenditure	Stage 2		
IE - no losses incurred	Stage 3		
IE - resulted in losses	Stage 3		
IE - determination in-progress	Stage 3		
IE - recovered/referred for recovery	Stage 5		
IE - irrecoverable and written-off	Stage 5		
IE - referred to PFS for further investigation	Stage 4		
IE - referred to HRF for disciplinary process	Stage 6		
IE - referred for condonation/condoned	Stage 7		
IE - not condoned and removed by AO/AA	Stage 7		
The bulk of the irregular expenditure is as a result of supply chain procedures not being followed. At year end, there were X cases outstanding, totalling Rxxx. These cases are in various stages of investigation and report. The average case takes xxx days from identification to final resolution.			
Notes			
"irregular expenditure" means expenditure, other than unauthorised expenditure, incurred in contravention of or that that is not in accordance with a requirement of any applicable legislation, including-			
(a) This Act; or			
(b) The State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of that Act; or			
(c) Any provincial legislation providing for procurement procedures in that provincial government;			
Stage 1 - Discovery			
Stage 2 - Assessment			
Stage 3 - Determination			
Stage 4 - Investigation			
Stage 5 - Recovery of Losses			
Stage 6 - Disciplinary			
Stage 7 - Condonement/Removal			

For Attention: The CFO

REPORTING OF ALLEGED FRUITLESS AND WASTEFUL EXPENDITURE IN ACCORDANCE WITH THE FRUITLESS AND WASTEFUL EXPENDITURE SOP

Fruitless and wasteful expenditure is incurred when the resulting expenditure is made in vain and no value for money was derived from the expenditure or the use of other resources.

Hereby, I wish to report alleged fruitless and wasteful expenditure.

Incident description:

Alleged amount involved: R

Programme and sub-programme where the alleged fruitless and wasteful expenditure has occurred or about to occur:

Name of person in the relevant programme who can provide more information regarding the alleged fruitless and wasteful expenditure:

Reason why fruitless and wasteful expenditure is suspected:
.....

Name of supplier/ company contracted:

My Name and contact number (Non-compulsory):

Case number as registered in the Check List. _____
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The table below provides a process to be followed in relation to the disclosure of all fruitless and wasteful expenditure identified in the current and previous financial year(s).

Description	Transgression took place in the current financial year	Transgression took place in the previous financial year
ASSESSMENT		
Alleged transaction related to fruitless and wasteful expenditure was identified and in the process of confirmation.	No disclosure in the fruitless and wasteful expenditure note (main); however, the amount(s) of the alleged fruitless and wasteful expenditure must be disclosed in the irregular expenditure sub-note.	No disclosure in the fruitless and wasteful expenditure note (main); however, the amount(s) of the alleged fruitless and wasteful expenditure must be disclosed in the irregular expenditure sub-note
DETERMINATION		
Alleged transaction was confirmed as fruitless and wasteful expenditure; and	Disclose amount(s) of fruitless and wasteful expenditure confirmed in the fruitless and wasteful expenditure main note; and	Disclose amount(s) of fruitless and wasteful expenditure confirmed in the fruitless and wasteful expenditure note; and
Further determination to identify facts and losses related to the transaction.	Disclose progress of fruitless and wasteful expenditure in the sub-note Fruitless and Wasteful Expenditure under Determination	Disclose progress of fruitless and wasteful expenditure in the sub-note Fruitless and Wasteful Expenditure under Determination
	Include supplementary disclosure on disciplinary steps taken	Include supplementary disclosure on disciplinary steps taken
INVESTIGATION		
Confirmed fruitless and wasteful expenditure is investigated in-order to establish facts whether the transgression is related to fraudulent, corrupt and other criminal conduct.	Disclose amount(s) of fruitless and wasteful expenditure in the fruitless and wasteful expenditure main note; and	Disclose amount(s) of fruitless and wasteful expenditure in the fruitless and wasteful expenditure note; and
	Disclose progress of fruitless and wasteful expenditure in the sub-note - Fruitless and wasteful Expenditure under Investigation	Disclose progress of fruitless and wasteful expenditure in the sub-note - Fruitless and wasteful Expenditure under Investigation

ADDRESSING FRUITLESS AND WASTEFUL EXPENDITURE

Fruitless and Wasteful Expenditure incurred and irrecoverable

Description	Transgression took place in the current financial year	Transgression took place in the previous financial year
<p>If fruitless and wasteful expenditure incurred is irrecoverable</p>	<p>Determine amount(s) of fruitless and wasteful expenditure that are irrecoverable and consider writing off such amount(s) in terms of Treasury Regulation 11.4.1 (a) and (b) for departments and constitutional institutions and in terms of a Debt Write Off Policy for public entities; and</p> <p>Disclose amount(s) of fruitless and wasteful expenditure irrecoverable in the fruitless and wasteful expenditure note under Amount(s) written off</p>	<p>Determine amount(s) of fruitless and wasteful expenditure that are irrecoverable from the date on which the fruitless and wasteful expenditure was incurred to the end of the reporting period and consider writing such amount(s) in terms of Treasury Regulation 11.4.1 (a) and (b) for departments and constitutional institutions and in terms of a Debt Write Off Policy for public entities; and</p> <p>Disclose amount(s) of fruitless and wasteful expenditure irrecoverable in the fruitless and wasteful expenditure note under Amount(s) written off.</p>
Criminal Proceeding		
<p>If fraudulent, corrupt or other criminal conduct is alleged or confirmed</p>	<p>Follow the relevant steps required in terms of Treasury Regulations 4, 9 and 12 (for departments and constitutional institutions), in a case of public entities, follow Treasury Regulations 33 and the debt management policy of the public entity</p> <p>Report in terms of section 34 of the Prevention and Combating of Corrupt Activities Act</p> <p>Include supplementary disclosure on criminal proceedings instituted</p>	<p>Follow the relevant steps required in terms of Treasury Regulations 4, 9 and 12 (for departments and constitutional institutions), in the case of public entities, follow Treasury Regulations 33 and the Debt Management policy of the public entity</p> <p>Report in terms of section 34 of the Prevention and Combating of Corrupt Activities Act</p> <p>Include supplementary disclosure on criminal proceedings instituted</p>