Providing incorrect, false, or misleading information to various parties, including the AGSA

AFS Consistency Workshop

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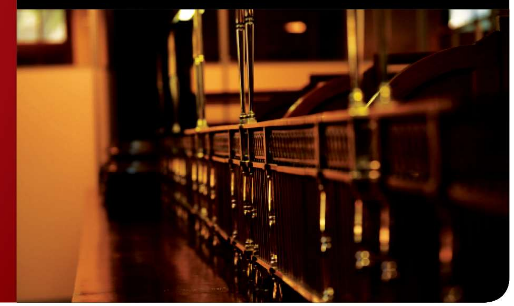


national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Agenda

01 Misinformation as Financial Misconduct
Sections 171 & 172 — disciplinary framework for Municipalities & entities

02 Misinformation as a Financial Offence
Section 173 — the criminal offence threshold

03 Key Words: Deliberately, Negligently, Grossly Negligent
The mental-state thresholds across s171, s172 and s173

04 Incorrect, Misleading & False Information
How the Act distinguishes "incorrect or misleading" from false or misleading"

05 Parties to Whom Information is Supplied
Mayor, council, parent municipality, AG, National Treasury, organs of state

06 Meaning of "Documents" & "This Act"
Scope of documents covered, and how regulations are pulled in

07 Penalties & No Double Jeopardy
Section 174 — fine or imprisonment up to 5 years, or both

08 Preventive Controls, Consequence Management & Awareness
Safeguards, SOPs and new-employee training

Sections 171 & 172 of the MFMA – Financial Misconduct

An official commits **financial misconduct** if they **deliberately or negligently** provide **incorrect or misleading information** in any document required under the MFMA.

S 171 - An official of a municipality

...commits financial misconduct if they deliberately or negligently provide **incorrect or misleading information** in any document which under this Act must be submitted to:

- The **mayor**
- The **council**
- The **Auditor-General**
- The **National Treasury**
- Any other **organ of state**
- Any document which must be **made public**
- **See sections 171(1)(d), 171(2)(d), and 171(3)(d) of the MFMA**

Note sections 171(2)(d) and 171(3)(d) on submission of information to the AO for purposes of submission in terms of s171(1)(d)

Threshold: deliberately OR negligently
→ **Financial misconduct · disciplinary proceedings**

S 172 - An official of a municipal entity

...commits financial misconduct if they deliberately or negligently provide **incorrect or misleading information** in any document which under this Act must be submitted to:

- The **parent municipality**
- The **Auditor-General**
- The municipal entity's **board of directors**
- Any document which must be **made public**
- **See sections 172(1)(d) and 172(2)(d) of the MFMA**

Note section172(2)(d) on submission of information to the AO for purposes of submission in terms of s172(1)(d)

Threshold: deliberately OR negligently
→ **Financial misconduct · disciplinary proceedings**

Section 173 of the MFMA – Financial Offence

Offences under section 173 are structured by the person's role. Fault threshold: **"deliberately"** or, **"in a grossly negligent way"**.

A Accounting officer of municipality is guilty of financial offence when: s 173(1)

s 173(1)(b)	Deliberately **misleads or withholds information** from the Auditor-General on any bank accounts of the municipality, or on money received or spent by the municipality.
s 173(1)(c)(aa)	Deliberately provides **false or misleading information (required by the MFMA)** in any document that must be submitted to the Auditor-General, National Treasury or any other organ of state.
s 173(1)(c)(bb)	Deliberately provides **false or misleading information** in any document **(required by the MFMA)** that must be **made public**.

B Accounting officer of a municipal entity is guilty of financial Offence when: s 173(2)

s 173(2)(b)	Deliberately **misleads or withholds information** from the Auditor-General or the entity's **parent municipality** on any bank accounts, or money received or spent by the entity.
s 173(2)(c)(aa)	Deliberately provides **false or misleading information** in any document **(required by the MFMA)** that must be submitted to the parent municipality, Auditor-General, National Treasury or any other organ of state.
s 173(2)(c)(bb)	Deliberately provides **false or misleading information** in any document **(required by the MFMA)** that must be **made public**.

C Councillor, Muncipal Official · Board member · Any other person s 173(5)

s 173(5): *"A councillor, an official of a municipality or municipal entity, a member of the board of directors of a municipal entity or any other person …" is guilty of a financial offence when he/she deliberately or grossly negligent way:*

s 173(5)(b)	Gives **incorrect, untrue or misleading information** material to an **investment decision on borrowing** by a municipality or municipal entity.
s 173(5)(f)(i)	Provides **false or misleading information** in any document **(required by the MFMA)** submitted to the council, mayor or accounting officer of a municipality, or to the Auditor-General or National Treasury.
s 173(5)(f)(ii)	Provides **false or misleading information** in any document **(required by the MFMA)** that must be **made public**.

"Deliberately", "Negligently" and "Grossly Negligent"

APPLIES TO · s171 · s172 · s173

"Deliberately"

Core meaning
Intentional, conscious and purposeful act or omission. The person knew their action was wrong and proceeded anyway.

In the misinformation context
Knowingly provided information they knew to be **incorrect, misleading or false**.

Applies across

BOTH disciplinary (s171/s172) AND criminal (s173) contexts.

Criminal standard of proof
Under s173, the prosecution must prove deliberate conduct **beyond reasonable doubt**.

Disciplinary AND criminal liability possible

APPLIES TO · s171 & s172 ONLY

"Negligently"

Core meaning
Failure to exercise the care a **reasonably prudent person** would exercise in similar circumstances.

In the misinformation context
Did not intend to provide incorrect information but failed to verify accuracy. A breach of **duty of care** — they ought to have known.

No intent required
Only failure to meet required standard of care.

Objective test
Would a reasonable official in the same position have **verified** the information?

Disciplinary proceedings ONLY

APPLIES TO · s173 ONLY

"Grossly negligent"

Significantly higher standard
Conduct so **reckless or careless** as to demonstrate a substantial lack of concern for consequences.

Extreme departure
An **extreme departure** from the standard of care expected of a reasonable person in the same position.

In the misinformation context
Showed **reckless disregard** for the truth or accuracy of the information.

Distinction that matters
Ordinary negligence → discipline.

Gross negligence → criminal prosecution.

CRIMINAL prosecution under s174

Meaning of “Incorrect”, “Misleading” and “False” Information

SECTION 171 · MUNICIPALITIES
"Incorrect or misleading"

"Incorrect"
Factually wrong — inaccurate data, figures, or statements.

"Misleading"
Information that creates a **false or deceptive impression** — even if technically accurate.

Documents covered
Submissions to the **mayor, council, AG, National Treasury, other organs of state**, or any public document.

Threshold
Deliberately OR negligently.

> **Financial misconduct · DISCIPLINARY**

SECTION 172 · MUNICIPAL ENTITIES
"Incorrect or misleading"

Same meaning as s171
Applies to officials of **municipal entities**.

"Incorrect" & "Misleading"
Same characterisation — factually wrong or creates a false impression even if technically accurate.

Documents covered
Submissions to the **parent municipality, AG, other organs of state**, or any public document.

Threshold
Deliberately OR negligently.

> **Financial misconduct · DISCIPLINARY**

SECTION 173 · CRIMINAL
"False or misleading"

"False"
Knowingly untrue, fabricated, or deliberately deceptive.

"Misleading"
Creates a false impression — even if not entirely fabricated.

Documents covered
Submissions to the **NT, AG, other organs of state**. Also: **directly furnishing** false info to the AG or NT.

Threshold (higher)
Deliberately OR **in a grossly negligent way**.

> **Financial offence · CRIMINAL**

Parties to Whom Information is Supplied

Section 171 — Municipalities

DISCIPLINARY · BROADEST LIST

- The **mayor**
- The **council**
- The **Auditor-General**
- The **National Treasury**
- Any other **organ of state**
- Any document **made public**

Standard: deliberately OR negligently
→ Disciplinary

Section 172 — Municipal Entities

DISCIPLINARY · PARENT MUNICIPALITY

- The **parent municipality**
- The **Auditor-General**
- Any other **organ of state**
- Any document **made public**

"**Parent municipality**" replaces "mayor" and "council" — reflecting entity's governance structure.

Standard: deliberately OR negligently
→ Disciplinary

Section 173 — Criminal Offence

CRIMINAL · NARROWER LIST, HIGHER BAR

- The **National Treasury**
- The **Auditor-General**
- Any other **organ of state**
- Any document **made public**

Section 173(5)(b) also includes the provision of false or misleading information, material to an investment of borrowing decision of a municipality or municipal entity.

Standard: deliberately OR grossly negligent
→ Criminal

KEY OBSERVATIONS

- Section 171 has the broadest recipient list — includes the mayor and council specifically.
- Section 172 substitutes the **parent municipality** for "mayor" and "council".
- Section 173 has a narrower recipient list — but a **higher culpability standard** (deliberate or grossly negligent).
- "Any other organ of state" appears in all three — broadly defined under s 239 of the Constitution, also refer to MFMA Circular No: 133.

Meaning of "Documents" and "This Act"

"Documents" in the MFMA

Statutory position

The **MFMA does not explicitly define** "document" in section 1 of the MFMA → Must be read in its broad, ordinary meaning.

In context, "document" includes (Not limited to:)

- Financial statements & reports
- Budget documents & adjustments budgets
- Annual reports & in-year monitoring reports
- SCM reports & deviation reports
- Auditor-General submissions & responses
- Council resolutions & minutes
- Any written or electronic record required under the Act

Covers BOTH physical and electronic documents.

Broad interpretation prevents officials from escaping liability based on form or format.

"This Act" — Section 1 of the MFMA

"'this Act' includes ***regulations made in terms of section 168 or 175.****"*

Extends beyond the primary Act to

- Municipal Regulations on Financial Misconduct Procedures & Criminal Proceedings (2014)
- Supply Chain Management Regulations
- Municipal Budget & Reporting Regulations
- Any other regulations promulgated under the MFMA – E.g. mSCOA regulations

Practical implication

Contravening any regulation under s168 or s175 is treated as contravening **the MFMA**. Providing incorrect / false information in relation to ANY regulatory requirement constitutes financial misconduct or an offence.

Ignorance of regulations is NOT a defence.

Officials must comply with the MFMA AND every regulation issued under it.

Section 174 of the MFMA

SECTION 174 — TEXT

"A person is liable on conviction for an offence in terms of section 173 to a ***fine*** *or to* ***imprisonment for a period not exceeding five years****."*

See Pietersen v State (A309/2017) [2019] ZAWCHC 93 (6 February 2019) which was appealed up to Constitutional Court

PENALTY OPTIONS · COURT DISCRETION

OPTION A	OPTION B	OPTION C
FINE	**PRISON**	**BOTH**
As determined by court	Up to 5 years	Fine + imprisonment

WHO IS LIABLE

Any person convicted under s173 — accounting officers, officials, councillors, board members of municipal entities, and any other person.

NO DOUBLE JEOPARDY — INTERNAL DISCIPLINE & CRIMINAL PROSECUTION CAN BOTH PROCEED

Disciplinary process addresses the **employment relationship** · **Criminal process** addresses the **offence against the State** · **Different purposes — not mutually exclusive.**

An official internally disciplined under s171 / s172 of the MFMA can **also face criminal prosecution** under s173 of the MFMA for the same conduct — this is not double jeopardy.

Preventative Controls & Consequence Management

Misinformation preventive controls

01 Verification protocols for all financial documents before submission.

02 Dual sign-off on critical financial reports.

03 Data quality assurance for all documents as contemplated in the MFMA.

04 Automated validation checks in financial systems to flag anomalies.

Document controls

01 Document management system with version control and audit trails.

02 Access controls to prevent unauthorised alteration.

03 Documented evidence of **review & approval** before external submission.

04 Retain all supporting documentation for audit and legal purposes.

Consequence management SOPs & policies

01 Clear SOPs **aligned with the 2014 Financial Misconduct Regulations**.

02 Compulsory Financial Misconduct Disciplinary Board.

03 Defined timelines: **reporting**, preliminary & **full investigation**.

04 Procedures for **referral to SAPS**.

05 Report all proceedings in the **annual report**.

06 Protected Disclosures Act protections for whistle-blowers.

Inform new employees

- MFMA compliance training in **induction programmes**.
- Distinction between **misconduct (disciplinary)** and **offence (criminal)**.
- Meaning of "deliberately", "negligently", "grossly negligent".
- Obligation to provide **accurate information** in every document.
- Parties to whom information is supplied; penalties under s174.
- **Signed acknowledgement** of MFMA obligations; **annual refresher training**.

Summary

SECTION 171 · MUNICIPALITIES

Incorrect / misleading info → DISCIPLINARY

Deliberately OR negligently.

SECTION 172 · ENTITIES

Incorrect / misleading info → DISCIPLINARY

Deliberately OR negligently.

SECTION 173 · ANY PERSON

False / misleading info → CRIMINAL

Deliberately OR grossly negligent.

DELIBERATELY

Intentional & purposeful

Applies across s171, s172 and s173.

NEGLIGENTLY (s171/s172)

Ordinary failure of care

Disciplinary only — reasonable person test.

GROSS NEGLIGENT (s173)

Reckless disregard

Criminal — extreme departure from standard.

VOCABULARY

"Incorrect" vs "False"

s171/s172: incorrect or misleading.
s173: false or misleading.

RECIPIENTS

Mayor, council, parent mun., AG, NT

Plus any organ of state and public documents.

"THIS ACT"

Includes s168 / s175 regulations

Ignorance of regulations is not defence.

PENALTIES — s174

Fine, prison up to 5 years, or both

Court discretion on form & severity.

NO DOUBLE JEOPARDY

Discipline AND criminal both proceed

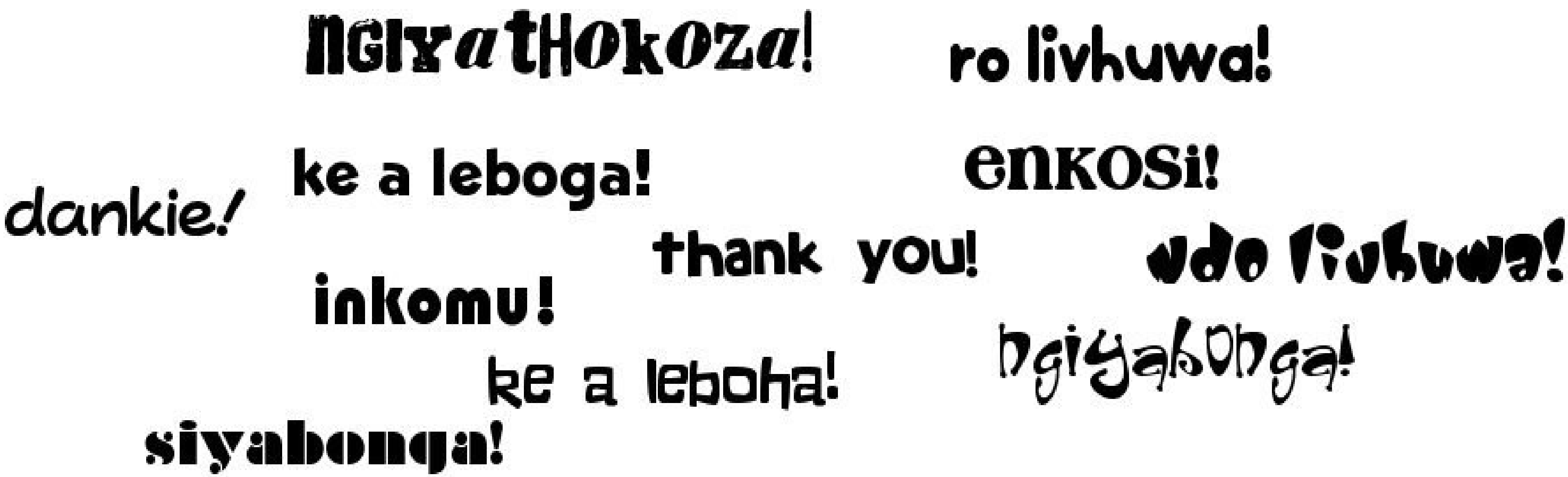
Different purposes — not mutually exclusive.

ESSENTIAL SAFEGUARDS

Preventive controls · Document controls · Consequence-management SOPs · New-employee training

Together these protect both the institution and the individual official from disciplinary and criminal exposure under MFMA Chapter 15.

THANK YOU



All enquiries to be submitted to MFMA helpdesk
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