



**Western Cape
Government**

Transport and Public Works

BETTER TOGETHER.

PRESENTATION TO PUBLIC ACCOUNTS COMMITTEE

MANAGEMENT OF CONTINGENT LIABILITIES 2019/20

Microsoft Teams meeting

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Analysis of contingent liabilities in AFS at 31 March 2020

● Housing loan guarantees (employees)	R 75 000
● Other guarantees (borrow pits)	R 14 749 000
● Private individuals (claims against the state)	R 97 261 000
● Various departments (interdepartmental payables)	R 6 000*
TOTAL	R112 091 000

* Considered immaterial for this presentation

Legislative framework: claims against the state

● **Public Finance Management Act 1 of 1999**

- ❖ Section 76 (1) The National Treasury must make regulations or issue instructions applicable to departments, concerning-

(h) “the settlement of claims by or against the State”

● **National Treasury Regulation 12.2**

- ❖ Claims against the State through acts or omissions

● **Western Cape Provincial Treasury Instruction 12.8**

- ❖ Claims against the State through acts or omissions

● **Accounting Officer delegations**

- ❖ Item number 148 – To instruct the State Attorney to dispute or settle the claim as advantageously as possible, as the case may be.
- ❖ Item number 150 – Prior written approval for the obligation of funds by the State Attorney.

Conditions or Limitations “A Claim against the State Register must be maintained.”

● **Standard Operating Procedure - Management of Losses and Claims**

- ❖ Paragraph 8.5.3.7 Include particulars of the Contingent Liabilities in the Annual Report and Annual Financial Statements.

Legislative framework: housing loan guarantees

- **PSBC Resolution No. 2 of 2004 “the State Housing Guarantee Scheme”**

Legislative framework: other guarantees (borrow pits)

- **Minerals & Petroleum Resources Development Act (Act 28 of 2002) (MPRDA) - section 41(1) relates to Borrow Pits for Road Construction and maintenance purposes**

Nature of claims against DTPW as at 31 March 2020

	Nature of claim	Number of cases	Amount (R)
1	Damage due to pothole	39	39,364,232.09
2	Damage due to other road defects	5	264,844.59
3	Loss of income (impoundment of vehicle/ rejection of permit)	2	12,288,000.00
4	Injuries and loss of life	18	35,228,272.73
5	Collision with animals	1	2,680,000.00
6	Alleged unlawful arrests and detention	14	6,412,079.50
7	Collision with Government PA vehicles	10	493,844.33
8	Other accidents	2	410,057.60
9	Damage to property	1	118,308.57
10	Grass cutting activities	1	1,100.00
	TOTAL	93	97,260,739.41

Nature of housing loan guarantees as at 31 March 2020

	Nature of guarantee	Number of cases	Amount (R)
	Housing Guarantee	1	R75 000,00

Nature of other guarantees (borrow pits) as at 31 March 2020

	Nature of guarantee	Number of cases	Amount (R)
	Borrow Pits	95	R 14 749 000.00

Mechanism: Process flow to manage claims against DTPW 1/3

- Claims are lodged against DTPW in the following manner:
 - ❖ Via Communications office, via the department's generic email address that appears on some publications or on the WCG website
 - ❖ Via the Regional Offices (RO)
 - ❖ Via District Municipalities (DM)
 - ❖ Via the Office of the State Attorney (S/A)
 - ❖ DoTP: Legal Services (L/S)
 - ❖ Office of the HOD (HOD)
 - ❖ Office of the Minister of Transport and Public Works (MEC)
- The above-mentioned points of entry will forward the claims to the Directorate Financial Governance (D:FG) to investigate and process.
- Upon receipt, D:FG will register the claim on the Transversal Loss Control System (of which Provincial Treasury is the custodian).
- A case file is opened in terms of the Archive Act at Records Management and all relevant documents are filed.

Mechanism: Process flow to manage claims against DTPW 2/3

- The claim is referred to L/S as per PTI 12.4 to act on behalf of DTPW.
- When DTPW is summoned, a formal request to defend the matter is sent to L/S who will appoint the S/A to proceed with the litigation process.
- The claimant is required to provide the DTPW with the GPS co-ordinates, kilometer markings of the road or landmarks etc., to establish whether the road in question resides within the jurisdiction of the DTPW.
- The Engineer in charge of that section of the Proclaimed Provincial Road in question will either do an on-site inspection or examination of existing maintenance records to establish whether or not a pothole was present
- In the event that a contractor was responsible for the maintenance of the Proclaimed Provincial road in question, the claimant will be advised to institute a claim directly against the contractor.
- All information regarding the claim will be forwarded to the S/A via L/S.

Mechanism: Process flow to manage claims against DTPW 3/3

- L/S will advise DTPW regarding the merits of the claim against it.
- Depending on the geographical area depicted by the claimant and the litigation process involved, the S/A will appoint a correspondent attorney if it is outside of their jurisdiction, as the cost of travel will outweigh the economic viability to defend the matter.
- Counsel will be appointed to act on behalf of DTPW for cases heard in the High court.
- If DTPW loses the case in the Magistrate or High Court, it will seek further advise from L/S whether it should appeal the judgement or settle the claim.
- In certain instances, if DTPW is expected to loose a case in court, L/S will advise DTPW to settle out of court to save on legal costs.
- All claims against DTPW are also listed in the Contingent Liabilities register from which the disclosure in the AFS is made.

Mechanism: Process flow to manage housing loan guarantees

- Control of Housing Guarantees approved to employees is vested with the Corporate Service Centre (CSC). This includes the following:
 - Maintaining records of all housing guarantee records;
 - Approval of applications via DTPW;
 - All related Persal transactions;
 - Liaison with employees, financial institutions and other relevant participants

Mechanism: Process flow to manage other guarantees (borrow pits)

- Borrow pit guarantees are controlled via an electronic system which makes provision for the following:
 - Request for guarantee is submitted electronically
 - Each request is issued with a control number to track the guarantee
 - Electronic record of the name of person requesting the guarantee
 - Electronic record of Project Type, District Municipal Area, Local Municipal Area, Road number, Guarantee amount, Released date, Date of issuing of Guarantee and Borrow Pit number

Monitoring of claims against the DTPW / contingent liabilities

- Each claim is monitored individually by the D:FG to ensure that the litigation process occurs within the legal timeframe applicable.
- Claims against DTPW are monitored on a quarterly basis by Top Management at its Enterprise Risk Management Committee meetings.
- Claims against DTPW and contingent liabilities are monitored on a quarterly basis through the Interim Financial Statements which are reviewed by Provincial Treasury.

Monitoring of housing loan guarantees

- Monitoring of Housing guarantees is performed by the CSC to ensure minimum liability to the State and shortest possible period of redemption of guarantee

Monitoring of other guarantees (borrow pits)

- On average a borrow pit's life cycle is five years and guarantees are issued for five year period
- After the five year period, DTPW have a three year period for rehabilitation of the borrow pit
- Department of Environmental Affairs (national) will issue a certificate of compliance for the rehabilitation of the specific borrow pit after conducting its inspection
- The guarantee will be redeemed after the successful rehabilitation and removed from the borrow pits register

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