



Province of the  
**EASTERN CAPE**  
COOPERATIVE GOVERNANCE  
& TRADITIONAL AFFAIRS

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# LITIGATION MANAGEMENT POLICY

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<b>Document Number</b>	<b>1</b>
<b>Document Name</b>	<b>Litigation Management Policy</b>
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<b>Date Completed</b>	<b>28 March 2024</b>
<b>Date of Approval</b>	<b>May 2024</b>
<b>Related Policies</b>	<p><b>The following policies of the Department of Justice and Constitutional Development relates to this policy.</b></p> <ol style="list-style-type: none"> <li><b>1. Alternative Dispute Resolution and State Mediation policy.</b></li> <li><b>2. Briefing and outsourcing of State Legal Work; Initiating, defending, and opposing of matters on behalf of the State policy.</b></li> <li><b>3. Management of State litigation policy.</b></li> <li><b>4. Policy on management of State Litigation contingent liability.</b></li> <li><b>5. State Legal Representation policy.</b></li> </ol>

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**SIGN OFF**


**I. Head of Department**

This policy on litigation management has been recommended by V. Mlokothe in my capacity as the Acting Head of Department of Cooperative Governance and Traditional Affairs.

I am satisfied and concur with the contents of this Policy.

Signed:	
Designation:	Acting Head of Department
Date:	06/05/2024

**II. Executive Authority**

Signed:	
Designation:	MEC: Zolile Williams
Date:	07/05/2024

## 1. PREAMBLE

The new democratic order in South Africa ushered some basic principles of constitutional democracy such as the rule of law, transparency and accountability, separation of powers and checks and balances. Organs of State are thus obliged to observe these basic principles.

To ensure that these principles are observed, parliament introduced various pieces of legislation like the Promotion of Access to Information Act, Promotion of Administrative Justice Act and Protection of Personal Information Act.

The Constitution further provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. It must be said that this right entrenches one of the fundamental principles of our law which is expressed in the maxim *ubi ius ubi remedium* which means where there is a right there is a remedy.

It is because of this background that the State is the biggest consumer of legal services in the Republic. Consumption of legal services includes participation in litigation whether for or against the department.

In order to avoid calamitous effect of litigation, the Department of Justice and Constitutional Development has approved 6 policies related to the management of State litigation. The framework seeks to improve management of state litigation.

The Departmental Litigation Management Policy is therefore aligned to the management of State litigation framework as well as the Eastern Cape provincial litigation management strategy. One of the drivers of the provincial litigation management strategy is to ensure transition from reactive litigation management into a proactive legal risk management. The strategy has four pillars, namely, the proactive legal support services, stakeholder consultation, litigation trend analysis and capacity building.

This policy is therefore intended to ensure that the department, when managing litigation, observes the constitutional values and principles as well as the provincial litigation management strategy.

## 2. PURPOSE

- 2.1 To ensure that any litigation that the Department is involved in is handled in an efficient manner looking at costs and value for money, which would include prompt instructions to the Office of the State Attorney; early preparation for hearings; thorough consultations with counsels on brief. The policy encourages a cooperative, results-oriented approach to litigation management.
- 2.2 To pursue alternative dispute resolution (ADR) as a mechanism to respond to litigation and minimise costs, and further foster peaceful co-existence and amicable settlement between the warring factions.
- 2.3 To ensure that judgments for and against the Department are promptly and properly responded to, either, by noting an appeal or giving guidance in complying with the Court orders.

## 3. DEFINITIONS

Terms and definitions that will be used throughout the procedure that need clarification for the reader, this can also include any keywords, technical terms and abbreviations that may be used in this document. Definitions in this Policy unless the context otherwise indicates.

<b>Words/Terms</b>	<b>Definition (with examples if required)</b>
Accounting Officer	Means an accounting officer as defined in the Public Finance Management Act, 1999 (Act No.1 of 1999)
Executive Authority	Means the member of the Executive Council responsible for the department of Cooperative Governance and Traditional Affairs

<b>Words/Terms</b>	<b>Definition (with examples if required)</b>
Legal Processes	Means any civil lawsuit or criminal prosecution instituted for or against an Organ of State
Legal Services	Means any form of legal advice, or drafting of document, or representation of any person that requires the expertise of a person trained in the practice of law
Legal Practitioner	Means an attorney or advocate
State Attorney	Means any person who is an Attorney in the office of the State Attorney created in terms of State Attorney Act, 1957 (Act No.56 of 1957)

#### **4. APPLICATION AND SCOPE**

This policy is applicable to all officials of the Department and to all processes relating to the initiation, opposition or defence of any legal action or application.

#### **5. LEGISLATIVE FRAMEWORK**

- Constitution of the Republic of South Africa ,1996.
- Broad Based Black Empowerment Act, 2003 (Act 3 of 2003).
- Preferential Procurement Policy Framework Act, 2005(Act of 2005).
- Public Service Act, 1994 (Proclamation 101 of 1994) as amended.
- Labour Relations Act, 1995 (Act No.66 of 1995) as amended.
- Public Service Regulations, 2016.
- Basic Conditions of Employment Act (Act 75 of 1997) as amended by Act 20 of 2013.
- Employment Equity Act (Act 55 1998) as amended by Act 47 of 2013.
- Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).
- Promotion of Access to the Information Act, 2000(Act No 2 of 2000).
- Promotion of Equity and Prevention of Unfair Discrimination Act (Act No 4 of 2000).



- Public Finance Management Act (Act 1 of 1999 as amended) and Treasury regulations.
- Intergovernmental Relations Framework Act, 2005.
- State Liability Act, 1957 (Act 20 of 1957) as amended.
- State Attorneys Act, 1957 (Act 56 of 1957) as amended.
- Legal Practice Act, 2014 (Act 28 of 2014).
- Institution of legal proceedings against certain organs of State, 2002 (Act No. 40 of 2002).
- Eastern Cape Traditional Leadership and Governance Act., 2017 (Act No.1 of 2017).
- Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).
- Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
- Local Government: Municipal Finance Management Act 2003 (Act No.56 of 2003).

## **6. PRINCIPLES**

### **6.1 Respect for the rule of law**

The Department acknowledges that as an organ of State it must obey the law and that its functionaries cannot exercise power unless authorized by law. Any decision or conduct taken by an unauthorized functionary may be declared null and void and set aside through litigation.

### **6.2 Accountability and Transparency**

The Department acknowledges that as an organ of State, it must be accessible and that it must be able to respond to the people. The Department further understands that the duty of accountability requires it to be able to explain its actions and decisions when required to do so.

It is further acknowledged that failure to observe principles of accountability and transparency may result in litigation.

### **6.3 Fairness**

The Department is committed to observe a fair procedure when dealing with individuals and members of the public in general as imposed to it by the Constitution and legislation. It is acknowledged that decisions of the department are reviewable in Court and therefore observing a fair procedure is imperative and is also a measure to mitigate incidents of litigation.

### **6.3 Professionalism**

The staff of the Department that is entrusted to handle litigation is expected to maintain a high standard of professional ethics.

### **6.4 Value for money**

In relation to litigation management, the principle of value for money relates to the department's commitment to the principle of rule of law thus avoiding unnecessary litigation. It also refers to ensuring that the State Attorney or a legal practitioner that is in brief carries out its mandate in a competent and timely manner.

The principle places an obligation on the part of the Department to explore alternative dispute resolution mechanisms where possible, instead of adversarial litigation process. To further this principle, the department must initiate settlement of matters instead of instituting hopeless cases or unnecessarily defending or opposing an application or action when there is no justification to do so.

## **7. ROLE PLAYERS**

The role players in litigation management, for purposes of the Department, are the following:

### **7.1 Accounting Officer**

The PFMA and Treasury Regulations prescribe specific powers to the Accounting Officer like management of losses and claims. Consequently, it is the responsibility of the accounting officer to ensure that the department's litigation management is in accordance with this policy document.

A decision to initiate, defend or oppose any matter is thus the responsibility of the Accounting Officer, acting in consultation with the Executive Authority.

### **7.2 Legal Advisory Services**

Management of litigation in the Department is the responsibility of Legal Advisory Services. Professional staff of legal advisory services must have necessary competencies, qualifications, expertise and must have practical knowledge of litigation process and must be persons who qualify to practice as either Attorneys or Advocates.

It is imperative for the department to adequately capacitate Legal Advisory Services to deal with complex matters as a unit that is handling litigation. A regular review of human capacity is thus essential.

The responsibility of legal advisory services in the management of litigation is outlined at clause 8 of this policy document.

### **7.3 Solicitor General and Offices of the State Attorneys**

The Solicitor-General is responsible for the provision of norms and standards for litigation as well as provision of reporting protocols on the implementation of the said norms and standards.

The mandate of the State Attorney is derived from section 3 of the State Attorneys Act and is to provide to government, services rendered by Attorneys, Notaries and Conveyances.

In terms of section 2 (3)(b) of the State Liability Act the State Attorney must within 10 days of receipt of the process, provide the head of department with legal advice on the merits of the matter.

### **7.4. Administrators / Line functionaries**

Departmental administrators or line functionaries are key in the management of litigation. They are expected, working with Legal Advisory Services, to develop measures to avoid litigation like prompt legal compliance and effective management of letters of demand. In instances where litigation has materialised, they are key in the provision of necessary information for instructions and prompt compliance with court orders.

## **8. LITIGATION PROCESS**

### **8.1. PRE-LITIGATION PROCEDURE**

#### **8.1.1. Management of letters of demand**

In terms of section 3 of the Institution of Legal Proceedings Against Certain Organs the State Act No. 40 of 2002, *No legal proceedings for the recovery of a debt may be instituted against an organ of state unless-*

*(a) the creditor has given the organ of state in question notice in writing of his or*

*(b) the organ of state in question has consented in writing to the institution of that her or its intention to institute the legal proceedings in question, or legal proceedings-*

- (i) without such notice; or*
- (ii) upon receipt of a notice which does not comply with all the requirements set out in subsection (2).*
- (2) A notice must-*
  - (a) within six months from the date on which the debt became due, be served on*
  - (b) briefly set out the organ of state in accordance with section 4(1); and*
    - (i) the facts giving rise to the debt; and*
    - (ii) such particulars of such debt as are within the knowledge of the creditor.*

The notice or letter of demand is intended to afford the organs of State, an opportunity to investigate the claims against it and possibly settle such claims. It is important for the department to arrest litigation at this stage.

The Department must, when receiving a notice or any letter of demand, immediately refer them to Legal Advisory Services. Legal Advisory Services must facilitate prompt investigation of the claims and respond thereto. No responses to the letters of demand must be sent out without a legal input by Legal Advisory Services.

Failure to investigate and respond to the letter of demand will justify institution of disciplinary proceedings against the responsible official(s).

## **8.2. Mediation**

Mediation can be initiated in any of the following stages:

- (a) before commencement of litigation.*
- (b) after commencement of litigation, but before trial commences; and*
- (c) during trial, but before judgement, with the consent of the court.*

Department must always investigate and consider the merits of each matter and thereafter give proper and detailed instructions to the State Attorneys in relation to mediation.

### **8.2.1 Mediation before commencement of litigation.**

- 8.2.1.1. The Department may, upon receipt of a letter of demand or any threat about institution of legal proceedings against it, instruct the State Attorney to initiate mediation.
- 8.2.1.2. The procedure to be followed is outlined at paragraph 5.1&2 of the State Mediation Policy approved by the Minister of Justice.

### **8.2.2 Mediation after commencement of litigation, but before trial commences.**

- 8.2.2.1 Mediation after commencement of litigation is regulated by rules of the Magistrates Court as well as those of the High Court.
- 8.2.2.2 In terms of rule 78(2) of the **Rules Regulating the Conduct of Proceedings of Magistrates ‘Court of South Africa**, after the commencement of trial but prior to judgment, any party may refer the dispute to mediation. The court may also suggest that the dispute be referred to mediation.
- 8.2.2.3 In the High Court, mediation after commencement of litigation is regulated by rule 41A of the uniform rules. Sub rule (2)(a) compels a plaintiff or applicant to file prescribed Rule 41A Notice of agreeing or opposing mediation, *before* summons or motions may be issued. Sub rule (2)(b) compels the defendant or respondent to also file a prescribed Rule 41A Notice of agreeing or opposing mediation, *before* a plea or opposing papers may be issued.

### **8.2.3 Mediation process**

- 8.2.3.1 The Department must give full instructions to the State Attorney to ensure that the mediation is conducted in accordance with accepted mediation practices. The norm in mediation practice is that the parties sign an agreement. The Head of Department or an official delegated to do so must sign the agreement. The following are some of the aspects to which parties agree on.
  - (a) Appointment of a suitably qualified mediator.
  - (b) The costs of the mediation, including the costs of the mediator.
  - (c) When and where the mediation is to take place.

- (d) Duration.
- (e) The procedure to be followed in conducting the process, for example, exchange of documents and preparation of bundles; and
- (f) any other matters the parties may agree upon.

### **8.3 Litigation phase**

Litigation is regulated by the rules of the relevant court and requires strict adherence to time limits in order to avoid adverse orders/judgments and punitive costs orders.

- 8.3.1 In terms of section 2(2)(a) of the State Liability Act No.20 of 1957, the plaintiff or applicant, as the case may be, or his or her legal representative must after any court process instituting proceedings and in which the executive authority of a department is cited as nominal defendant or respondent has been issued, serve a copy of that process on the head of the department concerned at the head office of the department.

To ensure effective management of litigation process and that legal documents are attended to promptly and appropriately, the head of department may designate Legal Advisory Services to receive court process. An official who receives court papers must clearly indicate the date and time of receipt of service and sign on the document.

- 8.3.2 In instances where court papers were served directly to the office of the head of department, they must promptly be referred to Legal Advisory Services directorate to ensure adherence with the rules of the court and prescribed time frames. Legal Advisory Services must immediately initiate contact with the relevant directorate in order to receive necessary information which will be used to formulate an advice to the accounting officer on whether or an application or action must be opposed or defended. In appropriate circumstances, Legal Advisory Services may hold a consultation with the relevant directorate.

- 8.3.3 Relevant directorates must adhere to time period as may be prescribed by Legal Advisory Services and must at all times avail themselves when information is requested. Upon receipt of requested information, Legal Advisory Services must request instructions from the accounting officer on whether or not the matter must be

opposed or defended. The request of instruction must at least explain to the accounting officer the following:

- (a) The cause of action;
- (b) The relief sought against the department;
- (c) Advice on the prospects of success if the matter is defended or opposed;
- (d) Any possibilities to initiate alternative dispute resolution mechanism;
- (e) Stipulate if litigation occurred as a result of misconduct or negligence of a departmental official and make necessary recommendations on necessary remedial steps to be taken against that official.
- (e) Recommendations.

8.3.4 On receipt of instructions from the accounting officer, Legal Advisory Services will prepare formal instructions to the State Attorney. All legal processes, notices related to the matter will be handled by the State Attorney once they have been instructed in writing.

8.3.5 Legal Advisory Services will regularly liaise with the State Attorney on the matter and provide necessary updates to the department. It is also the responsibility of Legal Advisory Services to ensure that responsible officials are available for further consultations and provision of further information and documentation as may be required by the State Attorney. In appropriate circumstances, Legal Advisory Services may, together with the State Attorney as well as the representative of the relevant directorate, attend all court hearings and pre-hearing conference on the matter.

## **9. LITIGATION REGISTER**

9.1 Legal Advisory Services must develop and maintain a register of all litigation matters in which the department is involved.

9.2 The register will include the following information:

- (a) The court where the matter was or is to be heard;
- (b) The case number;
- (c) The names of the parties;
- (d) The type of litigation;

- (e) The amount involved.

## **10. DORMANT MATTERS**

- 10.1 For purposes of this policy, a matter is regarded as dormant if there has not been any significant or material progress in the case for a period of more than thirty-six (36) months from date of the last action or steps taken in the prosecution of the matter.
- 10.2 Matters that are lying dormant must be removed from the litigation register. Legal Advisory Services must, before the dormant matters are removed, confirm with the State Attorney about the need to have these matters removed from the register.

## **11. MANAGEMENT OF CONTINGENT LIABILITIES**

- 11.1 All civil claims sounding in money against the departments must be considered as litigation contingent liability.
- 11.2 Legal Advisory Services must keep and update a register of litigation contingent liability.
- 11.3 Legal Advisory Services must, on a quarterly basis, report to Financial Accounting Services about pending claims, claims reduced or cancelled and those that have been paid.
- 11.4 The Department must also report to the Office of the Solicitor -General about its litigation contingent liability as and when required and in a manner prescribed by that office.
- 11.5 In principle all the amounts in the statement of claims or summonses intimated as a claim must be recorded in the contingent liability register.
- 11.6 Where the claimant has cited the Department jointly with other departments or organs of State, the department must figure out its contingent liability by dividing the quantum claimed equally amongst the defendants who are sued jointly and severally.



11.7 In cases of misjoinder, that is, where the Department is joined in a claim in which it ought not to have been joined because it was not involved in the transaction or event giving rise to a claim, such claim should not be recorded on the register.

## **12. LITIGATION RISK AND TREND ANALYSIS**

12.1 Legal Advisory Services must conduct annually an analysis of risk factors pertaining to the department's litigation. The analysis should identify potential risks and propose measures to mitigate these risks. To ensure the credibility and authenticity of the analysis, Risk Management Unit will take the lead in the compilation of the final risk analysis document.

12.2 A litigation risk report must consist of:

- (a) Risk identified;
- (b) Nature of matters litigated;
- (c) List of judgments against department;
- (d) Progress and compliance with judgments and reasons for non-compliance;
- (e) Factors identified as causes for the organ of state's exposure to litigation; and
- (f) Measures and/or corrective measures to be put in place to mitigate the identified risk.

12.3 The Department must submit the litigation risk report in a manner that is prescribed by the Office of the Solicitor-General.

12.4 Legal Advisory Services must conduct litigation monthly trend analysis and proposed mitigating measures with relevant directorates and provide a report to the Head of Department quarterly in this regard.

## **13. PAYMENT OF LEGAL FEES**

13.1 Payment of legal fees is the responsibility of the Department.

13.2 The Department of Justice, however, affords departments three (3) possible methods of payment of legal fees which are as follows:

- (a) Department of Justice pays legal fees on behalf of departments and seek reimbursement within 30 days after submitting invoices.
- (b) Departments may pay the respective practitioners directly after the Office of the State Attorney has checked and verified the invoice and submitted it to the department(s) for payment.
- (c) Advance payment to be made by the departments after having received estimated costs from the Office of the State Attorney. If the legal fees to be paid exceed the estimated costs, then the departments must pay the difference within thirty (30) days of receipt of the invoice.

13.3 Advance payment must under no circumstances be ever considered. Option (a) in terms of which Department of Justice pays legal fees on behalf of the department and reimbursed later, is most preferred method of payment of legal fees.

13.4 Legal Advisory Services must develop measures to ensure that payment to the Department is not duplicated and is justified, such measures must be detailed in the standard operating procedure for handling litigation matters and may include verification by Financial Accounting Services.

#### **14. IMPLEMENTATION OF COURT ORDERS / JUDGMENTS**

14.1 Compliance with court orders is highly regulated by legislation. Thus, in terms of section 165(5) of the Constitution, an order or decision issued by a court binds all persons to whom and organ of state to which it applies.

It is important to note that failure to comply with a court order may have serious implications because the judgment creditor may instruct the sheriff of the court to attach the state property.

14.2 The State Liability Act further provides that the State Attorney or attorney of record appearing on behalf of the department must, within seven days after a court order sounding in money against a department becomes final, in writing, inform the executive

authority and accounting officer of that department and the relevant treasury of the final court order.

- 14.3 It is further provided that a final court order against a department for the payment of money must be satisfied within 30 days of the date of the order becoming final or within the time period agreed upon by the judgment creditor and the accounting officer of the department concerned.
- 14.4 Legal Advisory Services must, upon receipt of a court judgment advise the department about its implications and facilitate compliance with it unless the department decides to appeal against it. The responsibility to comply with the Court Order rests with the Accounting Officer of the department. In instances where court judgments in respect of claims sounding in money are not satisfied within the prescribed period, the matter may, as provided by the State Liability Act, be referred to the Provincial Treasury.
- 14.5. Legal Advisory Services must keep and maintain an implementation of court orders register to track the status of implementation of court orders by the department. All court orders must be satisfied within the period prescribed in the court order and under no circumstances can the department take more than 30 days to implement a court order.
146. Failure to implement court orders within the prescribed time frames by the department must not be tolerated. Reasons for non-compliance must be investigated and remedial steps to prevent reoccurrence must be taken.
- 14.7. A decision to appeal must be taken within the prescribed timeframes of the relevant court. Legal Advisory Services will be responsible for advising the department of the deadlines that apply.

## **15 CLAIMS AGAINST THE DEPARTMENT THROUGH ACTS AND OMISSIONS OF THE OFFICIALS**

15.1 In terms of regulation 12.2.1 of the Treasury regulations, *an institution must accept liability for any loss or damage suffered by another person, which arose from an act or omission of an official, as a claim against the state and does not recover compensation from*

*an official, provided the official shall forfeit this cover if he or she, with regard to the act or omission, is liable in law.*

15.2 An official shall forfeit the cover provided by regulation 12.2.1, if he or she-

- (a) Intentionally exceeded his or her powers;
- (b) made use of alcohol or drugs;
- (c) did not act in the course and scope of his or her employment;
- (d) acted recklessly or intentionally;
- (e) without prior consultation with the Legal Advisory Service and /or State Attorney, made an admission that was detrimental to the department; or
- (f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage, or reason for the claim, excluding damage arising from the use of a state vehicle; and
- (g) in the case of a loss, damage or claim arising from the use of a state vehicle, the official –
  - (i) used the vehicle without authorisation;
  - (ii) did not possess a valid driver's licence or other appropriate licence;
  - (iii) did not use the vehicle in the interest of the state;
  - (iv) allowed unauthorised persons to handle the vehicle; or
  - (v) deviated materially from the official journey or route without prior authorisation.

## **16. CLAIMS BY THE DEPARTMENT AGAINST OTHER PERSONS**

*In term of regulation 12.3.1 If the state suffers a loss or damage and the other person denies liability, the accounting officer must, if deemed economical, refer the matter to the State Attorney for legal action, including the recovery of the value of the loss or damage.*

The institution of a legal action for recovery of the value of the loss or damage must, in order to avoid prescription of the claim, be done promptly and not more than three years after the accounting officer became aware of the loss.

## **17. LITIGATION AGAINST OTHER ORGANS OF STATE**

17.1 In terms of section 41(1) (h) (vi) of the Constitution all spheres of government and organs of state within each sphere must co-operate with one another in mutual trust and good faith by avoiding legal proceedings against one another. Section 40(1) of the Intergovernmental relations framework Act further states that all organs of states must make every reasonable effort to avoid intergovernmental disputes when exercising their statutory powers or performing their statutory functions and to settle intergovernmental disputes without resorting to judicial proceedings.

17.2 The Department consequently has a duty to avoid litigation against other organs of state and may not resort to judicial proceedings unless the IGR processes that are prescribed in the IGR Act have been exhausted.

It is worth to note that the provisions of IGR Act, do not apply to the settlement of specific Intergovernmental Disputes in respect of which other national legislation provides resolution mechanisms or procedures or to a dispute concerning an intervention in terms of section 100 or 139 of the Constitution.

17.3 The Department may however resort to judicial proceedings without having to exhaust the provisions of the IGR Act, if the procedures contemplated by IGR Framework Act will be time consuming and that for purposes of a particular case, following the procedures will deny effective redress to the department. A further reason to allow departure from the dispute resolution mechanism prescribed by IGR Framework Act is when the lawfulness of an organ of state's conduct needs to be determined.

## **18. LITIGATION AFFECTING MUNICIPALITIES**

18.1. Local Government is an autonomous sphere of government in terms of the constitution. The constitutional mandate of provincial government is to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions. This mandate does not impose any obligation to the department to litigate on behalf of municipalities. The Department cannot therefore litigate on behalf of municipalities as that would lead to the incurring of an unauthorized expenditure.

- 18.2. It must further be noted that the Department may also not litigate on behalf of municipalities even in instances where it has intervened in terms of section 139 of the Constitution.
- 18.3. In instances where the department is cited as defendant or respondent in a matter affecting a municipality, it may only enter the fray if there is relief sought against the department and that it is necessary to safeguard its interests.
- 18.4. In order to fulfil the constitutional mandate of the department, legal advisory services must embark on a coordinated and strategic risk litigation assessment and litigation trends analysis in municipalities with a purpose of avoiding litigation, where possible.

## **19. LITIGATION AFFECTING TRADITIONAL LEADERSHIP INSTITUTIONS**

- 19.1. The Constitutional mandate according to Section 211 and 212 is to provide for recognition of the institution of traditional leadership and further stipulates that national legislation may provide for the role of the institution of traditional leadership at local level on matters affecting local communities.
- 19.2. According to the white paper on Traditional Leadership the transformation of the institution must, among other things promote sound relationships between itself and other spheres of government, act in partnership with municipalities by creating good relationships in order to enhance service delivery.
- 19.3. The Traditional Leadership and Governance Framework Act, 2003 provides for the roles and functions of Traditional leadership institutions.
- 19.4. The Eastern Cape Traditional Leadership and Governance Act, 2017 (Act No. 1 of 2017) provides for the recognition of traditional communities; traditional councils and traditional leaders; withdrawal and removals.
- 19.5. The Local Government: Municipal Structures Act, 1998 provides for the procedure for the participation of Traditional Leaders in the Municipal Councils.

- 19.6. The Local Government: Municipal Systems Act, 2000 regulates the conduct of traditional leaders when participating in Municipal Council
- 19.7. The above-mentioned legislations will guide the Department on litigation management wherein traditional leadership institutions are involved. The Department will not be held legally accountable for personal litigation matters of traditional leadership, subject to paragraph 16.8 hereunder.
- 19.8. In instances where the department is cited as defendant or respondent in a matter affecting a traditional leadership, it may only enter the fray if there is relief sought against the Department and that it is necessary to safeguard its interests, and whether the Department is cited as a party or not and whether any relief is sought against it or not it may still enter the fray in any manner it deems fit where it has an interest or is concerned or the matter is in the public interest."
- 19.9. In order to fulfil the constitutional mandate of the Department, Legal Advisory Services must embark on a coordinated and strategic risk litigation assessment and litigation trends analysis in traditional leadership institutions with a purpose of avoiding litigation, where possible.

## **20. MONITORING OF COMPLIANCE WITH THE POLICY**

Legal Advisory Services will monitor the extent of compliance with this policy.

## **21. COMMUNICATION**

The Litigation Management Policy will be communicated by means of intranet, circulars, and advocacy sessions to all employees of the Department.

## **22. IMPLEMENTATION**

This policy will come into effect immediately on approval by the Executive Authority.

### 23. REVIEW OF THE POLICY

This policy will be reviewed as and when there are compelling developments in the legal framework regulating management of state litigation.

### 24. VERSION CONTROL AND CHANGE HISTORY

<b>Version control</b>	<b>Date Effective</b>	<b>Approved By</b>	<b>Amendment</b>
<b>Start from</b>	<b>DD/MM/YY</b>	(the date the policy takes Effect)	
2017	06/03/2017	Hon. FD Xasa	
2020	11/11/2020	Hon. X Nqatha	<ol style="list-style-type: none"><li>1. Management of letters of demand.</li><li>2. Removal of dormant matters from litigation register of the lapse of five (5) years.</li><li>3. Keeping and maintenance of the implementation of court orders register by Legal Advisory Services to track the status of implementation of court order by the department.</li><li>4. To further regulate participation of the department in traditional leadership litigation where the department or MEC is not cited as a respondent. MEC to enter the fray only if it is the public interest to do so.</li><li>5. To capture to provisions of regulation 12.2.1&amp; 12.3.1 of the Treasury regulations.</li><li>6. To incorporate provisions of section 2(2) of the State Liability Act 20 of 1956.</li></ol>
2024		Hon. ZA Williams	Objectives of the amendments are to provide for the following:



			<ol style="list-style-type: none"><li>1. Additional legal framework impacting on management of State litigation.</li><li>2. Mediation process as an alternative dispute resolution mechanism;</li><li>3. Solicitor General as a major role player in the management of State litigation;</li><li>4. Time period that must lapse before a matter appearing in our litigation register can be regarded as dormant;</li><li>5. Management of litigation contingent liability;</li><li>6. Contents of the litigation risk reports; and</li><li>7. Payments of legal fees.</li></ol>
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