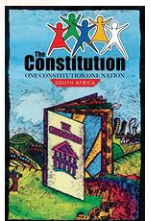


**Policy Implementation Presentation**  
**PREPARED FOR SALGA MUNICIPAL LEGAL  
PRACTITIONERS FORUM**

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**14<sup>TH</sup>-15<sup>TH</sup> MARCH 2024**  
**DURBAN ICC**

**PRESENTED BY SOLICITOR-GENERAL**  
**MR FHEDZISANI PANDELANI**



# OUTLINE

BACKGROUND

POLICY DEVELOPMENT

PURPOSE & OBJECTIVES

POLICY IMPERATIVES

POLICY IMPLICATIONS & CONSTITUTIONAL IMPACT

IMPLEMENTATION & BARRIERS

MONITORING & EVALUATION

## BACKGROUND

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- The State is the largest consumer of legal services in the country and annually loses billions of rands through unnecessary legal and/or litigation costs. The state employs hundreds of professionals who provide litigation and legal advisory services for the State in different capacities.
- The ability of the state to carry out service delivery projects has a huge impact on the lives of ordinary South Africans (*Chapter 13 of the National Development Plan*). The State is also faced with the challenge of ensuring that the justice system is accessible to all.
- South Africa has developed into a litigious society resulting in the citizens asserting their rights specifically against the State. Thus, it has become imperative for measures to be put in place in order to curb the unnecessary litigation costs and ballooning state contingent liability.

## BACKGROUND cont...

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- Prior to the 7<sup>th</sup> February 2020, the management of State litigation was governed by the State Attorney Act 56 of 1957 and the Offices of the State Attorney operated for a long time without proper policies relating to management and coordination of State legal services.
- Challenges in the management of State litigation have been highlighted through numerous court judgments and responses thereto have been on-going since the advent of democracy.
- The State Attorney Amendment Act of 2014 came into effect on the 7<sup>th</sup> February 2020 giving traction to the formulation and implementation of critical policies and monitoring which are imperative to transform and rebuild the State legal services and curb legal/litigation costs in order to fit the current constitutional setting.

## OFFICE OF THE SOLICITOR-GENERAL

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- The cardinal import of the Amendment Act that ushered the creation of the Office of the Solicitor-General is intended at addressing some of the state litigation challenges.
- The Solicitor-General reports directly to the Minister of Justice and Constitutional Development and is the executive officer of all State Attorney Offices.
- The Solicitor General is mandated to implement the provisions of the State Attorney Act, as amended and simultaneously, to lead, provide direction on state litigation and oversee the performance of the entire State legal services.
- The implementation of the Act therefore represents a staggered approach to transforming the State legal services, in that it recognises that immediate solutions are required to the current challenges encountered.

## POLICY DEVELOPMENT

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- The office of the Solicitor-General (OSG) has, in line with the State Attorney Act, as amended, developed policy on:
  - ✓ Management of State litigation.
  - ✓ Initiating, defending and opposing of matters.
  - ✓ Alternative dispute resolution mechanism (ADRM), State Mediation.
  - ✓ Management of State litigation contingent liability.
  - ✓ Briefing and outsourcing of State legal work.
  - ✓ State legal representation.
- These policies give the Solicitor-General a clear mandate to oversee State litigation/legal services and steer the performance towards a fully functional State litigation/legal service with the ultimate goal of excellence. This is in line with *Building a Capable and Developmental State, Chapter 13 of the National Development Plan, 2030*.
- The policies intend to serve as strategic interventions to the challenges faced by the offices of the state attorney and state organs in the management of State litigation.

# PURPOSE & OBJECTIVES

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## Purpose

- To promote an integrated, policy driven, professional, empowering and cost-effective, efficient coordination and management of State litigation.

## Objectives

- ✓ To introduce uniform procedures and standards in an effort to reduce the State liability;
- ✓ Improve service delivery and stakeholder engagements; and
- ✓ Redress the imbalances of the past by transforming the State legal services.

# POLICY IMPERATIVES

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## Management of State Litigation

- To ensure an improvement in the quality of services rendered and generally for the proper management of state litigation by addressing issues such as:
  - ✓ the absence of a set of clearly defined rules governing how litigation services are to be acquired, managed and monitored;
  - ✓ lack of communication between the offices of the state attorney and organs of state in the conduct of litigation resulting in poor service delivery; and
  - ✓ inadequate training as well as lack of supervision across the board.

## State Mediation

- Seeks to give effect to section 34 of the Constitution by enabling a system of a speedier, cheaper and more inclusiveness in resolving State litigation cases.
- Reduce the high level/volume of cases brought before courts resulting in exorbitant legal costs to the State.



## POLICY IMPERATIVES cont...

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### **Briefing & Outsourcing of state legal work**

- Give effect to the objectives of the Constitution of promoting effective and sustainable economic participation in the economy of the country in general and the legal profession in particular.
- Ensure the fair distribution of legal work by implementing clear regulating systems setting out how briefs are to be issued.
- Curtail the exorbitant legal costs of litigation by introducing the fee guidelines.
- Promote the development of legal expertise in both the public and private sphere by facilitating the enhancement of skills in multiple disciplines of law.

### **State Legal Representation**

- To ensure that legal representation and/or funding is provided in a uniform, fair, transparent manner and equitable access to legal representation and/or funding.

## POLICY IMPERATIVES cont...

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### **Initiating, Defending & Opposing matters**

- Seeks to provide norms and standards between offices of state attorney and state departments; ensure compliance thereof and to align and/or redefine, where necessary, the functions and processes when handling matters on behalf of the State.

### **Management of State litigation contingent liability**

- To develop uniform guidelines in respect of all civil litigation contingent liabilities against the state; create a central contingent liability database in order to monitor and control the recording of contingent liabilities for all state departments; and develop a national reduction plan to collectively address and mitigate state liability.

## POLICY IMPLICATIONS

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- Build a professional State legal services capable of playing a transformative and developmental role in line with *Chapter 13 of the National Development Plan, Vision 2030: Building a Capable State*.
- Foster collaborative initiatives to achieve common goals in the interest of the State and enhance governance issues within the offices of the state attorney and organs of state.
- Promote efficient and cost effective handling of litigation involving the entire state with the result of continuously improving service delivery and furthering government's transformation policies.
- Improve access to justice for all as well as access to state legal work, which in turn will contribute towards a sense of equality amongst all groups in society.

## POLICY IMPLICATIONS cont...

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- Enhance the creation of job opportunities in line with *Chapter 3: Economy and Employment of the National Development Plan Vision 2030* read with *Chapter 2: Demographic Trends* with a particular focus of women being given the opportunity to participate in the economy of the country.
- Clarify roles, responsibilities and accountability of stakeholders in state litigation management.
- Establish conditions for meaningful and enhanced stakeholder engagements and/or relations.

## CONSTITUTIONAL IMPACT

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- The *Constitution of the Republic of South Africa Act of 1996, Chapter 10, section 195(1)* states that South Africa's Public Service must maintain a high standard of professional ethics; promote efficient, economic and effective use of resources; and that it must be accountable, representative, transparent, development oriented and responsive to the needs of all.
  
- *Section 41(1) (h) of the Constitution of the Republic of South Africa, 1996* provides that all spheres of government and all organs of State within each sphere must-
  - (h) Co-operate with one another in mutual trust and good faith by-
    - (i) *Fostering friendly relations;*
    - (ii) *Assisting and supporting one another;*
    - (iii) *Informing one another of, and consulting one another on matters of common interest;*
    - (iv) *Co-coordinating their actions and legislation with one another;*
    - (v) *Adhering to agreed procedures; and*
    - (vi) *Avoiding legal proceedings against one another.*

## POLICY IMPLEMENTATION

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- The aforesaid policies have since been approved by Cabinet and tabled before Parliament for noting. The focus of the Office of the Solicitor-General in the 2023/2024 financial year is implementation of the aforesaid six (6) policies in line with the State Attorney Act, as amended.
  
- The Solicitor-General shall play a key role in overseeing the overall implementation plan, with the ultimate accountability to the Minister of Justice and Constitutional Development and shall:
  - ✓ provide clarity and guidelines to organs of state on the proper interpretation, implementation and application of the policies;
  - ✓ fulfil a monitoring and coordinating function to all the stakeholders;
  - ✓ develop strategies for intervention where challenges are encountered;
  - ✓ foster on-going interaction with stakeholders in respect of the policy objectives and provide feedback to organs of state; and
  - ✓ promote continuous awareness on the benefits of the policies.
  
- To this end, and in order to give effect to the successful and effective implementation of the policies, the Solicitor-General established a Policy Implementation Committee “IMPLECOMM”.

## IMPLEMENTATION ACTION PLAN

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- The policy implementation action plan has been developed and approved by the Solicitor-General.
- The implementation action plan seeks to serve as a roadmap for the effective and successful implementation of the six (6) policies across the entire State.
- The action plan contains about sixty nine (69) milestones as well as target dates to be undertaken for all the six (6) policies.
- Therefore, the Office of the Solicitor-General and IMPLECOMM, in collaboration with organs of state and other stakeholders, will adopt a collective approach towards the implementation and review thereof.

# IMPLEMENTATION CHALLENGES

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## Implementation Barriers

- ✓ Limited implementation funding.
- ✓ *Delays in rolling out training programmes to State Attorneys and State Organs.*
- ✓ Buy-in from all relevant stakeholders, including officials from State Attorneys and State Organs/Resistance to change.
- ✓ Insufficient support and/or cooperation.

## Measures put in place to mitigate the risks

- ✓ Change management strategies for offices of the State Attorneys and State organs.
- ✓ Develop and implement a holistic and coordinated approach to State litigation by ensuring that organs of state align their litigation strategies with the policies.
- ✓ A collective approach on training to be adopted.
- ✓ Continuous awareness on the benefits of the policies through workshops, meetings, webinars, publication of relevant information on the department's website, seminars, pamphlets, etc.



## MONITORING & EVALUATION

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- The achievement of the objectives entailed in these policies is an on-going process and the successful application thereof depends on the effective monitoring and evaluation process on an on-going basis.
- Data will be collected on the general management of state litigation.
- The statistics collected will be analyzed and form part of the process for reviewing the policies and its effectiveness.
- Reports to be consolidated and feedback provided to relevant stakeholders as well as develop strategies for interventions where hurdles or barriers are encountered.
- On-going comparative studies and international best practices to be conducted.
- Policies to be reviewed and updated after three (3) years or as and when the need arises in consultation with all stakeholders.

## THE END

**ngiyathokoza!**

**ro livhuwa!**

**dankie!**

**ke a leboga!**

**enKOSI!**

**inkomu!**

**thank you!**

**ude livhuwa!**

**ke a leboga!**

**ngiyabonga!**

**siyabonqa!**