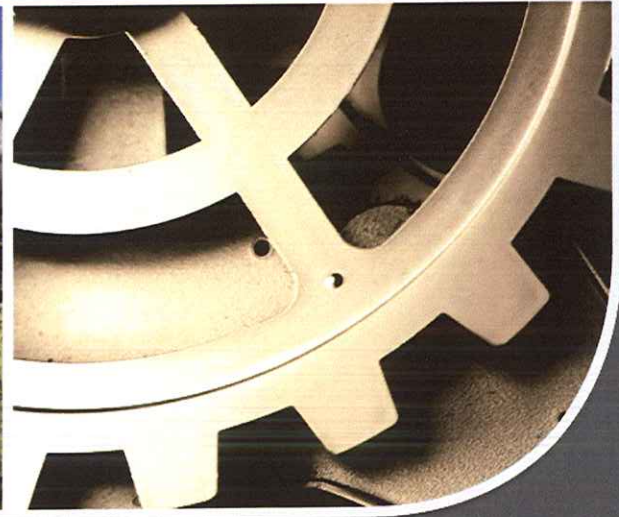
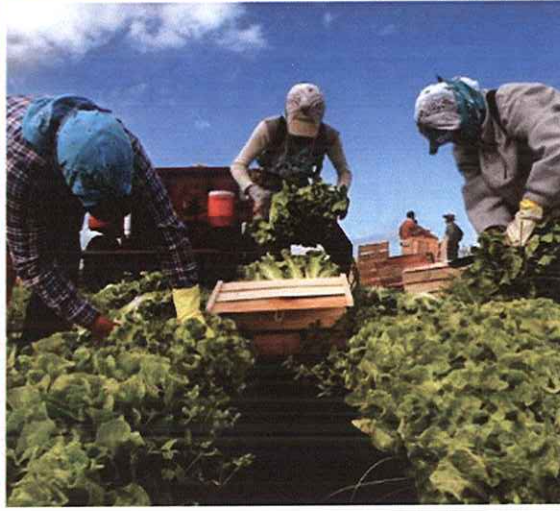


PORTFOLIO COMMITTEE ON LABOUR PRESENTATION ON NEDLAC'S FORENSIC AUDIT PROCESS

DATE: 30 JUNE 2015



labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA

NEDLAC'S FORENSIC AUDIT PROCESS

Requests flowing from the Portfolio Committee
Meeting of 17 June 2015

1. Proof of autonomy of public entities.
2. Proof of audit committee sanctioning decision to conduct a forensic investigation.
3. Proof of Submission to the Minister.
4. The concept of reporting to the Minister.
5. What process is followed to perform a forensic investigation?

NEDLAC'S FORENSIC AUDIT PROCESS

1. Proof of autonomy of public entities.

❖ Establishment

NEDLAC was established by the National Economic, Development and Labour Council Act, 1994 (Act No.35 of 1994). Annexure A

- NEDLAC thus has its own enabling legislation which stipulates that the Council shall be a juristic person;
- NEDLAC is listed as a Schedule 3 A National Public Entity and as such it must comply with the regulatory framework as contained in Chapter 6 of the PFMA, its Regulations and the King Reports on good governance.
- In terms of Section 49(2)(a) of the PFMA the accounting authority of Nedlac is the controlling body, which in turn is the Executive Council of Nedlac.
- Par. 5(2)(a) **of Annexure A** stipulates that the Council may **make such investigations** as it may consider necessary.

NEDLAC'S FORENSIC AUDIT PROCESS

1. Proof of autonomy of public entities. (Cont)

❖ Establishment (Continue)

- Par. 6(1)(d) of **Annexure A** stipulates that the Executive Council shall have powers to **establish committees** and to delegate or assign such powers to, amongst others, the committees.

- Section 50(1)(c) of the PFMA (**ANNEXURE B**) specifies that the accounting authority of a public entity must: "**on request**, disclose to the executive authority responsible for that public entity (The Minister), all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority;"

❖ Conclusion:

From the above it is clear that **Nedlac functions autonomously** and may, amongst others, conduct investigations, as contemplated in par. 5(2)(a) of the Nedlac Act.

NEDLAC'S FORENSIC AUDIT PROCESS

2. Proof of audit committee sanctioning decision to conduct a forensic investigation.

- ❖ **The Portfolio Committee on Labour requested proof of who/whom made the final decision to proceed with the forensic investigation.**
 - During a special Audit Committee of Nedlac held on 10 November 2011, it was agreed that the then Chief Financial Officer, Mr. Umesh Dulabh, be placed on precautionary suspension, **as he was the only person suspected** to have been responsible for the alleged irregularities at Nedlac.
 - Mr. Dulabh was served with a letter notifying him of the suspension, however he decided to resign with immediate effect on 21 November 2011.
 - An acting CFO was appointed on 28 November 2011 to stabilise the financial function of Nedlac and to also establish whether there are sufficient grounds to proceed with a forensic investigation, considering the accompanying high costs of such an investigation.

NEDLAC'S FORENSIC AUDIT PROCESS

2. Proof of audit committee sanctioning

decision to conduct a forensic investigation.

- During a meeting of Nedlac's Audit Committee held on 17 January 2012, it was agreed that Nedlac should proceed with the forensic audit, as the acting CFO confirmed gross negligence during her preliminary assessment of the financial functions at the institution.

Attached as **Annexure C**, please find copies of the Audit Committee Meeting minutes of **10 November 2011** as well as **17 January 2012**.

❖ Conclusion

- It was a **collective decision** to proceed with the forensic investigation into the allegations presented by the Department of Labour, giving due consideration to the probability that such allegations may be valid, and also to justify the costs to be incurred.

NEDLAC'S FORENSIC AUDIT PROCESS

3. Proof of Submission to the Minister.

The Portfolio Committee on Labour requested proof of submission(s) to the Minister of Labour, informing and advising her on the outcome of the forensic investigation and the way forward.

- The Director General of Labour was informed of the outcome of the forensic investigation on 2 July 2012, (**ANNEXURE D.**) and based on the sensitivity of the information revealed, he instructed Nedlac to obtain a legal opinion, prior to any further steps be taken.
- The Attorney's firm HAFEGEE ROSKAM SAVAGE was subsequently appointed and in accordance with **section B 3** of the attached **ANNEXURE E**, the report is divided into three (3) sections, which are as follows:
 1. Legal requirements and obligations of Nedlac and the Minister of Labour;
 2. The second section comments upon the forensic report; and
 3. The summary of the forensic report's findings and the steps that Nedlac should pursue with regard to each finding and recommendation.

NEDLAC'S FORENSIC AUDIT PROCESS

3. Proof of Submission to the Minister.

- The then Director-General (Mr NTP Nhleko) also indicated in the submission of 2 July 2012 that he and Mr L Kettleidas will meet with the Minister to discuss the content of the forensic report. **(ANNEXURE D)**

- The minister requested a meeting with the Audit Committee, the Forensic Auditors, the then Executive Director of Nedlac, Mr A Smith, Mr S Morotoba and Mr L Kettleidas. This meeting took place at Birchwood Conference Centre on 7 September 2012. During this meeting the Forensic Auditors were requested to further investigate certain matters with a view to present a final report by the end of September 2012.

- The Minister was presented with a follow up report on 28 May 2013 which was signed off on 24 June 2013. **(ANNEXURE F)** In the Minister's response to the submission, the Minister requested a meeting with the Director-General, the previous Acting Director-General, Mr S Morotoba, Mr L Kettleidas, the then Executive Director of Nedlac, Mr A Smith, the Overall Conveners of Nedlac and the Chairperson of the Audit Committee.

NEDLAC'S FORENSIC AUDIT PROCESS

4. The concept of reporting to the Minister.

- ❖ **The Portfolio Committee on Labour requested clarity regarding the phrase "reporting" to the Minister that was used during the meeting.**
- Paragraph 27.1.9 of the Treasury Regulations stipulates the following: "The audit committee must have **explicit authority** to investigate matters within its powers, as identified in the written terms of reference. The audit committee must be provided with the resources it needs to investigate such matters and shall have full access to information."
- Paragraph 27.1.11 stipulates: "Should a report from internal audit (or any other source) to the audit committee implicate any member(s) of the accounting authority in fraud, corruption or gross negligence, the chairperson of the audit committee must **report** this to the executive authority and the Auditor-General." **(ANNEXURE G)**

NEDLAC'S FORENSIC AUDIT PROCESS

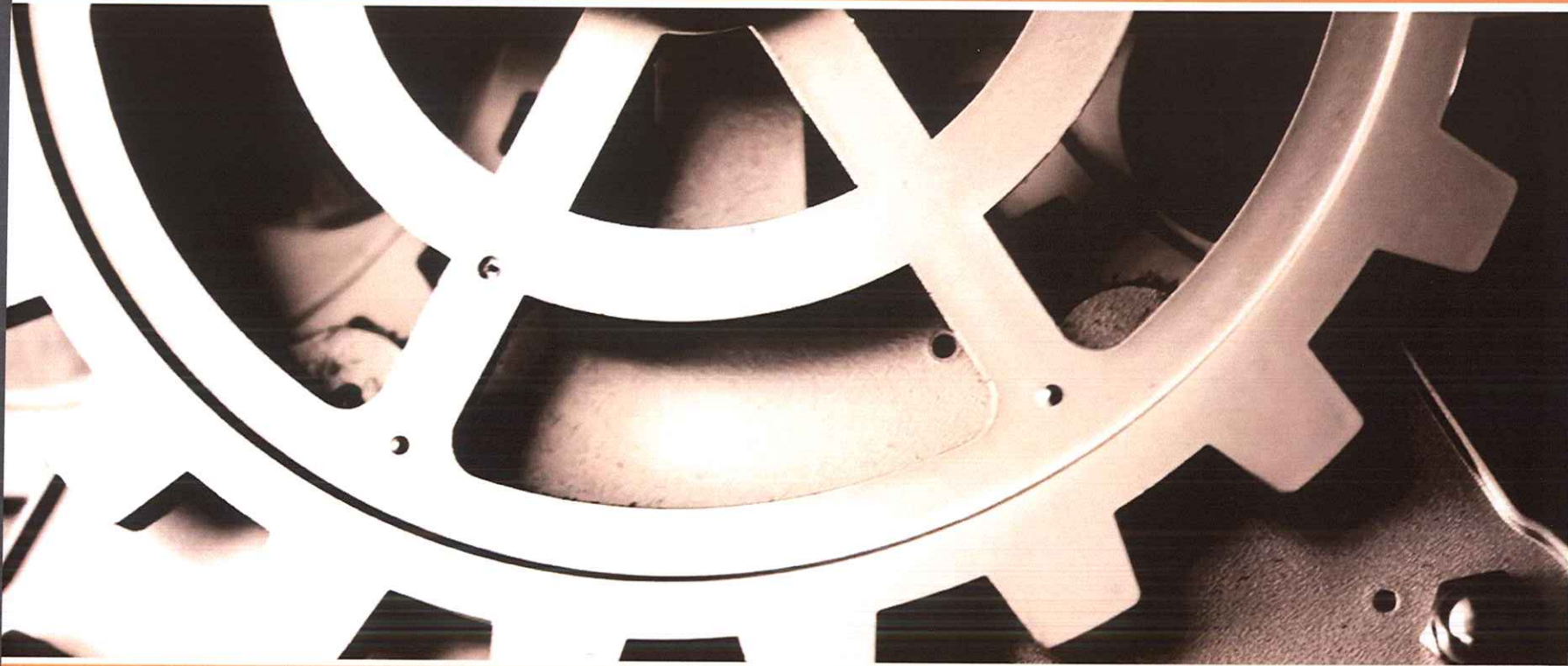
5. What process is followed to perform a forensic investigation?

The steps to follow to perform a forensic audit is discussed in detail in the legal opinion that was obtained. (Annexure E)

To the best of our knowledge, all steps were duly followed during the forensics audit here under discussion and no steps were omitted

Thank You...

NEDLAC'S FORENSIC AUDIT PROCESS



ANNEXURE A

The Nedlac Act

FOUNDING DOCUMENTS

Act No. 35 of 1994:
National Economic Development and Labour Council Act, 1994

Act

To provide for the establishment of a national economic, development and labour council; to repeal certain provisions of the Labour Relations Act, 1959; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 23 November 1994.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Definitions

1. In this Act, unless the context otherwise indicates-
 - (i) "Council" means the National Economic, Development and Labour Council established by section 2; (ix)
 - (ii) "Minister" means the Minister of Labour; (v)
 - (iii) "National Manpower Commission" means the Commission established by section 2A of the Labour Relations Act, 1956 (Act No. 28 of 1956); (vi)
 - (iv) "national summit" means the annual meeting of representatives of organised business, organised labour, organisations of community and development interests, the State and interested parties convened by the Council in terms of section 7; (vii)
 - (v) "organisations of community and development interests" means those non-governmental organisations identified by the Minister without Portfolio in the Office of the President in terms of section 3(5) as representing community interests relating to reconstruction and development; (viii)
 - (vi) "organised business" means business represented by those employer and business associations and federations of such associations that are the founding parties of the Council and any association that is admitted thereafter; (ii)
 - (vii) "organised labour" means the federations of trade unions that are the founding parties of the Council and any association that is admitted thereafter; (i)
 - (viii) "socio and economic policy" includes financial, fiscal and monetary policy, socio-economic programmes, trade and industrial policy, reconstruction and development programmes and all aspects of labour market policy, including training and human resource development; (iv)
 - (ix) "this Act" includes any regulation made under section 10. (iii)

Establishment of National Economic, Development and Labour Council

2.
 - (1) There is hereby established a council to be known as the National Economic, Development and Labour Council.
 - (2) The Council shall be governed by an executive council and shall in addition consist of four chambers, namely-
 - (a) a public finance and monetary policy chamber;
 - (b) a trade and industry chamber;

- (c) a labour market chamber; and
- (d) a development chamber.

(3) The Council shall be a juristic person.

Membership of Council

3. (1) The Council shall consist of-

- (a) members who represent organised business;
- (b) members who represent organised labour;
- (c) members who represent organised community and development interests;
- (d) members who represent the State.

(2) The members referred to in subsection 1(a) shall be appointed by the Minister on nominations made by organised business.

(3) The members referred to in subsection 1(b) shall be appointed by the Minister on nominations made by organised labour.

(4) The members referred to in subsection 1(c) shall be appointed by the Minister without Portfolio in the Office of the President from persons nominated by the organisations of community and development interest identified by the Minister without Portfolio in the Office of the President in terms of subsection (5).

(5) The Minister without Portfolio in the Office of President shall in consultation with the executive council identify organisations of community and development interest that-

- (a) represent a significant community interest on a national basis;
- (b) have a direct interest in reconstruction and development; and
- (c) are constituted democratically.

(6) The President shall appoint the members referred to in subsection (1)(d).

(7) The members appointed in terms of subsections (2), (3), (4) and (6) shall hold office in accordance with the constitution of the Council.

Constitution of Council

4. Subject to the provisions of this Act, the constitution of the Council shall provide for-

- (a) the manner in which organised business may nominate persons for appointment as members and the manner in which members may be removed;
- (b) the manner in which organised labour may nominate persons for appointment as members and the manner in which members may be removed;
- (c) the criteria by which and manner in which organised business shall admit employers and business associations or federations of such associations;
- (d) the criteria by which and manner in which organised labour shall admit federations of trade unions;
- (e) the appointment of alternates to members;
- (f) the appointment of ex officio members of the council in either a representative or expert capacity;
- (g) the removal of members;
- (h) the appointment, removal, duties and powers of the chairpersons, office-bearers and officials;
- (i) the establishment, composition, and functions of the executive council;
- (j) the establishment, composition, powers and functioning of the chambers;
- (k) the establishment, composition, powers and functioning of committees, including a management committee, of the Council;
- (l) the convening of, quorum for and conduct of meetings of the executive council, chambers and committees;

- (m) the convening of, the chairpersonship of, and the criteria for the participation of organised business, organised labour, organisations of community and development interest and other interested parties in, the national summit;
- (n) the keeping of minutes;
- (o) the manner in which decisions are taken;
- (p) the amendment of the constitution;
- (q) any other matters necessary for or incidental to the performance of its functions.

Objects, powers and functions of Council

5.

(1) The Council shall-

- (a) strive to promote the goals of economic growth, participation in economic decision-making and social equity;
- (b) seek to reach consensus and conclude agreements on matters pertaining to social and economic policy;
- (c) consider all proposed labour legislation relating to labour market policy before it is introduced in Parliament;
- (d) consider all significant changes to social and economic policy before it is implemented or introduced in Parliament;
- (e) encourage and promote the formulation of co-ordinated policy on social and economic matters.

(2) For the purpose of subsection (1), the Council-

- (a) may make such investigations as it may consider necessary;
- (b) shall continually survey and analyse social and economic affairs;
- (c) shall keep abreast of international developments in social and economic policy;
- (d) shall continually evaluate the effectiveness of legislation and policy affecting social and economic policy;
- (e) may conduct research into social and economic policy;
- (f) shall work in close co-operation with departments of State, statutory bodies, programmes and other forums and non-governmental agencies engaged in the formulation and the implementation of social and economic policy.

(3) Nothing in this section shall preclude the Council from considering any matter pertaining to social and economic policy.

Powers of executive council

6.

(1) The powers of the executive council shall be-

- (a) to exercise and perform the powers and functions referred to in section 5;
- (b) to agree to the constitution of the Council and amend it from time to time subject to the provisions of this Act;
- (c) to establish the chambers referred to in section 2(2);
- (d) to establish committees, including a management committee, to assist it in the exercise of its powers and the performance of its functions and to delegate or assign such powers and functions as it deems appropriate to such committees, and the chambers contemplated in paragraph (c);
- (e) to conduct enquiries in the performance of its functions and the exercise of its powers;
- (f) generally, but subject to this Act, to exercise those powers and perform those functions as are necessary to realise the objectives of the Council.

- (2) The executive council may under its constitution authorise any committee or person to conduct enquiries and exercise the powers and perform the functions conferred on the executive council under this Act.
- (3) The executive council shall develop conventions and regulate its relationships with Parliament and its standing committees and the Ministries and Departments affected by the decisions of the Council.
- (4) The executive council shall develop rules and protocols for the conduct of relations with other institutions engaged in the formulation or implementation of aspects of social and economic policy.
- (5) The executive council may develop codes of conduct to regulate the conduct of members and representatives.
- (6) The executive council shall appoint a secretariat on such terms and conditions as it may determine.

Duties of executive council

7.
 - (1) The executive council shall annually convene a national summit of interested parties, to report on and to consider the activities of the Council.
 - (2) The executive council shall as soon as possible after 31 December in each year furnish the Minister with a report, including an audited financial account and balance sheets of the Council, in respect of its activities and the state of social and economic matters in the Republic during the year ending on that date.
 - (3) The Council shall be publicly funded and the executive council shall prepare an annual budget for the financing of the Council for submission to the Minister by 1 September in each year for his or her approval and the concurrence of the Minister of Finance.

Reports

8. Any report of the Council, including the annual report or a report on any proposed legislation or policy relating to or affecting social and economic matters shall be submitted to the Minister and every such report shall as soon as practicable be laid upon the Table of the Senate and of the National Assembly.

Amendment of laws and transitional measures

9.
 - (1) The Minister shall be the interim chairperson of the Council.
 - (2) The interim chairperson shall for the purposes of subsection (6) convene an inaugural meeting of the Council by fixing a date, time and venue for such a meeting.
 - (3) The Minister shall invite the representatives of the employer and business associations, federations or such associations and federations of trade unions represented on the National Manpower Commission and the National Economic Forum to attend the meeting.
 - (4) The Minister, in consultation with the Minister without Portfolio in the Office of the President, shall invite persons who represent organisations of community and development interests to attend the meeting.
 - (5) The President shall appoint the representatives of the State to attend the inaugural meeting.
 - (6) The duties of the Inaugural meeting of the Council shall be to-
 - (a) adopt a constitution for the Council;
 - (b) appoint the chairpersons in terms of the constitution and relieve the interim chairperson of his or her duties;
 - (c) establish the chambers and the management committee and such other committees as are prescribed by the constitution and appoint the members to such committees;
 - (d) confirm the appointment of a secretariat on such terms and conditions as it may determine.
 - (7) The provisions of the Act mentioned in the Schedule are hereby repealed with effect from the date of the inaugural meeting referred to in subsection (2).
 - (8) For the purposes of section 33(5)(b) of the Constitution, the Council shall replace the National

Manpower Commission, which shall cease to exist with effect from the date of the inaugural meeting referred to in subsection (2), and from that date all rights, duties, assets and liabilities, whether contractually or otherwise obtained or accumulated in connection with matters entrusted to that Commission, shall pass to the Council.

Regulations

10. The Minister in consultation with the executive council may make regulations prescribing-

- (a) any matter which by this Act is required or permitted to be prescribed; and
- (b) generally, all matters which he or she considers necessary or expedient to prescribe in order to achieve the objects of this Act.

Offences

11.

- (1) Any person who, except when required to do so before a court of law or under any law, discloses any confidential information in regard to the financial or business affairs of any person, business or firm, or the State, acquired in the exercise of his or her powers in the performance of his or her duties under the Act or the constitution of the Council or its committees shall be guilty of an offence.
- (2) Any person who is convicted of an offence in terms of subsection (1) shall be liable to a fine not exceeding R1 000.

Short title and commencement

12. This Act shall be called the National Economic, Development and Labour Council Act, 1994, and shall come into operation on a date fixed by the President by Proclamation in the Gazette.

SCHEDULE 1

Labour Relations Act, 1956 (Act No. 28 of 1956): Sections 2A to 2D, and definition of "Commission" in section 1.

ANNEXURE B

- (c) may either be to a specific individual or to the holder of a specific post in the relevant department, trading entity or constitutional institution; and
 - (d) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (3) The accounting officer may confirm, vary or revoke any decision taken by an official as a result of a delegation or instruction in terms of subsection (1), subject to any rights that may have become vested as a consequence of the decision.

45. Responsibilities of other officials.—An official in a department, trading entity or constitutional institution—

- (a) must ensure that the system of financial management and internal control established for that department, trading entity or constitutional institution is carried out within the area of responsibility of that official;
- (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;
- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44; and
- (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

CHAPTER 6 PUBLIC ENTITIES

Part 1: Application of this Chapter

46. Application.—The provisions of this Chapter apply, to the extent indicated, to all public entities listed in Schedule 2 or 3.

47. Unlisted public entities.—(1) The Minister, by notice in the national *Government Gazette*—

- (a) must amend Schedule 3 to include in the list all public entities that are not listed; and
 - (b) may make technical changes to the list.
- (2) The accounting authority for a public entity that is not listed in either Schedule 2 or 3 must, without delay, notify the National Treasury, in writing, that the public entity is not listed.
- (3) Subsection (2) does not apply to an unlisted public entity that is a subsidiary of a public entity, whether the latter entity is listed or not.
- (4) The Minister may not list the following institutions in Schedule 3:
- (a) A constitutional institution, the South African Reserve Bank and the Auditor-General;
 - (b) any public institution which functions outside the sphere of national or provincial government; and
 - (c) any institution of higher education.

48. Classification of public entities.—(1) The Minister may by notice in the national *Government Gazette* classify public entities listed in Schedule 3 in accordance with the relevant definitions set out in section 1, as—

- (a) national government business enterprises;
- (b) provincial government business enterprises;
- (c) national public entities; and
- (d) provincial public entities.

(2) A public entity is for the purposes of this Act regarded as belonging to the class in which it is classified in terms of subsection (1).

Part 2: Accounting authorities for public entities

49. Accounting authorities.—(1) Every public entity must have an authority which must be accountable for the purposes of this Act.

(2) If the public entity—

- (a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity; or
 - (b) does not have a controlling body, the chief executive officer or the other person in charge of the public entity is the accounting authority for that public entity unless specific legislation applicable to that public entity designates another person as the accounting authority.
- (3) The relevant treasury, in exceptional circumstances, may approve or instruct that another functionalary of a public entity must be the accounting authority for that public entity.

(4) The relevant treasury may at any time withdraw an approval or instruction in terms of subsection (3).

(5) A public entity must inform the Auditor-General promptly and in writing of any approval or instruction in terms of subsection (3) and any withdrawal of an approval or instruction in terms of subsection (4).

50. Fiduciary duties of accounting authorities.—(1) The accounting authority for a public entity must—

- (a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;
 - (b) act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;
 - (c) on request, disclose to the executive authority responsible for that public entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature; and
 - (d) seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state.
- (2) A member of an accounting authority or, if the accounting authority is not a board or other body, the individual who is the accounting authority, may not—
- (a) act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of this Act; or

- (b) use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.
- (3) A member of an accounting authority must—
 - (a) disclose to the accounting authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the accounting authority; and
 - (b) withdraw from the proceedings of the accounting authority when that matter is considered, unless the accounting authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant.

51. General responsibilities of accounting authorities.—(1) An accounting authority for a public entity—

- (a) must ensure that that public entity has and maintains—
 - (i) effective, efficient and transparent systems of financial and risk management and internal control;
 - (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and
 - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
 - (iv) a system for properly evaluating all major capital projects prior to a final decision on the project;
- (b) must take effective and appropriate steps to—
 - (i) collect all revenue due to the public entity concerned; and
 - (ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and
 - (iii) manage available working capital efficiently and economically;
- (c) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;
- (d) must comply with any tax, levy, duty, pension and audit commitments as required by legislation;
- (e) must take effective and appropriate disciplinary steps against any employee of the public entity who—
 - (i) contravenes or fails to comply with a provision of this Act;
 - (ii) commits an act which undermines the financial management and internal control system of the public entity; or
 - (iii) makes or permits an irregular expenditure or a fruitless and wasteful expenditure;
- (f) is responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament or the relevant provincial legislature and to the relevant executive authority or treasury, as may be required by this Act;
- (g) must promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment; and

(h) must comply, and ensure compliance by the public entity, with the provisions of this Act and any other legislation applicable to the public entity.

(2) If an accounting authority is unable to comply with any of the responsibilities determined for an accounting authority in this Part, the accounting authority must promptly report the inability, together with reasons, to the relevant executive authority and treasury.

52. Annual budget and corporate plan by Schedule 2 public entities and government business enterprises.—The accounting authority for a public entity listed in Schedule 2 or a government business enterprise listed in Schedule 3 must submit to the accounting officer for a department designated by the executive authority responsible for that public entity or government business enterprise, and to the relevant treasury, at least one month, or another period agreed with the National Treasury, before the start of its financial year—

- (a) a projection of revenue, expenditure and borrowings for that financial year in the prescribed format; and
- (b) a corporate plan in the prescribed format covering the affairs of that public entity or business enterprise for the following three financial years, and, if it has subsidiaries, also the affairs of the subsidiaries.

53. Annual budgets by non-business Schedule 3 public entities.—(1) The accounting authority for a public entity listed in Schedule 3 which is not a government business enterprise must submit to the executive authority responsible for that public entity, at least six months before the start of the financial year of the department designated in terms of subsection (2) or another period agreed to between the executive authority and the public entity, a budget of estimated revenue and expenditure for that financial year, for approval by the executive authority.

(2) The budget must be submitted to the executive authority through the accounting officer for a department designated by the executive authority, who may make recommendations to the executive authority with regard to the approval or amendment of the budget.

(3) A public entity which must submit a budget in terms of subsection (1), may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained.

(4) The accounting authority for such a public entity is responsible for ensuring that expenditure of that public entity is in accordance with the approved budget.

(5) The National Treasury may regulate the application of this section by regulation or instruction in terms of section 76.

54. Information to be submitted by accounting authorities.—(1) The accounting authority for a public entity must submit to the relevant treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the relevant treasury or the Auditor-General may require.

(2) Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:

- (a) establishment or participation in the establishment of a company;
- (b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement.

- (c) acquisition or disposal of a significant shareholding in a company;
 - (d) acquisition or disposal of a significant asset;
 - (e) commencement or cessation of a significant business activity; and
 - (f) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.
- (3) A public entity may assume that approval has been given if it receives no response from the executive authority on a submission in terms of subsection (2) within 30 days or within a longer period as may be agreed to between itself and the executive authority.
- (4) The executive authority may exempt a public entity listed in Schedule 2 or 3 from subsection (2).

55. Annual report and financial statements.—(1) The accounting authority for a public entity—

- (a) must keep full and proper records of the financial affairs of the public entity;
- (b) prepare financial statements for each financial year in accordance with generally accepted accounting practice, unless the Accounting Standards Board approves the application of generally recognised accounting practice for that public entity;
- (c) must submit those financial statements within two months after the end of the financial year—
 - (i) to the auditors of the public entity for auditing; and
 - (ii) if it is a business enterprise or other public entity under the ownership control of the national or a provincial government, to the relevant treasury; and
- (d) must submit within five months of the end of a financial year to the relevant treasury, to the executive authority responsible for that public entity and, if the Auditor-General did not perform the audit of the financial statements, to the Auditor-General—
 - (i) an annual report on the activities of that public entity during that financial year;
 - (ii) the financial statements for that financial year after the statements have been audited; and
 - (iii) the report of the auditors on those statements.

- (2) The annual report and financial statements referred to in subsection (1) (d) must—
- (a) fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned;
 - (b) include particulars of—
 - (i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year;
 - (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
 - (iii) any losses recovered or written off;
 - (iv) any financial assistance received from the state and commitments made by the state on its behalf; and

- (v) any other matters that may be prescribed; and
- (c) include the financial statements of any subsidiaries.
- (3) An accounting authority must submit the report and statements referred to in subsection (1) (d), for tabling in Parliament or the provincial legislature, to the relevant executive authority through the accounting officer of a department designated by the executive authority.
- (4) The relevant treasury may direct that, instead of a separate report, the audited financial statements of a Schedule 3 public entity which is not a government business enterprise must be incorporated in those of a department designated by that treasury.

Part 3: Other officials of public entities

56. Assignment of powers and duties by accounting authorities—(1) The accounting authority for a public entity may—

- (a) in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity; or
- (b) instruct an official in that public entity to perform any of the duties assigned to the accounting authority in terms of this Act.
- (2) A delegation or instruction to an official in terms of subsection (1)—
 - (a) is subject to any limitations and conditions the accounting authority may impose;
 - (b) may either be to a specific individual or to the holder of a specific post in the relevant public entity; and
 - (c) does not divest the accounting authority of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (3) The accounting authority may confirm, vary or revoke any decision taken by an official as a result of a delegation or instruction in terms of subsection (1), subject to any rights that may have become vested as a consequence of the decision.

57. Responsibilities of other officials—An official in a public entity—

- (a) must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official;
- (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;
- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and
- (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

Part 4: External auditors

58. Appointment of auditors—(1) The annual financial statements of a public entity must be audited annually by—

- (a) the Auditor-General; or

- (b) a person registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), as an accountant and auditor, and engaged in public practice as such.
- (2) A public entity may appoint, as its auditor, a person referred to in subsection (1) (b) only if the audit is not performed by the Auditor-General.
- (3) A public entity must consult the Auditor-General on the appointment of an auditor in terms of subsection (2).

59. Discharge of auditors.—(1) An auditor appointed by a public entity in terms of section 58 (1) (b) may not be discharged before the expiry of that auditor's term of appointment except by the executive authority responsible for that public entity acting—

- (a) after consultation with the accounting authority for that public entity; and
 - (b) with the concurrence of the Auditor-General.
- (2) If an executive authority intends discharging an auditor in terms of subsection (1), the executive authority must—
- (a) in writing give notice of the proposed discharge to the auditor, with reasons; and
 - (b) give the auditor an opportunity to make written representations to the executive authority and the Auditor-General within 20 days of receipt of the notice.
- (3) The Auditor-General must report any discharge of an auditor in terms of this section to Parliament.

60. Duties and powers of auditors.—(1) An auditor appointed in terms of section 58 (1) (b) must perform the functions of office as auditor in terms of section 20 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).

(2) In exercising the powers and performing the duties as auditor of a public entity the auditor—

- (a) has access at all reasonable times to the accounting records, including all books, vouchers, documents and other property of the public entity;
 - (b) may require from the accounting authority for that public entity such information and explanations as are necessary for the purpose of the audit; and
 - (c) may investigate whether there are adequate measures and procedures for the proper application of sound economic, efficient and effective management.
- (3) An auditor appointed in terms of section 58 (1) (b) may consult the Auditor-General or any person in the Office of the Auditor-General concerning any matter relating to the auditing of the public entity concerned.
- (4) An auditor appointed in terms of section 58 (1) (b)—
- (a) must receive notice of every meeting of the public entity's audit committee; and
 - (b) may attend, and participate in, any meeting of the audit committee at the expense of the public entity.

61. Reports of auditor.—(1) The report of an auditor appointed in terms of section 58 (1) (b) must be addressed to the executive authority responsible for the public entity concerned and must state separately in respect of each of the following matters whether in the auditor's opinion—

- (a) the annual financial statements of the public entity fairly present the financial position and the results obtained by the entity in accordance with subsection 55 (1) (b) applied on a basis consistent with that of the preceding year;
- (b) if required by the Auditor-General, the performance information furnished in terms of subsection 55 (2) (a) is fair in all material respects and, if applicable, on a basis consistent with that of the preceding year; and

(c) the transactions that had come to the auditor's attention during auditing were in all material respects in accordance with the mandatory functions of the public entity determined by law or otherwise.

(2) The auditor—

- (a) must report to the executive authority responsible for the public entity the results of any investigation carried out under subsection 60 (2) (c); and
- (b) when reporting in terms of paragraph (a), must draw attention to any other matters within the auditor's investigation which, in the auditor's opinion, should in the public interest be brought to the notice of Parliament.

62. Duties and powers of Auditor-General—(1) The Auditor-General may—

- (a) investigate any public entity or audit the financial statements of any public entity if the Auditor-General is not appointed as auditor and the Auditor-General considers it to be in the public interest or upon the receipt of a complaint; and
- (b) recover the cost of the investigation or audit from the public entity.

(2) An investigation or audit in terms of section (1) may be carried out either by the Auditor-General or a person appointed by the Auditor-General.

(3) The executive authority responsible for a public entity in respect of which the Auditor-General has issued a special report in terms of subsection (1) or (2), must promptly table the report in the National Assembly or the relevant provincial legislature, as may be appropriate.

(4) The Auditor-General may—

- (a) claim the reasonable cost of performing the duties and exercising the powers in terms of this section from the public entity concerned; and
- (b) annually report to Parliament on specific and general findings regarding the accountability of public entities.

CHAPTER 7

EXECUTIVE AUTHORITIES

63. Financial responsibilities of executive authorities—(1) (a) Executive authorities of departments must perform their statutory functions within the limits of the funds authorised for the relevant vote.

(b) In performing their statutory functions executive authorities must consider the monthly reports submitted to them in terms of section 39 (2) (b) and 40 (4) (c).

(2) The executive authority responsible for a public entity under the ownership control of the national or a provincial executive must exercise that executive's ownership control powers to ensure that that public entity complies with this Act and the financial policies of that executive.

64. Executive directives having financial implications—(1) Any directive by an executive authority of a department to the accounting officer of the department having financial implications for the department must be in writing.

(2) If implementation of the directive is likely to result in unauthorised expenditure, the accounting officer will be responsible for any resulting unauthorised expenditure unless the

accounting officer has informed the executive authority in writing of the likelihood of that unauthorised expenditure.

(3) Any decision of the executive authority to proceed with the implementation of the directive, and the reasons for the decision, must be in writing, and the accounting officer must promptly file a copy of this document with the National Treasury and the Auditor-General, and if a provincial department is involved, also with the relevant provincial treasury.

65. Tabling in legislatures.—(1) The executive authority responsible for a department or public entity must table in the National Assembly or a provincial legislature, as may be appropriate—

- (a) the annual report and financial statements referred to in section 40 (1) (d) or 55 (1) (d) and the audit report on those statements, within one month after the accounting officer for the department or the accounting authority for the public entity received the audit report; and
- (b) the findings of a disciplinary board, and any sanctions imposed by such a board, which heard a case of financial misconduct against an accounting officer or accounting authority in terms of section 81 or 83.

(2) If an executive authority fails to table, in accordance with subsection (1) (a), the annual report and financial statements of the department or the public entity, and the audit report on those statements, in the relevant legislature within six months after the end of the financial year to which those statements relate—

- (a) the executive authority must table a written explanation in the legislature setting out the reasons why they were not tabled; and
- (b) the Auditor-General may issue a special report on the delay.

CHAPTER 8

LOANS, GUARANTEES AND OTHER COMMITMENTS

Part 1: General principles

66. Restrictions on borrowing, guarantees and other commitments.—(1) An institution to which this Act applies may not borrow money or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind that institution or the Revenue Fund to any future financial commitment, unless such borrowing, guarantee, indemnity, security or other transaction—

- (a) is authorised by this Act; and
- (b) in the case of public entities, is also authorised by other legislation not in conflict with this Act; and
- (c) in the case of loans by a province or a provincial government business enterprise under the ownership control of a provincial executive, is within the limits as set in terms of the Borrowing Powers of Provincial Governments Act, 1996 (Act No. 48 of 1996).

(2) A government may only through the following persons borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind a Revenue Fund to any future financial commitment:

- (i) the steps taken in connection with such financial misconduct;
 - (b) matters relating to the investigation of allegations of financial misconduct;
 - (c) the circumstances in which the National Treasury or a provincial treasury may direct that disciplinary steps be taken or criminal charges be laid against a person for financial misconduct;
 - (d) the circumstances in which a disciplinary board which hears a charge of financial misconduct must include a person whose name appears on a list of persons with expertise in state finances or public accounting compiled by the National Treasury;
 - (e) the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board must be reported to the National Treasury, the relevant provincial treasury and the Auditor-General; and
 - (f) any other matters to the extent necessary to facilitate the object of this Chapter.
- (2) A regulation in terms of subsection (1) may—
- (a) differentiate between different categories of—
 - (i) accounting officers;
 - (ii) accounting authorities;
 - (iii) officials; and
 - (iv) institutions to which this Act applies; and
 - (b) be limited in its application to a particular category of accounting officers, accounting authorities, officials or institutions only.

Part 2: Criminal proceedings

86. Offences and penalties.—(1) An accounting officer is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting officer wilfully or in a grossly negligent way fails to comply with a provision of section 38, 39 or 40.

(2) An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section 50, 51 or 55.

(3) Any person, other than a person mentioned in section 66 (2) or (3), who purports to borrow money or to issue a guarantee, indemnity or security for or on behalf of a department, public entity or constitutional institution, or who enters into any other contract which purports to bind a department, public entity or constitutional institution to any future financial commitment, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

CHAPTER 11

ACCOUNTING STANDARDS BOARD

87. Establishment.—(1) The Minister by regulation in terms of section 91 must establish a board to be known as the Accounting Standards Board.

(2) The Accounting Standards Board is a juristic person.

88. Composition.—(1) The Accounting Standards Board consists of no more than 10 members as the Minister may determine.

ANNEXURE C

11 November 2011

The NEDLAC Executive Director, Mr. Alistair Smith,
The NEDLAC Overall Convenor: Government, Mr. L. Kettleidas,
The NEDLAC Overall Convenor: Organised Business, Dr. L. Lotter,
The NEDLAC Overall Convenor: Organised Community, Ms. L. Nare and
The NEDLAC Overall Convenor: Organised Labour, Mr. B. Ntshaitshali.

RECOMMENDATION BY NEDLAC AUDIT COMMITTEE: FORENSIC INVESTIGATION INTO THE AFFAIRS OF NEDLAC, AND OTHER MEASURES

An extraordinary meeting of the NEDLAC Audit Committee was held on 10 November 2011 at NEDLAC House, and was attended by representatives of Business (Mr. Nico Vermeulen), Government (Mr. Freddie Petersen) and Labour (Mr. Moose Burger) as well as the NEDLAC Executive Director, Mr. Alistair Smith.

The purpose of this extraordinary NEDLAC Audit Committee meeting was to consider a letter dated 8 November 2011, received from the Director: Financial Liaison – Public Entities, Department of Labour. The letter outlines a number of alleged financial, administrative and governance irregularities at NEDLAC.

This meeting was convened in terms of Treasury Regulations applicable to public entities, (as issued in terms of the Public Finance Management Act), sections 27.1.9 and 27.1.10 which clearly stipulates that:

27.1.9 The audit committee must have explicit authority to investigate matters within its powers, as identified in written terms of reference. The audit committee must be provided with the resources it needs to investigate such matters and shall have full access to information. The audit committee must safeguard all information supplied to it within the ambit of the law.

27.1.10 The audit committee must –


- (a) report and make recommendations to the accounting authority;*
- (b) report on the effectiveness of internal controls in the annual report of the institution; and*
- (c) comment on its evaluation on the financial statements in the annual report.*

After consideration of the allegations, the NEDLAC Audit Committee resolved to recommend that:

1. The Auditor-General be commissioned by NEDLAC to undertake a detailed forensic investigation into the allegations, at an estimated cost of R160 000.

2. the NEDLAC Chief Financial Officer (CFO), Mr. Umesh Dulabh, be placed on precautionary suspension pending the outcome of the investigation. However, the CFO should during his leave of absence, avail himself and give his full cooperation to assist with the investigation by the Auditor-General.
3. The NEDLAC Executive Director to take all precautionary measures necessary to safeguard all supporting documents, financial information and other data which might relate to the investigation.
4. The NEDLAC Executive Director to consult with the Overall Convenors on the Audit Committee's recommendation.
5. In the interest of minimising reputational risk to NEDLAC, it is requested that this investigation and allegations be kept in the strictest confidentiality.

Sincerely,



Moose Burger
Chairperson: NEDLAC Audit Committee



NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL
 P.O. BOX 1775, SAXONWOLD, 2132 – 14A JELlicoe AVENUE, ROSEBANK 2196
 TELEPHONE +27(0) 11 328 4200 FAX +27 (0) 11 447 6053/2089

MINUTES OF THE AUDIT COMMITTEE MEETING HELD ON
17 JANUARY 2012 AT 09H00 to 10H30 AT
NEDLAC HOUSE, 14A JELlicoe AVENUE, ROSEBANK

PRESENT	APOLOGIES
Business	Community
NV – Mr N Vermeulen	LN – Ms L Nare
Community	
TM – Mr T Makaya	
LK – Ms L Kganvago	
Government	
FP – Mr F Petersen	
CR – Ms C Rossouw (Observer)	
TM – Ms T McPherson (Observer)	
Organised Labour	
MB – Mr M Burger	
NEDLAC Secretariat	
AS – Mr Alistair Smith	
RM – Ms R Maartens	
NN – Ms N Ngubane (Scribe)	

NUMBER	DETAILS	ACTION
1.	WELCOME Mr Moose Burger opened the meeting and welcomed everyone. It was agreed by all the representatives that the meeting would be chaired by the Labour Constituency representative, Mr Moose Burger and that the issue of Chairmanship will be dealt with under the applicable Agenda item.	
2.	ATTENDANCE & APOLOGIES See Above	
3.	ADOPTION OF AGENDA The Agenda was adopted without changes.	
4.	ADOPTION OF THE MINUTES The adoption of the minutes of the Audit Committee meeting	

	<p>held on 28 July 2011 could not be done as no minutes were available.</p> <p>4.1 Minutes of 28 July 2011</p> <p>4.1.1 Mr Moose Burger indicated the following pertaining to the minutes of 28 July 2011:</p> <ul style="list-style-type: none"> The recorder did not work, when brought to the attention of the previous CFO, Mr Umesh Duiabh, he indicated that he will keep handwritten notes and will circulate the minutes. Upon his resignation it became apparent that the minutes were not circulated and nobody has access to the notes. Mr Moose Burger requested the representatives to highlight the key issues that were discussed at the meeting. <p>4.2 Minutes of 11 July 2011</p> <p>4.2.1 Business Constituency sought clarity on the status of the minutes of the meeting held on 11 July 2011. Organised Labour indicated that the minutes was circulated and adopted at the meeting of 28 July 2011.</p>	
5.	<p>MATTERS ARISING FROM THE MINUTES OF THE MEETING HELD ON 28 JULY 2011</p> <p>5.1 Internal Audit Findings</p> <p>5.1.1 Business stated that the Internal Audit Report identified a number of serious risks of which some were aligned to the allegations of financial misconduct in NEDLAC.</p>	
6.	<p>ALLEGED FINANCIAL IRREGULARITIES</p> <p>6.1 Allegations</p> <p>6.1.1 Mr Moose Burger said that he received a correspondence from Government on the 08th November 2011, which outlined a number of alleged financial administrative and governance irregularities at NEDLAC. Some of the allegations include:</p> <ul style="list-style-type: none"> Personal loans to staff members for which we have no policy Ghost staff, which still appears in the NEDLAC payroll NEDLAC staff use NEDLAC flight bookings for personal travel Petrol card abuse Supply chain management irregularities Irregularities with the NEDLAC leave register Office burglary and stolen equipment which were never reported to the Department of Labour 	

6.2 Special Audit Committee Meeting – 10 November 2011

6.2.1 Since these allegations emanated internally from the NEDLAC staff members, an urgent Audit Committee meeting was convened on 10 November 2011 at NEDLAC House in accordance with Sections 27.1.9 and 27.1.10 of the Treasury regulations.

6.2.2 Community Constituency was not present at the meeting of 10 November 2011 and questioned the validity of the procedure.

6.2.3 RESOLUTION:

The Special Audit Committee meeting considered the allegations and made the following recommendations:

- a) A Forensic Audit must be conducted
- b) The CFO must be placed on precautionary suspension pending the outcome of the investigation
- c) The Executive Director will consult with the Overall Convenors on the recommendations

AS

6.3 Suspension of the CFO

6.3.1 The Executive Director reported that the Overall Convenors agreed to the suspension of the previous CFO, Mr Umesh Dulabh, while the allegations levelled against him were investigated.

6.3.2 A notification of suspension was served on the previous CFO on 18 November 2011. He was given a time period to respond to the allegations. On 21 November 2011 the CFO tendered his resignation and vacated his office the same day.

6.3.3 An Acting CFO was appointed to stabilise the financial function within NEDLAC and to start an investigation into the alleged irregularities levelled against the previous CFO. Crucial reports, ENE, APP and Quarterly Report, had to be submitted to Department of Labour and this informed the decision to appoint someone with the necessary experience or place NEDLAC under Administration.

6.4 Acting CFO

6.4.1 The acting CFO reported that the following issues were discovered in the financial records of NEDLAC:

- a) The books were written up on a cash basis and not on the accrual basis as indicated in the various reports submitted to Department of Labour.
- b) There is a lack of necessary control accounts normally found in a General Ledger for control purposes.
- c) The entries were captured on Pastel through Cash Book or General Journal entries instead of the sub account systems.

	<p>d) Salaries and Taxes lumped I in one expense account.</p> <p>e) In at least two instances a staff member had been allowed to use the company account for private travel.</p> <p>f) SARS queries on PAYE are outstanding. One EMP/201 query dates back to September 2004.</p> <p>g) Advances are given to staff without the necessary policies and letters of acknowledgement in place.</p> <p>h) A list of further issues to be investigated has come to the fore through performing of daily financial tasks.</p> <p>i) Payment documentation was not properly signed off before payment was effected.</p> <p>j) Control measures are being put in place with immediate effect to limit irregularities.</p> <p>6.5 Government Conclusions</p> <p>6.5.1 In terms of the PFMA all Public Entities must follow the GRAP principles and clearly the practice was not followed in NEDLAC. It was surprising that the External Auditors did not pick up on this.</p> <p>6.5.2 The Auditor General recommended to the Department of Labour that NEDLAC should have a Forensic Audit. It is critical to appoint independent auditors due to the sensitivity of the issue.</p> <p>6.5.3 The Audit Committee members agreed that there was enough evidence to warrant the recommendation of a Forensic Audit.</p> <p><u>6.6 RESOLUTION:</u></p> <p>6.6.1 The Executive Director requested that the recommendation to proceed with the forensic investigation be confirmed by the overall convenors and ratified by MANCO.</p> <p>6.6.2 The members of the Audit committee agreed with the proposal from the Executive Director.</p>	<p>RM</p>
7.	<p>NEDLAC HR POLICIES</p> <p>7.1 Leave Policy</p> <p>7.1.1 The Acting CFO reported that the Leave Policy was changed with an addendum to allow for the payment of all accumulated leave pay and not the limit of 40 (forty) days set by the actual approved policy. There is no indication that the matter was tabled at FINCOM and MANCO for approval. Business and Government verified that this change in policy was not tabled at MANCO for approval.</p> <p>7.1.2 The Executive Director stated that the current NEDLAC policies need urgent attention and the addendum to the Leave Policy must be investigated as well as that consideration be given to the establishment of a HR Committee.</p>	<p>AS/RM</p>

	<p>7.1.3 Government noted that the previous Executive Director will have to refund the leave money paid to him should the addendum be revoked.</p> <p>7.2 Performance Contracts</p> <p>7.2.1 The Executive Director indicated that Annual Bonuses will be linked to Performance in future and that Performance Based Contracts will be agreed with all employees.</p> <p>7.3 Flexi Time</p> <p>7.3.1 Business raised the issue of flexi time and Community concurred that this should be investigated as a possibility for NEDLAC</p> <p><u>7.4 RESOLUTION:</u></p> <p>7.4.1 The issue of appointing a HR Committee will be dealt with at the Strategic Plan Meeting to be held on 18 January 2012. The terms of the Finance Committee may be changed to include the HR function and the Finance Committee's name to be changed to Finance and Admin Committee.</p>	AS
8.	<p>AUDIT COMMITTEE CHARTER</p> <p>8.1 Chairman</p> <p>8.1.1 Government explained that the Chairman of the Audit Committee should be an independent person (have no ties to NEDLAC) and this person would typically be an Accountant. This may have a cost implication for NEDLAC.</p> <p>8.2 Changes to the Draft Audit Committee Charter</p> <p>8.2.1 The Audit Committee agreed to changes to the draft Audit Committee Charter as proposed by the Committee members.</p> <p>8.2.2 See proposed changes in the attached document in "track change" format.</p>	AS
9.	<p>APPOINTMENT OF EXTERNAL AUDITORS</p> <p>9.1 Appointment</p> <p>9.1.1 NEDLAC is a Section 3A entity and should appoint external auditors. External Auditors must be appointed before financial year end. The Auditor General would normally conduct the audit unless the entity sent an application to the Auditor General to approve or reject the appointment of different external auditors. They have 14 days in which to verify the details of the external auditors and to approve or reject the recommendation.</p> <p>9.2 GOBODO</p> <p>9.2.1 Business said that their understanding was that Gobodo had been appointed as external auditors for the next financial</p>	RM

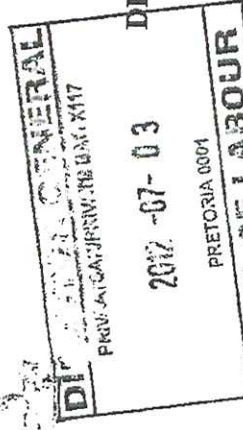
	<p>year (1 April 2012 to 31 March 2013). They added that the information must be verified.</p> <p>9.2.2 The Executive Director indicated that assuming that Gobodo had been appointed; NEDLAC would continue to use their services. Business agreed with the Executive Director that if Gobodo was appointed as external auditors that the status quo should be kept as they will have the necessary institutional memory.</p> <p>9.3 RESOLUTION:</p> <p>9.3.1 Gobodo must be invited to give inputs during the forensic investigation. Government will check with the Auditor General and the Executive Director will check for contractual obligations.</p>	<p>FP/AS/RM</p>
<p>10.</p>	<p>INTERNAL AUDITORS</p> <p>10.1 Appointed Internal Auditors</p> <p>10.1.1 The only information that could be established by the acting CFO was that the contact name for the Internal Auditors was a Mr Karel Wehmar. She will contact the person and establish more about the agreement between them and NEDLAC.</p> <p>10.2 Three Year Rolling Internal Audit Plan</p> <p>10.2.1 The three year rolling plan for Internal Audits is outdated and should be reviewed.</p> <p>10.3 RESOLUTION:</p> <p>10.3.1 It was agreed that a draft of the current plan be circulated to all the Audit Committee members for reviewing.</p>	<p>RM</p> <p>MB</p>
<p>11.</p>	<p>NEDLAC CFO POSITION</p> <p>11.1 Advertising of CFO position</p> <p>11.1.1 The position will be advertised, probably in February 2012 with a possible starting date of 1 April 2012.</p> <p>11.1.2 Government suggested that this process be commenced with as soon as possible.</p> <p>11.2 Contract of the Acting CFO</p> <p>11.2.1 The current contract runs from 28 November 2011 to 28 February 2012 (three months).</p> <p>11.2.2 The suggestion from the members is that the contract of the Acting CFO should be extended to incorporate a handover to the appointed CFO and to finalise the audit process and submissions to Department of Labour and Treasury.</p>	

	<p>11.2.3 Business enquired whether the Acting CFO could apply for the position. The Executive Director and Community replied that it is open for any person to apply.</p> <p><u>11.3 RESOLUTION:</u></p> <p>11.3.1 Advertisement for the CFO position must be done as soon as possible.</p> <p>11.3.2 The contract of the Acting CFO must be extended until the 31st August 2012.</p>	<p>AS</p> <p>AS</p>
<p>12.</p>	<p>APPOINTMENT OF THE CHAIRPERSON OF THE AUDIT COMMITTEE</p> <p>12.1 Appointment</p> <p>12.1.1 The item was dealt with under point 8.1.1 of the minutes.</p> <p>12.2 Rates</p> <p>12.2.1 Government said that there are rates set by National Treasury.</p> <p>12.2.2 If a CA(SA) is appointed the SAICA rates would apply.</p> <p><u>12.3 RESOLUTION:</u></p> <p>12.3.1 The Executive Director suggested that a list of possible candidates be compiled who could chair these meetings.</p> <p>12.3.2 NEDLAC could partner with other organisations, e.g. Proudly South Africa in using a chairperson.</p> <p>12.3.3 The issue must be raised at MANCO as it has financial implications.</p>	<p>All</p> <p>AS</p>
<p>13.</p>	<p>PFMA COMPLIANCE</p> <p>13.1 Reporting</p> <p>13.1.1 The ENE was submitted</p> <p>13.1.2 The Quarterly Report for Quarter Three was submitted early.</p> <p>13.2 Procurement</p> <p>13.2.1 Government stated that there is a document detailing procurement for amounts in excess of R500,000 that has to be submitted annually. It will be forwarded to the Acting CFO for completion .</p>	<p>FP</p>

14.	<p>GENERAL</p> <p>14.1 Dates for Meetings</p> <p>14.1.1 A meeting date will have to be scheduled for May 2012 with a suggested date of 22 May 2012.</p> <p>14.1.2 The meeting date in July is too early as the Auditor General will scrutinise the AFS packs in detail. The date is changed from the 17 July 2012 to 24 July 2012.</p> <p>14.2 Quorum</p> <p>As there is a quorum present at the meeting all the resolutions and decisions taken are valid.</p>	All
15.	<p>CLOSING</p> <p>The date for the next meeting is: Monday, 12 March 2012 at 09H00 – 11H00</p> <p>There being no further business, the meeting was adjourned at 11H20.</p>	

SCRIBE		
Ronell Maartens		

ANNEXURE D



DEPARTMENT OF LABOUR

Fin: 1/5/1

2 July 2012

DIRECTOR GENERAL
DEPARTMENT OF LABOUR

FEEDBACK ON FORENSIC AUDIT CONDUCTED AT NEDLAC

1. PURPOSE

1.1. The purpose of this submission is to inform you of alleged financial, administrative and governance irregularities request that were reported to the Audit Committee of Nedlac and the outcome of the subsequent forensic audit that was conducted into these allegations.

2. DISCUSSIONS

2.1. The Department of Labour received information regarding alleged financial, administrative and governance irregularities at Nedlac and consequently a letter was submitted to the Audit Committee of Nedlac during November 2011. (**Annexure A**).

2.2. A special Audit Committee Meeting was convened on 10 November 2011 at Nedlac and due to the seriousness of the allegations it was decided to place the then Chief Financial Officer (CFO), Mr. Dulabh on precautionary leave, pending an investigation into the allegations.

2.3. However, Mr. Dulabh chose to tender his resignation and he vacated his office on 21 November 2011. An acting CFO was appointed on 28 November 2011 to stabilize the financial function at Nedlac and also to ensure that all financial reporting requirements are conformed with.

2.4. After deliberations with the Office of the Auditor-General, it was decided at a meeting with Nedlac's Audit Committee on 17 January 2012 to proceed with a forensic audit, due to the seriousness of the allegations and further confirmation for the Acting CFO that documented proof of expenditure are extremely poor or non-existent.

2.5. After following due procurement processes, the firm, AFCA & Partners were appointed to conduct the forensic investigation and their report is hereby attached for your perusal. (**Annexure B**)

2.6. It is important to note that in accordance with the stipulations of the Prevention and Combating of Corrupt Activities Act, 2004, Nedlac's Audit Committee is compelled to report corruption in excess of R100,000 to the South African Police and it is envisaged that the Overall Conveners will sanction this route when they are briefed on 5 July 2012, as failure to do so can result in exposing oneself to prosecution.

2.7. Kindly note that due to the fact that the Minister's Advisor is implicated in the report, the Minister has already been informed on the outcome of the forensic findings, as it could pose a reputational risk to her Office.

3. FINANCIAL IMPLICATIONS

3.1. There are no direct financial implications to the Department following the release of the forensic report and Nedlac will defray expenditure relating to the appointment of the Forensic Auditors.


4. COMMUNICATION IMPLICATIONS

4.1. The Office of the Chief Financial Officer will communicate the contents of the Forensic Report to the Auditor-General and the National Treasury as required by current legislation once the Overall Conveners of Nedlac have been briefed.

5. RECOMMENDATIONS

It is recommended that

- 5.1. you take note of the outcome of the forensic report; and
- 5.2. you also take note of the intended action of the Nedlac Audit Committee to report the matter to the South African police, please.



EKETLEDAS

DEPUTY DIRECTOR-GENERAL: LP & IR

DATE: 3/7/2012

Recommendation 5.1: Noted / not noted

5.2: Noted / not noted

COMMENTS: *I need a response from deputy
within next 24hrs and Mr Minister*



DIRECTOR-GENERAL
NPT MHEKO

DATE: 09/7/2012

FEEDBACK ON FORENSIC AUDIT CONDUCTED AT NEDLAC

NPT NHLEKO
L KETTLEDAS
BE MADUNA
FS PETERSEN

Handwritten signatures and dates:

- Signature: [Handwritten signature] Date: 03/07/2012
- Signature: [Handwritten signature] Date: 2/7/2012
- Signature: [Handwritten signature] Date: 31/07/2012
- Signature: [Handwritten signature] Date: 31/07/2012

ANNEXURE E



Our Ref: A Roskam

Your Ref: A Smith

TO BE COLLECTED

Mr A Smith

Chief Executive Officer

NEDLAC

14A Jellicoe Avenue

NEDLAC House

Rosebank

Johannesburg

6 December 2012

Dear Sir

LEGAL REPORT ON THE AFCA & PARTNERS' FORENSIC REPORT

We refer to your telephone conversation with the writer on 6 December 2012. We confirm that you will make arrangements for our report to be collected.

We shall make arrangements with you in due course to return the original forensic report of AFCA & Partners.

If you wish to clarify anything in our report, kindly contact the writer.

Yours faithfully

HAFEEGEE ROSKAM SAVAGE

Per: Anton Roskam

Mobile: +27 (82) 559 8324

Direct fax: +27 (86) 648 0536

Email: anton@hrsattorneys.co.za

IMRAAN HAFEEGEE
ANTON ROSKAM
KATE SAVAGE

BA LLB (WITS)
BA LLB (WITS) Higher Dip in Labour Law (RAU)
MBA (cum laude) (Wits)
BA LLB (UCT) LLM (Notre Dame) (summa cum laude)

Johannesburg: 1st Floor, North Block,
Le Val Westcliff, 45 Jan Smuts Ave,
Westcliff, PO Box 72459 Parkview 2122
Tel: +27 (0)11 8801079
Fax +27 (0)11 252 5994
Cape Town: 314 Sunclare, 21 Dreyer St
Claremont 7700

Legal Report on the AFCA & Partners Forensic Report

Legal Obligations of
NEDLAC and Minister
of Labour

Anton Roskam

5 December 2012

**HAFEEGEE
ROSKAM
SAVAGE**



Attorneys

Contents

A. ABBREVIATIONS AND REFERENCES.....	3
B. INTRODUCTION	4
C. THE LAW	4
i) CHAPTER 6 OF THE PFMA – PUBLIC ENTITIES.....	4
The Accounting Authority	5
The Fiduciary Responsibilities of the Accounting Authority	5
The General Responsibilities of the Accounting Authority	6
Information to be submitted by the Accounting Authority	7
Responsibilities of Other Officials	7
ii) CHAPTER 7 OF THE PFMA – EXECUTIVE AUTHORITIES	8
iii) FINANCIAL MISCONDUCT	9
Disciplinary Proceedings	9
Criminal Proceedings.....	10
The Treasury Regulations.....	10
iv) UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE	11
v) MANAGEMENT OF LOSSES AND CLAIMS	12
vi) PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT, 2004	13
vii) CONCLUSION.....	14
D. COMMENTS UPON THE FORENSIC REPORT	19
E. SUGGESTED NEXT STEPS	19

A. ABBREVIATIONS AND REFERENCES

Forensic Report	Forensic Report of AFCA & Partners dated 1 November 2012
NEDLAC	National Economic, Development and Labour Council
NEDLAC Act	National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994)
PFMA	Public Finance Management Act (Act No. 1 of 1999)
Prevention and Combating of Corrupt Activities Act, 2004	Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004)
SAPS	South African Police Services
Treasury Regulations	GN R225 in GG 27388 of 15 March 2005, as amended by GN R146 in GG 29644 of 20 February 2007

B. INTRODUCTION

1. On 1 November 2012 AFCA & Partners produced a forensic report about certain allegations of financial impropriety and irregular financial controls and expenditure. The report covers the periods 1 April 2009 to 31 March 2010, 1 April 2010 to 31 March 2011 and 1 April 2011 to 31 March 2012.
2. NEDLAC requested us to advise it and the Minister of Labour, the executive authority responsible for NEDLAC, about their legal obligations as regards the findings and recommendations of the forensic report.
3. The report is divided into three sections. The first sets out the legal requirements and obligations of both NEDLAC and the Minister of Labour. The second comments upon the forensic report. The third summarises the forensic report's findings and recommendations and suggests the steps that NEDLAC should pursue in regard to each finding and recommendation. We, therefore, begin with a consideration of the relevant legal issues.

C. THE LAW

4. Two statutes are of relevance. They are the PFMA and its regulations, the Treasury Regulations, and the Prevention and Combating of Corrupt Activities Act, 2004. We first deal with the PFMA and Treasury Regulations.
- i) **CHAPTER 6 OF THE PFMA – PUBLIC ENTITIES**
5. NEDLAC is a national public entity listed in schedule 3A of the PFMA.¹ Chapter 6 of the PFMA regulates public entities.

¹ "National public entity" is defined in section 1 of the PFMA to mean:

- (a) a national government business enterprise; or
- (b) a board, commission, company, corporation, fund or other entity (other than a national government business enterprise) which is—
 - (i) established in terms of national legislation;
 - (ii) fully or substantially funded either from the National Revenue Fund, or by way of a tax, levy or other money imposed in terms of national legislation; and
 - (iii) accountable to Parliament;

The Accounting Authority

6. In terms of section 49(2)(a) the accounting authority of NEDLAC is the controlling body for NEDLAC. The controlling body of NEDLAC is the executive council (see section 3.1 of the NEDLAC Constitution read with sections 6 and 7 of the NEDLAC Act).²

The Fiduciary Responsibilities of the Accounting Authority

7. The fiduciary responsibilities of NEDLAC's accounting authority are set out in section 50 of the PFMA. In terms of subsections (1) and (2):

7.1. The accounting authority must:

- (a)** exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;
- (b)** act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;
- (c)** on request, disclose to the executive authority responsible for that public entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature; and
- (d)** seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state.”
(Sub-section (1))

7.2. A member of the accounting authority may not:

- (a)** act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of this Act; or
- (b)** use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.” (Sub-section (2))

² The present CEO of NEDLAC, Alistair Smith, informed us that the issue of which body in NEDLAC is the accounting authority of NEDLAC has been a “grey area” in the organisation, as the executive council has never performed the role of accounting authority and that the Management Committee (ManCo) has traditionally performed this role. This issue must be properly clarified.

The General Responsibilities of the Accounting Authority

8. The general responsibilities of the accounting authority are set out in section 51 of the PFMA. In terms of this section the following provisions are relevant in this context:

- “(1) An accounting authority for a public entity—**
- (a) must ensure that that public entity has and maintains —**
 - (i) effective, efficient and transparent systems of financial and risk management and internal control;**
 - (ii) ...; and**
 - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;**
 - (iv) ... ;**
 - (b) must take effective and appropriate steps to—**
 - (i) collect all revenue due to the public entity concerned; and**
 - (ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and**
 - (iii) manage available working capital efficiently and economically;**
 - (c) is responsible for the management, including the safe-guarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;**
 - (d) must comply with any tax, levy, duty, pension and audit commitments as required by legislation;**
 - (e) must take effective and appropriate disciplinary steps against any employee of the public entity who—**
 - (i) contravenes or fails to comply with a provision of this Act;**
 - (ii) commits an act which undermines the financial management and internal control system of the public entity; or**
 - (iii) makes or permits an irregular expenditure or a fruitless and wasteful expenditure;**

(f) is responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament or the relevant provincial legislature and to the relevant executive authority or treasury, as may be required by this Act;

(g) ...; and

(h) must comply, and ensure compliance by the public entity, with the provisions of this Act and any other legislation applicable to the public entity.

(2) If an accounting authority is unable to comply with any of the responsibilities determined for an accounting authority in this Part, the accounting authority must promptly report the inability, together with reasons, to the relevant executive authority and treasury.”

Information to be submitted by the Accounting Authority

9. In terms of section 54(1) of the PFMA “[t]he accounting authority for a public entity must submit to the relevant treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the relevant treasury or the Auditor-General may require.”

Responsibilities of Other Officials

10. As regards the responsibilities of other officials in a public entity, section 57 states the following:

“An official in a public entity—

(a) must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official;

(b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official’s area of responsibility;

(c) must take effective and appropriate steps to prevent, within that official’s area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;

(d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and

(e) is responsible for the management, including the safe-guarding, of the assets and the management of the liabilities within that official’s area of responsibility.”

ii) **CHAPTER 7 OF THE PFMA – EXECUTIVE AUTHORITIES**

11. In terms of paragraph (c) of the definition of executive authority (section 1 of the PFMA), the Minister of Labour is the executive authority in relation to NEDLAC, as she is the Cabinet member who is accountable to Parliament for NEDLAC or in whose portfolio NEDLAC falls.

12. In terms of section 63(2) of the PFMA “[t]he executive authority responsible for a public entity under the ownership control of the national or a provincial executive must exercise that executive’s ownership control powers to ensure that that public entity complies with this Act and the financial policies of that executive.”

13. “Ownership control” is defined in section 1 of the PFMA to mean:

“in relation to an entity, ... the ability to exercise any of the following powers to govern the financial and operating policies of the entity in order to obtain benefits from its activities:

- (a) To appoint or remove all, or the majority of, the members of that entity’s board of directors or equivalent governing body;*
- (b) to appoint or remove that entity’s chief executive officer;*
- (c) to cast all, or the majority of, the votes at meetings of that board of directors or equivalent governing body; or*
- (d) to control all, or the majority of, the voting rights at a general meeting of that entity;”*

14. In terms of section 65(1)(b) of the PFMA the executive authority responsible for a public entity must table in the National Assembly the findings of any disciplinary board, and any sanctions imposed by such a board, which heard a case of financial misconduct against an accounting officer or accounting authority in terms of section 81 or 83 of the PFMA.³

³ Section 81 deals with financial misconduct by officials in departments and constitutional institutions and section 83 deals with financial misconduct by accounting authorities and officials of public entities.

iii) FINANCIAL MISCONDUCT

Disciplinary Proceedings

15. Section 83 deals with financial misconduct by accounting authorities and officials of public entities. It states the following:

“(1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently—

(a) fails to comply with a requirement of section 50, 51, 52, 53, 54 or 55;⁴ or

(b) makes or permits an irregular expenditure or a fruitless and wasteful expenditure.

(2) If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.

(3) An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

(4) Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation.”

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

⁴ These sections deal with the following issues relating to public entities:

Section 50	Fiduciary duties of accounting authorities
Section 51	General responsibilities of accounting authorities
Section 52	Annual budget and corporate plan by Schedule 2 public entities and government business enterprises
Section 53	Annual budget for non-business Schedule 3 public entities
Section 54	Information to be submitted by accounting authorities
Section 55	Annual report and financial statements

Criminal Proceedings

17. In terms of section 86(2) of the PFMA “[a]n accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of sections 50, 51 or 55.

The Treasury Regulations

18. Regulation 33 of the Treasury Regulations deals with financial misconduct in respect of public entities.

19. Regulation 33.1 (which refers to sections 85(1)(b),(c) and (d) of the PFMA) deals with the investigation and disciplinary proceedings:

“33.1.1 If an employee is alleged to have committed financial misconduct, the accounting officer of the public entity must ensure that an investigation is conducted into the matter and if confirmed, must ensure that a disciplinary hearing is held in accordance with the relevant prescripts.

33.1.2 The accounting officer must ensure that such an investigation is instituted within 30 days from the date of discovery of the alleged financial misconduct.

33.1.3 If an accounting officer or any of its members is alleged to have committed financial misconduct, the relevant executive authority must initiate an investigation into the matter and if the allegations are confirmed, must ensure that the appropriate disciplinary proceedings are initiated immediately.

33.1.4 The relevant treasury may, after consultation with the executive authority –

- (a) direct that a person other than an employee of the public entity conducts the investigation; or
- (b) issue any reasonable requirement regarding the way in which the investigation should be performed.”

20. As regards criminal proceedings, regulation 33.2.1 states that “[t]he accounting officer must advise the Auditor-General and the relevant executive authority and treasury of any criminal charges it has laid against any person in terms of section 86 of the [PFMA].” There is thus no

obligation in terms of this regulation to actually lay criminal charges. However, in terms of regulation 33.2.2, the executive authority or relevant treasury (in this case National Treasury) may direct NEDLAC "to lay charges of criminal financial misconduct against any person should an accounting officer fail to take appropriate action." In addition, and more importantly, regulation 12.5.1 imposes such an obligation upon NEDLAC (see paragraph 27 below) and section 34(1) of the Prevention and Combating of Corrupt Activities Act, 2004 requires certain criminal activity to be reported to the police (see paragraph 30 below).

21. Regulation 33.3 (which refers to section 85(1)(a) and (e) of the PFMA) deal with the issue of reporting obligations. Regulation 33.3.1 states the following:

"The accounting authority must, on an annual basis, submit to the executive authority, the relevant treasury and Auditor-General a schedule of –

- (a) the outcome of any disciplinary hearings and/or criminal charges;**
- (b) the names and ranks of employees involved; and**
- (c) the sanctions and any further actions taken against these employees."**

FRUITLESS, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

Section 1 of the PFMA sets out the following definitions relating to different kinds of expenditure.

Term	Definition
Fruitless and wasteful expenditure	Expenditure which was made in vain and would have been avoided had reasonable care been exercised
Irregular expenditure	<p>Expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including –</p> <ul style="list-style-type: none"> (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.

Term	Definition
Unauthorised expenditure	<p>(a) overspending of a vote or a main division within a vote;</p> <p>(b) expenditure not in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division.⁵</p>

23. Regulation 9 deals with these types of expenditure. It states the following:

“9.1.1. ...

9.1.2 When an official of an institution discovers unauthorised, irregular or fruitless and wasteful expenditure, that official must immediately report such expenditure to the accounting officer. ...

9.1.3 ...

9.1.4 The recovery of losses or damages resulting from unauthorised, irregular or fruitless and wasteful expenditure must be dealt with in accordance with regulation 12.

9.1.5 The amount of the unauthorised, irregular, fruitless and wasteful expenditure must be disclosed as a note to the annual financial statements of the institution.”

v) MANAGEMENT OF LOSSES AND CLAIMS

24. Regulation 12 deals with this issue.

25. Regulation 12.3 states:

“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.” (Emphasis added.)

26. The qualification, “if deemed economical”, is important to note.

⁵ “Vote” is defined in section 1 of the PFMA as “one of the main segments into which an appropriation Act is divided and which – (a) specifies the total amount which is usually appropriated per department in an appropriation Act; and (b) is separately approved by Parliament or a provincial legislature, as may be appropriate, before it approves the relevant draft appropriation Act as such.”

27. As regards losses and damages through criminal acts or omissions regulation 12.5 states the following:

“12.5.1 When it appears that the state has suffered losses or damages through criminal acts or possible criminal acts or omissions, the matter must be reported, in writing, to the accounting officer and the South African Police Service. If liability can be determined, the accounting officer must recover the value of the loss or damage from the person responsible.

12.5.2 The accounting officer may write off losses or damages arising from criminal acts or omissions if, after a thorough investigation, it is found that the loss or damage is irrecoverable.” (Emphasis added.)

28. Therefore, in terms of regulation 12.5.1, NEDLAC is obliged to report criminal acts or omissions to the SAPS.

29. If NEDLAC has suffered losses or damages as a result of acts or omissions of officials then it must comply with regulation 12.7 of the Treasury Regulations. This regulation states:

“12.7.1 Losses or damages suffered by an institution because of an act committed or omitted by an official, must be recovered from such an official if that official is liable in law.

12.7.2 The accounting officer must determine the amount of the loss or damage and, in writing, request that official to pay the amount within 30 days or in reasonable instalments. If the official fails to comply with the request, the matter must be handed to the State Attorney for the recovery of the loss or damage.

12.7.3 ...

12.7.4 If in doubt, the accounting officer of the institution must consult the State Attorney on questions of law in the implementation of paragraphs 12.7.1 and 12.7.3.”

vi) PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT, 2004

30. In terms of section 34 (1) of the Prevention and Combating of Corrupt Activities Act, 2004 reports of certain criminal activity must be reported to the police. This section states:

“(1) Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed—

- (a) an offence under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2; or
- (b) the offence of theft, fraud, extortion, forgery or uttering a forged document,
involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.”

31. This section goes beyond the offences of corruption as defined in that Act. A person who fails to comply with the above subsection is guilty of an offence in terms of that Act (sub-section(2)).

vii) CONCLUSION

32. From the above, the legal actions required by NEDLAC are set out in table 1 below.

33. Although the provisions of the PFMA and the Treasury Regulations may seem confusing and detailed, NEDLAC's obligations may be distilled into three general legal requirements:

33.1. Preventing future unauthorised, irregular or fruitless and wasteful expenditure by instituting the correct systems and governance processes and policies.

33.2. Recovering, where economically viable, losses as a result of unauthorised, irregular or fruitless and wasteful expenditure, criminal conduct, or non-compliance with the operational policies of the public entity by way of civil actions. It should be borne in mind that recovery of losses by way of civil action is subject to prescription of three years from the date that NEDLAC became aware of the loss.

33.3. Reporting criminal conduct or possible criminal conduct to the SAPS.

34. As regards the reporting obligations of NEDLAC, these are specifically set out above and summarised in the table below. However, in order to ensure compliance with these reporting obligations and in the interests of best practice, it is suggested that a comprehensive report of the issues canvassed in the forensic report be made to the Minister of Labour, as the executive authority of NEDLAC, and the Auditor-General.

35. In essence the Minister's obligations are to exercise "ownership control" over NEDLAC. If, however, NEDLAC is dealing with the matter appropriately, the steps contemplated in the concept of ownership control would not be necessary.

SUMMARY OF THE LEGAL OBLIGATIONS OF NEDLAC AND THE MINISTER OF LABOUR

Table 1 – Legal Obligations of NECLAC and Minister of Labour

ITEM	DESCRIPTION	MINISTER OF LABOUR
1	WHERE THERE IS FINANCIAL MISCONDUCT ON THE PART OF AN EMPLOYEE OR FORMER EMPLOYEE	Exercise "ownership control" (s 63(2) read with definition of this term in s 1 of the PFMA)
1.1	<p>Disciplinary Proceedings</p> <p>Take disciplinary steps against the employee. (s 51(10(e) of the PFMA and Treasury Reg. 33.1.1) (if the person is no longer an employee, this is obviously not possible.)</p> <p>NEDLAC, on an annual basis, must submit to the Minister of Labour, National Treasury and Auditor-General a schedule of –</p> <ul style="list-style-type: none"> • the outcome of any disciplinary hearings and/or criminal charges; • the names and ranks of employees involved; and • the sanctions and any further actions taken against these employees. (Treasury Reg. 33.3) 	<p>If an accounting officer or any of its members is alleged to have committed financial misconduct, the Minister of Labour must initiate an investigation into the matter and if the allegations are confirmed, must ensure that the appropriate disciplinary proceedings are initiated immediately (Treasury Reg. 33.1.3).</p> <p>The Minister must table in the National Assembly the findings of any disciplinary board, and any sanctions imposed by such a board, which heard a case of financial misconduct against an accounting officer or accounting authority in terms of s 83 of the PFMA (s 65(1)(b) of the PFMA).</p> <p>[It appears that no disciplinary proceedings against the accounting authority or its members are contemplated as a result of the issues dealt with in the forensic report.]</p>
1.2	<p>Where there are criminal acts or omissions</p> <p>In respect of offences of corruption, theft, fraud, extortion, forgery or uttering a forged document involving more than R100, 000, the matter must be reported to the SAPS (s 34 of the Prevention and Combating of Corrupt Activities Act).</p> <p>If NEDLAC suffered losses as a result of possible criminal</p>	<p>The Minister or National Treasury may direct NEDLAC to lay charges of criminal financial misconduct against any person should NEDLAC fail to take appropriate action. (Treasury Reg. 33.2.2)</p>

2.2	Where it is as a result of criminal acts or possible	Refer to 1.2 above.
2.1	Systemic Remedial actions	Prevent unauthorised, irregular or fruitless and wasteful expenditure losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity (s 51(1)(b)(iii) of the PFMA). This would include taking remedial action where such has occurred.
2	WHERE THERE IS UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE.	Exercise "ownership control" (s 63(2) read with definition of this term in s 1 of the PFMA)
1.3	Recovery of losses by civil action	If the employee or former employee is liable in law, investigate whether it is economical to recover the losses (Treasury Reg. 12.3 and 12.7). Refer the matter to lawyers for recovery (Treasury Reg. 12.3).
		<p>If liability as a result of possible criminal acts or omissions can be determined, recover the value of the loss or damage unless it is found to be irrecoverable (Treasury Reg. 12.5.1 and 12.5.2).</p> <p>If NEDLAC lays any criminal charges against any person in terms of s 86 of the PFMA, the accounting officer of NEDLAC must advise the Auditor-General and the Minister of Labour of the criminal charges laid against the person (Treasury Reg. 33.2.1).</p> <p>acts or omissions, it must report the matter to the SAPS (Treasury Reg. 12.5.1).</p>

ITEM	DESCRIPTION	NEDLAC	
	criminal acts or omissions.		
2.3	Where the losses involve recovery by civil action	Refer to 1.3 above	
2.4	Reporting	Disclose as a note to the annual financial statements the amount of the unauthorised, irregular or fruitless and wasteful expenditure (Treasury Reg. 9.1.5)	

D. COMMENTS UPON THE FORENSIC REPORT

36. Without allocating fault, and recognising some of the difficulties that confronted the investigators such as the lack of documentation and lack of co-operation by former employees, there are a number of difficulties with the forensic report. They include:

- 36.1. In many cases the summary of the evidence lacks important detail.
- 36.2. In some cases the report's finding that expenditure was private in nature seems to be based on the fact that there is no documentation to confirm otherwise. It should be borne in mind that in a civil action for recovery of this expenditure, NEDLAC would have to prove the claim on a balance of probabilities. It is doubtful that the lack of documentation would be sufficient proof. Similarly in prosecuting a criminal case, where the state would have to show beyond reasonable doubt that the offence was committed. The lack of evidence at this stage suggests that some of the allegations must be carefully scrutinised before civil actions and criminal prosecutions are embarked upon. It should be borne in mind that a civil action that is clearly not economical or a criminal prosecution that is clearly not viable would lead to further fruitless and wasteful expenditure.
- 36.3. The report makes assumptions such as it being unnecessary for persons associated with NEDLAC to travel on weekends or for employees to work on weekends. These assumptions must be tested in terms of the way that NEDLAC conducts its business.
- 36.4. In some cases the report makes no specific recommendation, and a recommendation must be inferred from the finding.
- 36.5. In other cases the precise finding is unclear, making it difficult to determine what the next step should be.

E. SUGGESTED NEXT STEPS

37. Bearing in mind these concerns, we have summarised the findings and recommendations of the forensic report and made suggestions about the next step in the light of the legal obligations

imposed upon NEDLAC and the Minister of Labour by the PFMA and the Prevention and Combating of Corrupt Activities Act, 2004. See in this regard Table 2.

38. Where the word “systemic” appears in the “Suggested Next Steps” column of table 2, it signifies that the suggested next step is to correct the financial and management controls in NEDLAC with respect to that finding, if this has not been done already. It is suggested that the financial and management controls that have been and will be implemented be set out in the report to the Minister of Labour and Auditor-General referred to in paragraph 34.

SUMMARY OF FORENSIC REPORT'S FINDINGS AND RECOMMENDATIONS AND SUGGESTED NEXT STEPS

Table 2

ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED NEXT STEPS
1.1	Staff Loans			
1.1.1	Staff Advances / Loans	Staff advances and loans were given as and when it was requested with no proper approval. An amount of R31, 904.21 cannot be accounted for.	R31, 904.21 should be recovered from the CFO.	The forensic report is unclear. What is the legal basis for claiming the R31, 904.21 from the previous CFO? Is it negligence or is some form criminal financial misconduct alleged?
1.1.1	Staff Advances / Loans			Clarify the legal basis for claiming the monies from the CFO. If it is to be recovered by way of a civil claim, determine whether it is economical to proceed with the recovery. On the face of it, it does not seem to be economical. If criminal financial misconduct was found to be the basis of the recommendation to recover these monies, report the matter to the SAPS. This appears to be fruitless and wasteful expenditure. This amount must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).

ALLEGATION No.	ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED NEXT STEPS
1.2	Former Employees Still on Payroll	No former employees were still on the payroll or were paid after the date of resignation other than final payment			No action required.
2.1	Flight Bookings for Personal Use				
2.1.1	Air Travel	The NFC policy was often not adhered to.			Systemic
		Mr Mkhize travelled to New York, Rome and Moscow. These trips cost R133, 092.68. No documentation to confirm that the international trips were authorised as official business trips. Therefore, they were private in nature and should be regarded as irregular expenditure as per the definition in the PFMA.	R133, 092.68 should be recovered from Mr Mkhize.	The fact that there is no documentation to confirm that the international trips were properly authorised as official business trips does not mean that they were private in nature.	Investigate whether the trips were private or business related. Investigate whether the trips were authorised and what the deficiencies were in relation to the authorisation. Depending on the outcome of the above, consider instituting civil claim for recovery of the monies and reporting the matter to the SAPS as alleged fraud.

ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED NEXT STEPS
		<p>Business class air fares (excluding international travel) amounted to R147,645.83. This is contrary to the NFC. The persons involved were MH Mkhize (11 trips), U Dulabh (3 trips), M Nare (1 trip) and J Rudin (1 trip).</p>		<p>This amount must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5). Investigate whether it is economical to recover the value of the loss. If economical, institute civil claims for the recovery of these monies.</p>
		<p>C Palmer, J Kganayo, L Kganayo and M Nare travelled to the Kruger National Park, allegedly for a convention. The total cost was R13,955.39. It was a request for the Community Constituency. This trip did not constitute an official trip and should therefore be regarded as irregular expenditure.</p>	<p>This is irregular expenditure and should be dealt with in accordance with the PFMA. The costs should be recovered.</p>	<p>Investigate whether it is economical to recover the value of the loss. If economical, institute civil claims for the recovery of these monies. On the face of it, it seems uneconomical. If the persons are employed, institute disciplinary proceedings. This amount must be</p>
			<p>The forensic report lacks detail. Are these persons employees of NEDLAC?</p>	<p>Verify whether the trip was not official. If unofficial, report the matter to the SAPS, as it may constitute fraud. Investigate whether it is economical to recover the value of the loss. If economical, institute civil claims for the recovery of these monies. On the face of it, it seems uneconomical.</p>

ALLEGATION	ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED NEXT STEPS
					disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).
		58 individuals undertook trips over weekends with a total cost of R264,905.69.	The cost should be recovered.	Do trips on weekends constitute irregular expenditure?	Investigate whether the recommendation is correct in the light of the business of NEDLAC.
		<p>Mr and Mrs Nare travelled mainly together to PE. Both travelled to PE on 17 Dec 2010 and returned on 5 Jan 2010. The cost involved was R9, 673.40.</p> <p>During the same period they rented a car for R19, 904.10.</p> <p>The air travel cost and car rental cost where they travelled together to the same destination amounted to R28, 946.05 and R14,886.69 respectively.</p> <p>Conclusion: this travel was not official since no accommodation was incurred for the same period.</p>	No specific recommendation, but presumably the implied recommendation is that the amounts should be recovered, as it constitutes irregular expenditure.	<p>Were Mr and Mrs Nare interviewed about this matter?</p> <p>Are they employees?</p>	<p>Verify that the trip was not official.</p> <p>If unofficial, report the matter to the SAPS, as it may constitute fraud.</p> <p>Investigate whether it is economical to recover the value of the loss. If economical, institute civil claims for the recovery of these monies. On the face of it, it seems uneconomical.</p> <p>If the persons are employees and are still employed, institute disciplinary proceedings.</p> <p>If unauthorised, this amount must be disclosed in a note to the annual financial</p>

ALLEGATION	ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED NEXT STEPS
					statements (Treasury Reg. 9.1.5).
		<p>Mrs Nare rented a car for 20 days travelling 1,586 kilometres in the Johannesburg area. The cost was R7, 215.14.</p>	<p>No specific recommendation, but presumably the implied recommendation is that the amount should be recovered, as it constitutes irregular expenditure.</p>	<p>Was Mrs Nare interviewed about this matter? Is Mrs Nare an employee of NEDLAC?</p>	<p>Verify whether the rental was not official. If unofficial, report the matter to the SAPS, as it may constitute fraud. Investigate whether it is economical to recover the value of the loss. If economical, institute civil claims for the recovery of these monies. On the face of it, it seems uneconomical. If Mrs Nare is an employee and is still employed, institute disciplinary proceedings. If unauthorised, this amount must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).</p>

ALLEGATION NO.	ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED NEXT STEPS
2.1.2	Car Travel	128 out of 191 car rentals were not in terms of the NFC. NEDLAC incurred an additional cost of R406, 921.	No specific recommendation, but presumably the implied recommendation is that the amounts should be recovered, as the expenditure is irregular.		This amount must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).
		<p>3 persons incurred the most expenditure on car rental classes not authorised by the NFC: MK Mkhize (431,854.20), L Nare (71,041.10) and T Makaya (48,220.68).</p> <p>For Mkhize most of the rentals were luxury vehicles which added up to a continuous period of 43 days and most of the travel was in the Rosebank and Johannesburg area.</p>		Are L Nare and T Makaya employees of NEDLAC?	<p>Investigate whether it is economical to recover the value of the loss. If economical, institute civil claims for the recovery of these monies.</p> <p>If so, institute claims against the persons involved.</p> <p>If these persons are employees, institute disciplinary proceedings.</p> <p>This amount must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5), if it is indeed irregular.</p>
		Various destinations other than Jhb and Cape Town where cars were hired. The cost involved was		Not clear that this necessarily constitutes irregular expenditure.	Clarify finding.

2.1.3	Weekend usage of car rentals	<p>It is not normal practice or policy for employees to work over weekends.</p> <p>Numerous incidents where cars were rented over weekends. The total amount is R343,342.55. Mr</p>	<p>No specific recommendation, but presumably the implied recommendation is that the amounts should be recovered, as the expenditure is irregular.</p>	<p>is it not normal practice for at least some employees to work over weekends?</p>	<p>Verify whether the rentals were for personal use. Investigate whether it is economical to recover the value of the loss. If economical, institute civil claims for the recovery of</p>
		<p>R26, 312.02 was paid in traffic fines and damages to rental cars. MH Mkhize (19,099.02); A Mangale (3,550); J Blose (220); T Makaja (2470), T Mbusi (360) and L Nare (613)</p>		<p>Are any of these persons employees of NEDLAC?</p>	<p>Investigate whether it is economical to recover the value of the loss. If economical, institute civil claims for the recovery of these monies.</p> <p>If any of these persons are employees, recover the monies from these employees, and if needs be, institute disciplinary proceedings.</p> <p>If so, institute claims against the persons involved. These amounts must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).</p>
ALLEGATION	ALLEGATION	FINING	ASSIGNMENT	GOVERNMENT	SUGGESTED NEXT STEPS

ALLEGATION NO	ALLEGATION	FINDING	RECOMMENDATION	EVIDENCE	SUGGESTED NEXT STEPS
		Mkhize and Mrs Nare were two individuals who regularly rented cars over weekends with costs of R269, 070.34 and R23,123.16 respectively.			these monies. If so, institute claims against the persons involved and report to the SAPS as possible fraud. If unauthorised, these amounts must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).
2.1.4	Accommodation	4 star accommodation was mostly used and in some cases 5 star accommodation contrary to the NFC. The expenditure for 4 and 5 star accommodation was R821,884.01.	No specific recommendation, but presumably the implied recommendation is that the amounts should be recovered, as the expenditure is irregular.	What would be the cost of 3 star accommodation, as this must be deducted from the amount of R821,884.01 if actions are to be taken to recover the monies?	Investigate whether it is economical to recover the value of the loss. If economical, institute civil claims for the recovery of these monies. This amount must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).
2.1.5	Additional observation	Air travel, car rental, and accommodation expenses totalling R77, 219.29 were incurred over the two December breaks.	No specific recommendation.		Systemic

ALLEGATION	ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED IMPROVEMENTS
2.2	Employee Called Back from Airport	On 8 July 2011 two air fare tickets were purchased for the same staff member travelling from Johannesburg to East London. The return ticket was not used and an additional ticket was purchased for Mrs A Mangali on 9 July 2011. The only reason to justify booking in one person's name is to accompany a minor. No evidence that the air fare of the minor was recovered from Mrs A Mangali. The cost to be recovered amounts to R3,813.91.	Recover R3, 813.91.	Confusing finding. Who precisely used the ticket?	Clarify finding. Based upon the clarifications, if fraud was involved, report the matter to the SAPS. Investigate whether it is economical to recover the value of the loss. If economical, institute civil claims for the recovery of these monies. If unauthorised, this amount must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).
3.1	Official Transport Utilised to Home and NEDLAC Offices	Mr Mkhize used the Isuzu KB250 for transport between the office and his residence. There is documentation to prove that Mr Dulabh used the Isuzu KB250 for private use to travel to Durban and	No specific recommendation.	How often? What is the loss?	Systemic Clarify finding and recommendation
				What is the loss? Further details required.	Systemic Clarify finding and recommendation

ALLEGATION NO.	ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED IMPROVEMENTS
3.4	Possible Excessive Payments Fumo Travel	<p>Fumo Transport - the procedures required to be followed by NEDLAC for procurement of goods and services were not adhered to.</p> <p>Umesh Dulabh was primarily responsible for the failure to adhere to the required policies and procedures.</p> <p>Fumo Travel's rates are not excessive:</p>	No specific recommendation.		Systemic
4.1	Private Cars Filled with NEDLAC Petrol Card	<p>There were two unauthorised petrol cards that were linked to an unauthorised FNB credit card which was paid via debt order from the NEDLAC Current Account.</p> <p>They were issued to Messrs Mkhize and Dulabh. They could be used for any vehicle.</p> <p>The total amount paid on the petrol cards was</p>	No specific recommendation.	What was the loss?	Clarify finding and recommendation.

ALLEGATION	ALLEGATION	FINDING	RECOMMENDATION	COMMENT	FINISHED NEXT STEPS
5.1	Suppliers Being Friends	Umesh Dulabh did not adhere to accepted policies and practices for the procurement of goods and services.	The allegation requires further investigation.		Further investigation
5.2	Kickbacks	No relationships with the suppliers as per the allegation could be confirmed.	The allegation requires		Further investigation
		Travel was not performed in Johannesburg and Pretoria areas. The vehicles used that were linked to the petrol cards were also the same vehicles that the two individuals used for private travel. No fringe benefit declared for the two individuals and no repayments of the usage of the petrol cards.			
		R186,139.08.			

ALLEGATION NO.	ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED NEXT S
7.1	Rotation of Auditors	Despite limited information, it seems as if the Audit Report should not have been unqualified.	A quality review with the possibility of negligence on the part of auditors should be performed on the working papers of the audit firm, Goodo Inc. The prescribed process to obtain access to their working papers will have to be instituted.	Which audit report?	Clarify finding. Institute review of auditors.
8.1	Flight Bookings Detail Not Submitted to Fincom	Not able to verify whether this detail was supplied to FINCOM as requested in minutes of 27 July 2009, 27 January 2010 and 1 October 2010. Therefore, the allegation is true.	No specific recommendation.		Systemic
9.1	Frequent Flyer Miles	Contract between SAA and NEDLAC stipulates that voyager benefits accrue to the individuals nominated by NEDLAC. This is renewable every six months. Latest contract not found.	Further investigation on the use of frequent flyer miles.		Further investigation.
9.2	Cheaper Flights	Fincom recommended on 28 Oct 2010 that cheaper modes of transport be used	No specific recommendation.		Systemic

ALLEGATION NO.	ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED NEXT STEPS
10.1	Staff Leave Not Captured	<p>like Kulula, One Time Airiles and Mango instead of SAA.</p> <p>Air fare tickets were abused. No corrective action was taken.</p>	<p>R309, 837.31 must be recovered from Mr Mkhize.</p>		
		<p>NFC policies and contracts since 2002 state 20 days leave per annum and a maximum of 40 days can be accrued where after it must be taken or forfeited.</p> <p>There is an unsigned, undated policy drafted by Mr Mkhize, but there are no minutes confirming that this policy was presented to FinCom or ManCom. In terms of this policy leave is changed to 21 days and it may accumulate year on year.</p> <p>A reconciliation of the leave provision in the Annual Financial Statements of 31 March 2011 provides in</p>			<p>Recover by way of a civil claim against Mr Mkhize. Report the matter to the SAPS, as on the face of it is amounts to fraud. This amount must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).</p>

ALLEGATION NO.	ALLEGATION	FINDING	RECOMMENDATION	CONFLICT	SUGGESTED NEXT STEPS
		excess of the 40 days as per the NFC.			
		Mr Mkhize was paid R453, 947.69 as part of his final payment after resignation. This amounts to 126 days leave accrued. This is an overpayment of R309, 837.31.			
		Mr Mkhize's accumulated leave could not have been accurate because there were trips undertaken where car rental records show the stay was in excess of 2 days.		This finding is not clear.	Clarify finding
		No detailed records of sick leave, study leave or maternity / paternity leave or compassionate leave taken.			Systemic
10.2	Leave taken for December Break	Leave taken during the annual shutdown was not recorded in the leave records. Staff members claimed the previous ED	No specific recommendation.		Systemic

ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED NEXT STEPS
	Indicated that this period should not be deducted from a person's leave.			
10.3	Unable to contact Staff and no Leave Records No detail and accurate records were kept of any type of leave.	No specific recommendation.		Systemic
11.1	Burglary Not Reported to Department of Labour No documentation that it was reported to Department of Labour.	No specific recommendation.		No action required.
11.2	Claims After Burglary There is a possibility that the burglary did occur. However, insufficient documentary proof.	No specific recommendation.		
A	Inadequate Accounting Records Poor condition	No specific recommendation.		Systemic
B	Financial Information Withheld from Audit and Finance Committees Allegation true	No specific recommendation.		Systemic

ALLEGATION NO	ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED NEXT STEPS
C	Misallocation of Information in Books	Allegation true	No specific recommendation.		Systemic
D	Accounting Record	Not up to Standard	No specific recommendation.		Systemic
E	Laptops	Fixed Asset Register not kept up to date	No specific recommendation.		Systemic
F	Debit Orders	Debit orders for Discovery Life and Liberty Life for the period under review was R67, 639 and R115, 832.22 respectively. There is no need for this expense for Nedlac. The individuals have not been identified.	These monies should be recovered from the individuals.	Who are the individuals?	Clarify the individuals involved. Recover from the individuals. Insofar as they are no longer employees, investigate whether it is economical to proceed against the persons involved. Systemic
G	Diners Club	Diners Club cards were issued to Mr Mkhize and Mr Dulabh. No form of authorisation for these cards in all the ManCom and FinCom minutes. Therefore the issuing of these cards and the expenditure on	Deal with these transactions as unauthorised and irregular expenditure.		Systemic These amounts must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).

ALLEGATION	ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED NEXT STEPS
		<p>them is regarded as unauthorised and irregular.</p>			
	<p>On Mr Mkhize's card there is an amount of R9, 631 for Mrs Mkhize, which was private in nature.</p>	<p>This amount should be claimed back.</p>			<p>Recover by way of a civil claim against Mr Mkhize. Report the matter to the SAPS, as on the face of it is amounts to fraud. The loss must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).</p>
	<p>92 tickets were found to be over R4,000 and therefore it is concluded that they were Business class tickets, which were not in compliance with the NFC.</p>	<p>No specific recommendation.</p>	<p>Is the assumption correct? Who are the persons involved? What is the loss?</p>	<p>Systemic Clarify whether they were business class tickets. If they were indeed business class tickets, investigate whether or not it is economical to recover the difference in cost between a business class and economy class ticket from the individuals concerned. The loss must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).</p>	

ALLEGATION NO.	ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED NEXT STEPS
		<p>Mr Mkhize's transactions at Makro included a large array of items that must be personal expenditure. It was concluded that all items purchased at Makro were for personal use.</p> <p>Most transactions occurred on weekends.</p> <p>There was also a transaction for a suite and shirt at the Oriental Plaza.</p> <p>Mr Mkhize also bought tyres to the tune of R9, 500.01 on 4 October 2011 after his last day at work. There were other transactions relating to this personal vehicle.</p> <p>There were also transactions at the Ferrari shop.</p> <p>Mr Mkhize also bought items at Best Buy Arlington on his USA trip, which were personal in nature</p> <p>The Diners Club card was mainly used for personal expenditure. The total amount in the period under review for Mr Mkhize's card was R168, 171.76 of which 105,840.72 was private.</p>	<p>Deal with these transactions as unauthorised and irregular expenditure.</p>		<p>Recover by way of a civil claim against Mr Mkhize.</p> <p>Report the matter to the SAPS, as on the face of it is amounts to fraud.</p> <p>The loss must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).</p>

ALLEGATION NO.	ALLEGATION	FINDINGS	RECOMMENDATION	COMPLIANCE	SUGGESTED NEXT STEPS
H	Electronic Payments made Without Supporting Documents	Procedures were not complied with	No specific recommendation.	Systemic	Recover by way of a civil claim against Mr Dulabh. Report the matter to the SAPS, as on the face of it is amounts to fraud. The loss must be disclosed in a note to the annual financial statements (Treasury Reg. 9.1.5).
I	Changes to NEDLAC Leave Policy	See 10.1 above	Systemic	Systemic	Systemic
J	Other Matters raised by the Acting CFO	Payments effected or requested not done formally	Systemic	Systemic	Systemic

ALLEGATION NO.	ALLEGATION	FINDING	RECOMMENDATION	COMMENT	SUGGESTED NEXT STEPS
K	Report on any Significant Processes that was Lacking in Prevention of Fraud	Control and Administrative deficiencies	Specific recommendations contained in report.		Systemic

STATUS ON ADDRESSING CONCERNS RAISED BY FORENSIC REPORT

NO	DESCRIPTION OF FINDING	COMPLETED	PENDING
1	Lack of segregation of duties relating to the procurement and payment cycles.		The members of the Audit and Risk Committee recommend that MANCO approve the minimum structure for the finance department that has been proposed by the auditors. This recommendation proposes the addition of a SCM coordinator and a SCM administrator to the organisational structure.
2	No appropriate system for filing payment documentation	Corrected	
3	No sequential or date control over filing payment documentation	Corrected	
4	Indications of ineffective filing of paid cheques	Corrected – now mainly making use of EFT payments	
5	Labels written on the spines of lever arch files not matching the contents of the files,	Corrected	
6	Documentation supporting payments, not cancelled to prevent its re-presentation,	Corrected	
7	Orders not having been prepared for items for which payments have been made	Corrected	

NO	DESCRIPTION OF FINDING	COMPLETED	PENDING
8	The space for prices on orders being left blank	Corrected	
9	Lack of evidence that quotes were obtained, in accordance with the NEDLAC Financial Code,		A Supply Chain Management Deviation Report was presented to the Audit & Risk Committee on all the items that were identified by NEDLAC that have not been procured 100% in line with the SCM prescripts. The matter must be referred to the Minister for condonation.
10	On cheque requisitions, the signature space provided for the recipient of the cheque has not been completed on certain requisitions and in most instances a signature stamp was utilized	Corrected – now mainly making use of EFT payments	
11	Adequate records of staff advances/loans were not kept.	Staff advances have been stopped completely.	
12	Cellphone allowances were not entered onto the payroll system. Accordingly this creates a situation where payments were received during the year from the employer and were not reflected on the IRP5 certificates.	Corrected	
13	Unable to obtain the relevant documented proof that study loans were properly dealt with. No proof that the ED considered any of the loans and no contract could be obtained.	Study agreements were designed, signed and implemented during 2012/2013. MANCO has approved the scope of the standing HR and Remuneration Committee and the	The first task of the Audit & Risk Committee will be to finalise the HR policies.

NO	DESCRIPTION OF FINDING	COMPLETED	PENDING
		representatives from each of the constituencies have been finalised.	
14	According to the NFC, air travel was restricted to an economy class air ticket. Car travel was restricted to a group A car. Accommodation was restricted to a B&B at a Holiday Inn Garden Court or similar three-star accommodation.	All policies were updated and where none existed new policies were developed. Feedback on the updated policies was only received from the Government constituency.	The CFO is working through the policies again and has made some changes that need to be approved by the Audit and Risk Committee members before the policies can be presented to MANCO for approval.
15	Numerous incidents were found where cars were rented over weekend periods.	Policies developed and awaiting approval by MANCO	MANCO Approval awaited.
16	The log book was not properly maintained. Therefore the allegation that private trips were not recorded is deemed to be true.	The logbook has been reintroduced and it is completed after every trip.	
17	Two unauthorised petrol cards that were linked to an unauthorised FNB credit card account which was paid on a monthly basis via debit order from the Nedlac Current account.	Petrol Cards stopped and cancelled.	
18	None of the suppliers listed as preferred suppliers submitted any documentation in accordance to Treasury regulations in becoming a preferred supplier.	A Database Registration form was designed and completed by the current providers.	Policies developed and awaiting approval by MANCO However, some of the initial documentation has expired and the lack of the SCM Unit and capacity in general are the contributing factors to the expired documentation not being followed up.

NO	DESCRIPTION OF FINDING	COMPLETED	PENDING
19	Gobodo Inc. was appointed as auditors since 2005 to date. According to their initial agreement their contract period was only for 5 years, which should have ended in 2009	The Auditor General has taken over the external audit function.	
20	Nedlac should use cheaper modes of transport such as flying with Kulula, One Time Airlines and Mango Airlines instead of SAA."		Policies developed and awaiting approval by MANCO
21	An unsigned, undated leave policy drafted by Mr Mkhize was recovered in the records at the Nedlac offices. There are no minutes stating that this draft / policy was presented to either Nedlac's FinCom or ManCom.		Policies developed and awaiting approval by MANCO
22	Leave taken during the annual closure was not recorded in the leave records supplied. In consultation with staff members it was mentioned that the previous ED indicated that the December break days should be seen as a present from Nedlac.	The staff were all required to submit leave forms for the December / January shut down	Policies developed and awaiting approval by MANCO
23	Overall the accounting records were found to be inadequate and	Accounting system has been enhanced and additional ledgers	

NO	DESCRIPTION OF FINDING	COMPLETED	PENDING
	not well maintained. Detail descriptions in the general ledger were not provided to ensure a proper audit trail.	created as well as control accounts.	
24	Temporary salaries and cellphone allowances are paid on one requisition. This complicates the accounting systems and also confuses the supporting documentation when more than one type of expense is combined on one requisition.	Unlawful practice stopped and all requests for changes to payroll are duly approved and authorised.	
25	Supporting documentation to transactions was also found to be inadequate to ensure accurate record keeping at all times. We also found some misallocations within the general ledger which is important when expenditure is compared to the approved budgets. This could also lead to management and FinCom making business decisions and approvals based on incorrect financial information.	All misallocations have been corrected and expenditure has also been linked to projects for better reporting.	
26	The accounting record was not kept at the standard that it was supposed to be. In addition to the	Corrected – Audit file is in place containing all supporting documentation.	

NO	DESCRIPTION OF FINDING	COMPLETED	PENDING
	information and allocation of transactions the supporting and other statutory requirements were also not kept/complied with as required.		
27	All assets and services purchased by Nedlac have been recorded in the cash book, Fixed assets <u>have not</u> in all instances been recorded in the Fixed Asset Register,	Corrected. Assets counts conducted on a regular basis and those assets that could not be accounted for have been written off.	
28	In terms of the list of debit orders obtained from the bank statement, we were able to verify the validity of most. The two most significant debit orders that were deducted for the full period of review were for Discovery Life and Liberty Life. In our opinion there is no need for the expense from a Nedlac business point of view, since these entities provide mainly Life insurance and investment services.	Corrected. All debit orders have been stopped.	
29	Dinersclub cards were only issued to Mr Mkize and Mr Dulabh. We were unable to obtain any form of authorisation for the two cards including all the minutes of the ManCom and	Dinersclub cards have been cancelled.	

NO	DESCRIPTION OF FINDING	COMPLETED	PENDING
	FinCom. Therefore the issuing of the cards as well as all the expenditure is regarded as unauthorised and irregular.		
30	The procedure to be followed as laid out in the Nedlac NCF for the procurement of goods and services has not been adhered to by the relevant responsible person at Nedlac.		Policies developed and awaiting approval by MANCO
31	Email requests to effect back pay to temporary employees & stipends were utilised. The email only states; "Stipend increase of 10% for the year 09/10", no amounts or calculations to verify the amount paid appear on the email. This does not constitute adequate supporting documentation for the increases or any other related payments.	Unlawful practice stopped and all requests for changes to payroll are duly approved and authorised.	
32	Policies and procedures were either not in place or so weak that management override was possible.		Policies developed and awaiting approval by MANCO

NO	DESCRIPTION OF FINDING	COMPLETED	PENDING
33	Full review of risk profile, policies and procedures including month end procedures and reporting lines (this should be clearly defined and build into employment contracts of at least the Executive director and the CFO).	Risk Assessment concluded and reporting requirements clearly defined.	Minister to incorporate policies, procedures and reporting lines in employment contract of ED.
34	The Audit and Risk Committee is functioning without an Independent Chairperson	An independent Chairperson, Advocate Shami Kholong has been appointed with effect from 01/05/2013	
35	Review Finance policies and develop HRM & SCM Policies.		All policies developed and awaiting approval by MANCO.
36	Report findings of Forensic Report to Minister	Done	
37	Report findings of Forensic Report to Auditor-General	Done – AGSA requested Nedlac’s ED to provide the report as was mentioned in the previous Annual Report	
38	Report findings of Forensic Report to MANCO	The Audit and Risk Committee present the Report to MANCO on 17 May 2013	
39	Report findings of Forensic Report to National Treasury	Reported to National Treasury on 23 May 2013.	
40	Report findings of Forensic Report to SAPS		Will report to SAPS on instruction from National Treasury.

ANNEXURE F

RECEIVED
DIRECTOR GENERAL
PRIVATE SECRETARY'S OFFICE
2013-05-03
FACTORIA 0001
DEPT. OF LABOUR

DEPT. OF LABOUR
PRIVATE BAG X 117
2013-05-03
DEPARTMENT OF LABOUR
FACTORIA 0001

RECEIVED
2013-05-30
DDG: LP & IR
PRETORIA
FIN 5/4/1

THE MINISTER OF LABOUR

PROGRESS REPORT ON FINANCIAL, ADMINISTRATIVE AND GOVERNANCE IRREGULARITIES REVEALED AT NEDLAC

RECEIVED
2013-07-18
DDG: PES

1. PURPOSE

To provide feedback to the Minister on progress made with regard to financial, administrative and governance irregularities that were detected at NEDLAC. Reporting in this respect also gives effect to Treasury Regulation 27.1.12, which requires that concerns deemed necessary, should be communicated to the Executive Authority, the Auditor-General and if appropriate the external auditor.

2. DISCUSSION

2.1. As the Minister is aware, the Audit and Risk Committee of Nedlac commissioned a forensic audit into alleged financial, administrative and governance irregularities which were reported to the Department.

2.2. The investigation has been concluded and Nedlac communicated the outcome of the findings to the Minister on 7 September 2012. During this meeting, a request was made to the forensic auditors to further investigate certain matters with a view to present a final report by the end of September 2012.

2.3. The further investigation and interview with the Community Constituency (representing Ms L. Nare) did not change the outcome of the forensic findings and Messrs H Mkize and U Dulabh could not be reached for comment.

2.4. The final report was presented to the Director-General, Mr Nhleko, on 26 November 2012 and during this meeting it was agreed that a legal opinion should be obtained about the obligations of Nedlac and the Minister of Labour prior to any further steps being taken. A copy of the legal opinion is enclosed for the Minister's ease of reference. (Annexure A).

2.5. The Audit and Risk Committee of Nedlac has initiated a process to address internal control deficiencies and policy reviews and a status report in this regard is attached as Annexure B.

3. STATUTORY AND OTHER REPORTING REQUIREMENTS

3.1. In accordance with Treasury Regulation 33.3.1, the Accounting Authority must, on an annual basis, submit to the Executive Authority, the relevant Treasury and

ANNEXURE G

Internal control and corporate management

27.1 Audit committees [Sections 51(1)(a)(ii) and 76(4)(d) of the PFMA]

27.1.1 The accounting authority of a public entity must establish an audit committee as a sub-committee of the accounting authority.

27.1.2 A shared audit committee may be established for a public entity and any subsidiaries under the ownership and control of that entity.

27.1.3 The chairperson of the audit committee must be independent, be knowledgeable of the status of the position, have the requisite business, financial and leadership skills and may not be the chairperson of the accounting authority or a person who fulfils an executive function in the public entity.

27.1.4 The majority of the members of an audit committee shall consist of non-executive members appointed by the accounting authority, although committee members need not all be members of the accounting authority. The majority of persons serving on an audit committee must be financially literate.

27.1.5 The relevant executive authority must concur with any premature termination of services of a member of the audit committee.

27.1.6 The audit committee must operate in terms of a written terms of reference, which must deal adequately with its membership, authority and responsibilities. The terms of reference must be reviewed at least annually to ensure its relevance.

27.1.7 It must be disclosed in the entity's annual report whether or not the audit committee has adopted a formal terms of reference and if so, whether the committee satisfied its responsibilities for the year, in compliance with its terms of reference.

27.1.8 The audit committee must, amongst others, review the following:

- (a) the effectiveness of the internal control systems;
- (b) the effectiveness of internal audit;
- (c) the risk areas of the entity's operations to be covered in the scope of internal and external audits;
- (d) the adequacy, reliability and accuracy of financial information provided to management and other users of such information;
- (e) any accounting and auditing concerns identified as a result of internal and external audits;
- (f) the entity's compliance with legal and regulatory provisions; and
- (g) the activities of the internal audit function, including its annual work programme, coordination with the external auditors, the reports of significant investigations and the responses of management to specific recommendations; and
- (h) where relevant, the independence and objectivity of the external auditors.

27.1.9 The audit committee must have explicit authority to investigate matters within its powers, as identified in the written terms of reference. The audit committee must be provided with the resources it needs to investigate such matters and shall have full access to information. The audit committee must safeguard all information supplied to it within the ambit of the law.

27.1.10 The audit committee must –

- (a) report and make recommendations to the accounting authority;
- (b) report on the effectiveness of internal controls in the annual report of the institution; and
- (c) comment on its evaluation of the financial statements in the annual report.

27.1.11 Should a report from internal audit (or any other source) to the audit committee implicate any member(s) of the accounting authority in fraud, corruption or gross negligence, the chairperson of the audit committee must promptly report this to the relevant executive authority and the Auditor-General.

27.1.12 * The audit committee must communicate any concerns it deems necessary to the executive authority, the Auditor-General and if appropriate, to the external auditor.

27.1.13 The audit committee must meet at least annually with the Auditor-General or the external auditor, whichever applicable, to ensure that there are no unresolved issues of concern.

27.2 Internal controls and internal audit [Sections 51(1)(a)(ii) and 76(4)(b) and (e) of the PFMA]

27.2.1 The accounting authority must ensure that a risk assessment is conducted regularly so as to identify emerging risks of the public entity. A risk management strategy, which must include a fraud prevention plan, must be used to direct internal audit effort and priority and to determine the skills required of managers and staff to improve controls and to manage these risks. The strategy must be clearly communicated to all employees to ensure that the risk management strategy is incorporated into the language and culture of the public entity.

27.2.2 All public entities to which these regulations apply must have an internal audit function.

27.2.3 A public entity and subsidiaries under the ownership control of the entity may have a shared internal audit function.

27.2.4 The internal audit function may, in accordance with preferred tendering procedures, be contracted out to an external institution with specialist audit expertise, provided that the external auditors may not perform the internal audit function.

27.2.5 The purpose, authority and responsibility of the internal audit function must, in consultation with the Board, be formally defined in an audit charter and be consistent with the Institute of Internal Auditors (“IIA”) definition of internal auditing.

27.2.6 Internal audit must be conducted in accordance with the standards set by the Institute of Internal Auditors.

27.2.7 The internal audit function must, in consultation with the audit committee, prepare:

- (a) a rolling three-year strategic internal audit plan based on its assessment of key areas of risk for the public entity, having regard to its current operations, the operations proposed in its corporate or strategic plan and its risk management strategy;
- (b) an internal audit plan for the first year of the rolling plan;
- (c) plans indicating the scope of each audit in the annual internal audit plan; and

(d) reports to the audit committee detailing its performance against the plan, to allow effective monitoring and intervention when necessary.

27.2.8 The internal audit function must report directly to the accounting authority and shall report at all audit committee meetings. The function must be independent of activities that are audited, with no limitation on its access to information.

27.2.9 The internal audit function must co-ordinate with other internal and external providers of assurance to ensure proper coverage and to minimise duplication of effort.

27.2.10 The internal audit function must assist the accounting authority in maintaining effective controls by evaluating those controls to determine their effectiveness and efficiency, and by developing recommendations for enhancement or improvement. The controls subject to evaluation should encompass the following:

- (a) the information systems environment;
- (b) the reliability and integrity of financial and operational information;
- (c) the effectiveness of operations;
- (d) safeguarding of assets; and
- (e) compliance with laws, regulations and controls.

27.2.11 The internal audit function must assist the accounting authority in achieving the objectives of the institution by evaluating and developing recommendations for the enhancement or improvement of the processes through which:

- (a) objectives and values are established and communicated;
- (b) the accomplishment of objectives is monitored;
- (c) accountability is ensured; and
- (d) corporate values are preserved.

27.3 Chief financial officers

27.3.1 Unless directed otherwise by the relevant treasury, each public entity listed in Schedule 3A or 3C of the Act shall have a chief financial officer as the head of the finance division.

27.3.2 Without limiting the right of the accounting authority to assign specific responsibilities, the general responsibility of the chief financial officer is to assist the accounting authority in discharging the duties prescribed in Part 2 of Chapter 6 of the Act.