Report on Measuring the Efficacy of the Code of Conduct for Public Servants

Public Service Commission
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National Office:
Commission House
cnr Hamilton & Ziervogel Streets
Arcadia 0083

Private Bag X121
Pretoria

Tel: (012) 328 7690
Fax: (012) 325 8382
E-mail: info@opsc.gov.za
Website: www.psc.gov.za

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TABLE OF CONTENTS

	ACKNOWLEDGEMENT	iii
	FOREWORD BY THE CHAIRPERSON	iv
	EXECUTIVE SUMMARY	v
1.	**CHAPTER ONE:** INTRODUCTION TO THE RESEARCH	1
1.1	Introduction and background	2
1.2	Research methodology	2
1.3	Limitations of the research	2
2.	**CHAPTER TWO:** THE CODE OF CONDUCT IN RELATION TO NATIONAL ENACTMENTS	3
2.1	Introduction	4
2.2	Provisions of the Code	4
2.2.1	Relationship with the Legislature and Executive	4
2.2.2	Relationship with the public	4
2.2.3	Relationship amongst employees	4
2.2.4	Performance of duties	5
2.2.5	Personal conduct	5
2.3	Assessment of the Code against National Legislation	5
2.3.1	The Public Service Act (Act No. 103 of 1994)	5
2.3.2	The Constitution of the Republic of South Africa (Act No. 108 of 1996)	6
2.3.3	Promotion of Access to Information Act (Act No. 2 of 2000)	7
2.3.4	Promotion of Administrative Justice Act (Act No. 3 of 2000)	7
2.3.5	Promotion of Equality and Prevention of Unfair Discrimination Act (Act No. 4 of 2000)	8
2.3.6	The Public Finance Management Act (Act No. 1 of 1999)	9
2.3.7	Prevention and Combating of Corrupt Activities Act (Act No. 12 of 2004)	9
2.3.8	Offences created in Chapter 2 of the new Corruption Act which are pertinent to the conduct of public servants	10
2.4	Extent of enforceability	11
3.	**CHAPTER 3:** FINDINGS, ANALYSIS OF FINDINGS AND ASSESSMENT OF THE CODE OF CONDUCT	15
3.1	Introduction	16
3.2	Findings from open-ended interviews	16
3.2.1	General	16
3.2.2	Relationship with the public	16
3.2.3	Relationship amongst employees	17

3.2.4	Performance of duties	17
3.2.5	Personal conduct	17
3.3	Departmental results	18
3.4	Integrity Thermometer survey results	23
3.5	Analysis of findings of the survey	26
3.6	Assessment of the Code of Conduct	27
3.6.1	Contents of the Code	27
3.6.2	Implementation	27
3.6.3	Compliance with the Code	28
4.	**CHAPTER FOUR:** RECOMMENDATIONS	29
4.1	Introduction	30
4.2	Review of the Code of Conduct	30
4.2.1	Generic process to develop a successful Code	30
4.2.1.1	Purpose	31
4.2.1.2	Development process	31
4.2.1.3	Tone and structure	32
4.3	Ethics training/induction programme linked to a revised Code of Conduct	33
4.3.1	Implementation	34
4.3.2	Regular future reviews	34
4.4	Whistle-blowing mechanism	34
4.5	Ethics champion	35
5.	**CHAPTER FIVE:** CONCLUSION	37
6.	**CHAPTER SIX:** ANNEXURES	39
	Annexure A: Minimum standards for ethical conduct in the Public Service	40
	Annexure B: Responses received from survey	41
	Annexure C: Organization for Economic Co-operation and Development: Principles for Managing Ethics	43
	Annexure D: Code of Conduct for the Public Service	44

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FOREWORD BY THE CHAIRPERSON

The public has become much more aware of the need for good governance and effective service delivery. This obviously puts a greater focus on the conduct and performance of public servants. Such expectations by the public are legitimate and healthy since they hold public officials accountable for their actions.

This new awareness of good governance by the public was underscored at the Second National Anti-Corruption Summit (held from 21 to 22 March 2005) where the following resolution was adopted: "Values and principles of Codes of Conduct of the various sectors must be established, promoted and enforced through a defined programme."

The Code of Conduct for the Public Service is therefore of essential value for public servants as a guide to their conduct and performance.

This study on the Code of Conduct is welcomed since it provides an interesting window into the uptake of the Code amongst public servants. One of the findings of the report is that a significant number (27%) of public servants believe that the Code of Conduct is not as highly rated as it ought to be. It is therefore necessary for managers to give particular attention to the induction of staff in the Code of Conduct. This will add to the enhancement of a professional ethos amongst public servants.

The Public Service Commission therefore recommends this report to be read by all in the Public Service, especially managers, on whom the responsibility rests to promote honesty and integrity as spelt out in our Code of Conduct.

Professor Stan S. Sangweni
Chairperson: Public Service Commission

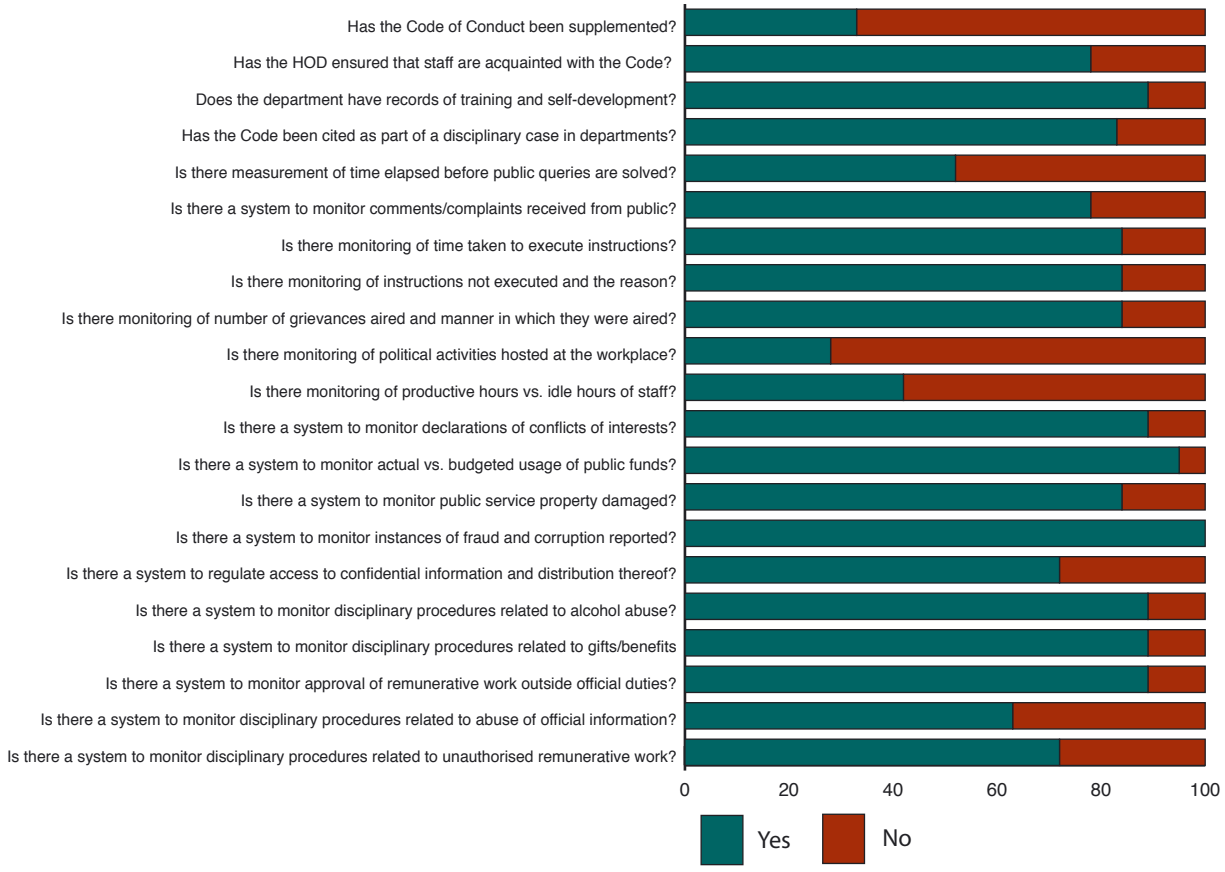
EXECUTIVE SUMMARY

An approved service provider was contracted by the Public Service Commission and the Deutsche Gesellschaft Für Technische Zusammenarbeit (GTZ) to measure the efficacy of the Code of Conduct for Public Servants in South Africa (the Code). The aim of the survey was to:

- measure compliance with the Code;
- assess the efficacy of the Code by focusing on the responsibility of Heads of Department to efficiently manage their departments and to maintain discipline;
- assess the scope and content of the Code; and
- assess best practices pertaining to codes of conduct.

Key findings: A legal review was conducted to assess the applicability of national legislation to the scope and content of the Code. The principal finding is that the Code itself, read with the provisions of the Public Service Act (103 of 1994) provides the primary driver for its enforceability by making non-compliance with its provisions a disciplinary offence. In addition, the content of the Code clearly reflects the spirit of the South African Constitution (Act 108 of 1996), with many of the values and principles articulated in the Constitution, in particular Chapter 10, pertaining to public administration, also reflected in the Code.

The graph below summarises the results from the interviews focusing on implementation:



With regards to the confidential survey results, the most important areas highlighted by respondents related to communication of the Code, the value placed on the Code by public servants and the willingness of public servants to report unacceptable behaviour:

- 8% of respondents strongly disagreed and 19% disagreed that the communication of the Code to public servants has been effective;
- 9% strongly disagreed and 18% disagreed with the statement that public servants place a high value on the Code; and
- 10% strongly disagreed and 15% disagreed with the statement that most public servants will report fraud, corruption, nepotism or any other offence to the appropriate authorities.

The types of unethical behaviour that were identified by respondents as having the highest frequency are: favouring of friends or family, failing to live up to agreements, gossiping, arriving late at work or leaving early, frequent long-distance phone calls of a personal nature and excessive photocopying for private purposes.

Conclusions: The final assessment of the impact of the Code focused on three different components: **contents, implementation and compliance.** It is believed that the Code has little impact because of the following reasons:

The Code was adopted in 1997. Best practice requires ethical policies to be reviewed from time to time. Although there is no generally accepted guideline in terms of the frequency of such reviews, it is safe to say that a period of almost nine years is too long. The Code – in its present format – is not very reader-friendly, although the Explanatory Manual on the Code of Conduct for the Public Service, of which more than a million copies were printed and distributed both nationally and provincially during 2002, would have had a positive impact on the understanding of the contents by public servants. It is also understood that a project is currently underway to translate this manual into all official languages – this will make a further important contribution in terms of the Code's accessibility. Given the current South African context, and the fact that the Code was promulgated in 1997, it is suggested that the Code should be subjected to a comprehensive review. This review should address the structure, context and style of the current Code.

The Code was rolled out to all provinces during 1999 – this comprised provincial launches as well as workshops based on the Code. Although there have been some examples of effective implementation of the Code, this has not been the case in all departments surveyed. Although the majority of departments that participated in the interviews have managed to get the basics right, some major gaps were identified.

The confidential survey results have raised concerns about levels of compliance with the Code as well as the overall ethical climate. Favouritism was identified as the biggest problem area.

Recommendations: It is recommended that an effective ethics infrastructure based on the Organisation for Economic Cooperation and Development (OECD) principles, comprising – as a minimum – the following activities, be implemented:

- a comprehensive review of the Code that addresses the structure, contents and style of the current code;
- an ethics training programme linked to a revised Code of Conduct;
- a review of its whistle blowing mechanism; and
- the creation of a visible and credible ethics champion.

CHAPTER ONE ~ Introduction to the research

1.1 Introduction and background

The Code of Conduct (the Code) for public servants in South Africa was promulgated and has been in operation since 1997. The Code acts as a guideline to employees as to what is expected of them from an ethical point of view in their individual conduct, in their relationship with the public, the Legislature and Executive, and with other employees. From the onset it was envisaged that the Code would give guidance in these various focus areas, as well as promote professional ethics in the Public Service. However, little is known about the extent to which public servants have complied with the Code or about the attitudes and perceptions of public servants pertaining to the Code. Therefore, this study was designed to measure the uptake and impact of the Code amongst public servants.

1.2 Research methodology

The research methodology into the uptake and impact of the Code on public servants comprised three phases. In the first phase of the research process all government employees with access to the Internet were given the opportunity to complete a customised version of a tool called an Integrity Thermometer. This tool comprised a confidential online survey that measures perceived unethical conduct and the ethical climate within organisations. In the second phase of the research process officials from 27 selected departments were given the opportunity to complete hard copies of the Integrity Thermometer tool. In this phase open-ended interviews were also conducted with the heads of the selected departments. In total, 537 responses were received from the survey. The final phase of the research process comprised a desk study on the provisions contained in the Code and the extent of its enforceability with other legal enactments.

In essence, this report presents the final analysis of all information received as well as recommendations on steps to be taken to improve the efficacy of the Code. The findings and recommendations are based on the following:

- legal review: desk study of applicable legislation;
- systems and procedures: results of open-ended interviews;
- compliance with the Code: results of the survey; and
- proposed revision of the Code: desk review of existing code, experience of best practice, supported by results of interviews and the survey.

1.3 Limitations of the research

It needs to be noted that all research studies have limitations and are restricted to certain parameters. This study is not an exception. Firstly, the legal review section does not constitute a legal opinion, and accordingly should not be accepted or utilised as such. Secondly, an interview guide and a briefing session for interviews were prepared and conducted. Open-ended interviews were conducted. Responses were received from 18 out of the 27 selected departments (three randomly selected departments per province). No responses were received from the Eastern Cape and Limpopo provinces. Thirdly, in terms of the survey, only public servants with access to the Internet were invited to participate in the survey, while the 27 selected departments were given the opportunity to complete hard copies of the survey.

CHAPTER TWO ~ The Code of Conduct

in relation to national enactments

2.1 Introduction

In this chapter, national legislation is reviewed so as to assess the applicability of such enactments to the scope and content of the Code of Conduct for the Public Service (the Code). The review is limited to an assessment of the requirements of the Code against provisions contained in national legislation, which is believed to have application to the Public Service as a general body. Thus, enactments pertaining to specific functions or organs of government have not been considered. Provincial and local legislation have similarly not been considered.

In the first subsection, the provisions of the Code are documented. In the second subsection various national enactments are documented and analysed with regard to their relevance to the Code in general. The extent to which these enactments enforce the content of the Code is also indicated.

2.2 Provisions of the Code

The general purpose of the Code is that it acts as a guideline to employees as to what is expected of them from an ethical point of view, both in their individual conduct and in their relationship with others. However, one should not only be aware of the general purpose of the Code but also its provisions (for ease of reference the Code in its entirety is at Annexure D). The provisions of the Code embrace the following principles:

- Relationship with the Legislature and Executive;
- Relationship with the public;
- Relationship amongst employees;
- Performance of duties; and
- Personal conduct.

2.2.1 Relationship with Legislature and Executive

- Employees should be familiar with all the statutory and official instructions and abide by them; and
- Employees should execute all the policies of Government as contained in the Public Service regulations, statutory and other departmental prescripts.

2.2.2 Relationship with the public

- Employees should serve the public in an unbiased and impartial manner;
- Employees should not abuse their position to promote or prejudice any political party or interest group; and
- Employees should recognise the right of access of information, excluding information that is specifically protected by law.

2.2.3 Relationship amongst employees

- Employees should execute all instructions received, unless it is in contrast with the law;
- Employees should not favour relatives or friends;
- Employees should not abuse their authority;
- Employees should not influence other employees to abuse their authority;

- Employees should use appropriate channels to air their grievances; and
- Employees should not take part in party political activities in the workplace.

2.2.4 Performance of duties

- Employees should strive to achieve the objectives of the institution cost effectively;
- Employees should be professional and punctual in the execution of their duties;
- Employees should not engage in any transaction which is in conflict with their duties;
- Employees should recuse themselves from any action or process which may result in improper personal gain (this should be declared);
- Employees should be honest and accountable in dealing with public funds;
- Employees should use public service property for authorised purposes;
- Employees should promote accountable administration;
- Employees should report fraud and corruption to the appropriate authorities;
- Employees should give honest and impartial advice to higher authority when requested; and
- Employees should honour the confidentiality of matters and documents.

2.2.5 Personal conduct

- Employees should not use their positions to obtain private gifts or benefits for themselves;
- Employees should not accept gifts or benefits; and
- Employees should not disclose official information for personal gain.

2.3 Assessment of the Code against National Legislation

In this section an assessment of the requirements of the Code against national legislation will be made. The Acts that have been selected for the purpose of this assessment are the following:

- The Public Service Act (103 of 1994).
- The Constitution of the Republic of South Africa,1996 (Act 108 of 1996).
- Promotion of Access to Information Act (Act No 2 of 2000).
- Promotion of Administrative Justice Act (Act No 3 of 2000).
- Promotion of Equality and Prevention of Unfair Discrimination Act (Act No 4 of 2000).
- The Public Finance Management Act (Act No.1 of 1999).
- Prevention and Combating of Corrupt Activities Act (Act No. 12 of 2004).

2.3.1 The Public Service Act (Act No. 103 of 1994)

The Code, published on 10 June 1997 and promulgated as an amendment to the Public Service Regulations, seeks to promote exemplary conduct amongst the public service. The purpose of the Code, as articulated in its introduction, is to, inter alia, provide guidelines to employees with regard to their relationship with the legislature, political and executive office-bearers, fellow employees and the public. In essence, it attempts to provide a framework setting out the standard of conduct which all government employees should adhere to.

However, although its stated purpose is to provide a set of guidelines on expected behaviour of employees within the Public Service both in their public and private life, the Code is regulatory in effect, in that it also provides that “an employee shall be guilty of misconduct in terms of Section 20(t) of the

Public Service Act, 1994 [2] and may be dealt with in accordance with the relevant sections of the Act … if he or she contravenes any provision of the Code of Conduct or fails to comply with any provision thereof" [3]. In terms of the Disciplinary Code and Procedures, misconduct is a dismissible offence. Therefore non-compliance with the provisions of the Code by a public official is potentially dismissible.[4] The Code itself, read with the provisions of the Act, provides the primary driver for its enforceability by making non-compliance with its provisions, a disciplinary offence.[5]

2.3.2 The Constitution of the Republic of South Africa (Act No. 108 of 1996)

With the coming into being of the Constitution, the legal landscape of South Africa was profoundly altered. From being essentially state-centred in orientation, the South African legal system is now firmly human rights based with the Constitution having legal supremacy over Parliament. In its founding provisions, the Constitution provides, inter alia, that law or conduct inconsistent with its provisions, is invalid, and the obligations imposed by it must be fulfilled.[6] Among the values enshrined by the Constitution as fundamental to the 'new South Africa', are those of human dignity, the achievement of equality and the advancement of human rights and freedoms, non-racialism and non-sexism.[7]

To give effect to many of the rights contained in its Bill of Rights[8] the Constitution places an obligation on Government to enact legislation to, inter alia, promote equality, human dignity, just administrative action, and access to information.

Not only do recently enacted laws reflect these changes, but constitutional provisions have enhanced the ability of affected persons to seek redress from the courts should non-compliance with such enactments be shown to have occurred. For example, the common law requirements pertaining to legal standing upon which an aggrieved person may approach a competent court to seek relief have been relaxed significantly.[9] Traditionally, one had legal standing or *locus standi*, if he or she were able to show a personal interest in the matter before court. This represented a major obstacle for non-governmental organisations and other concerned citizens wishing to take court action in respect of environmental transgressions. Section 38 has significantly widened the ambit of persons who may seek redress in respect of an infringement of any right in the Bill of Rights, to anyone acting as a member of, or in the interests of, a group of persons; anyone acting in the public interest; and an associate acting in the interests of its members.

Although still the subject of legal debate, it is generally accepted that the Bill of Rights has largely vertical application, protecting the individual's rights from the actions of Government and placing certain obligations on the state to act, or to refrain from acting, in a certain manner.[10] It is therefore important that the day-to-day conduct of public servants, as representatives of Government interfacing with members of the public, be consistent with the Constitution at Section 195 (1)(a).

The Code sets out the required standard of conduct of the Public Service in the form of guidelines pertaining to government employees' relationships with the legislature, political and executive office-bearers, fellow employees, and the public. The content of the Code clearly reflects the spirit of the Constitution, with many of the values and principles articulated in the Constitution, and Chapter 10 pertaining to public administration, in particular, reflected in the Code. For example, the Code calls for employees in their relationship with the legislature and executive, inter alia, to be faithful to the Republic and honour the Constitution,[11] to put the public interest first in the execution of their duties,[12] and to loyally execute the policies of the government of the day in the performance of their duties.[13] The principles and values underpinning these requirements in the Code are enshrined in the Constitution.[14]

2. Chapter VI, including Section 20, was repealed by Act 86 0f 1998. However, notwithstanding such repeal, provisions relating to inefficiency and misconduct now have the effect and status of a collective agreement binding: the State, parties to the Public Service Co-ordinating Bargaining Council, and all employees of the public service.
3. See clause M3.3 of the Code.
4. These provisions would be subject to requirements pertaining to disciplinary proceedings as contained in the Labour Relations Act 66 of 1995.
5. Notwithstanding its regulatory effect, because the Code is drafted as a set of guidelines and does not provide detailed minimum standards of conduct, its legal enforcement in practice could be problematic.
6. S 2.
7. S 1.
8. Chapter 2
9. S 38.
10 It is recognised that certain rights do have horizontal application, depending on the nature of the right and the nature of any duty imposed by the right.
11 S. 4.1.1.,
12 S. 4.1.2,
13 S. 4.1.3
14 See Ss 41, 195(1)(a) and (e), and 197(1).

The Code was promulgated after the Constitution had come into operation, and it appears that the content of the document was shaped by the values and principles set out in the Constitution at section 195 (1) (a) – (f). As stated above, various statutes have been enacted to give effect to certain of the rights guaranteed in the Constitution.

2.3.3 Promotion of Access to Information Act (Act No 2 of 2000)

The Promotion of Access to Information Act (the PAIA) gives effect to Section 32 of the Constitution subject to justifiable limitations, including but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance and in a manner which balances the right of access to information with any other rights, including the rights in the Bill of Rights in Chapter 2 of the Constitution.

The PAIA establishes voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as is reasonably possible. Part 2 of the PAIA is relevant to the conduct of public officials as it sets out the basis upon which information must be supplied by a public body, on the request of a member of the public. A person, who with intent to deny a right of access in terms of this Act, destroys, damages or alters a record, conceals a record, or falsifies a record or makes a false record, commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.[15]

2.3.4 Promotion of Administrative Justice Act (Act No 3 of 2000)

This Promotion of Administrative Justice Act (the PAJA) gives effect to the right to just administrative action contained in Section 33 of the Constitution. The PAJA makes reference to administrative action which is defined as any decision taken, or any failure to take a decision by, inter alia, a natural person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision.[16]

In terms of Section 3 of the PAJA, administrative action, which materially and adversely affects the rights of legitimate expectations of any person, must be procedurally fair. The PAJA further stipulates that in order for an administrative action to be procedurally fair, an administrator must give an affected person:

- Adequate notice of the nature and purpose of the proposed administrative action;
- A reasonable opportunity to make representations;
- A clear statement of the administrative action;
- Adequate notice of any right of review or internal appeal; and
- Adequate notice of the right to request reasons in terms of Section 5 of the PAJA.[17]

The PAJA further details the procedures to be followed in instances where administrative action may adversely affect the rights of the public,[18] which includes giving the public an opportunity to respond, either by way of a public enquiry or by way of a notice and comment procedure, to the proposed administrative action.[19]

15 S 90 of PAIA
16. S 1 (b) of the PAJA
17. S 3 (b) of the PAJA.
18. S4
19. Ss 4(2) and 4 (3).

The aforementioned provisions in the PAJA have general application to the Code's stipulated conduct for employees in respect of their relationship with the public, as well as their conduct in performing their duties. Thus, for example, the requirement in the Code that an employee must be polite, helpful and reasonably accessible in his or her dealings with the public, at all times treating members of the public as customers who are entitled to receive high standards of service,[20] are consistent with the principles underlying the requirements for procedural fairness in the Act. Similarly, the requirement that an employee must have regard to the circumstances and concerns of the public in performing his or her official duties and in the making of decisions affecting them,[21] finds resonance with the duties imposed on an administrator in the Act, in his or her administrative dealings with members of the public.[22] The requirement in the Code that employees, in performing their duties, must promote sound, efficient, effective, transparent and accountable administration is consistent with the stated objectives of the PAJA, as stated in the preamble of the Act.

The PAJA also provides for the judicial review of administrative action taken by an administrator.[23] A court in hearing such a review, has been given wide powers in terms of the Act, to grant any order that is just and equitable, including the power to set aside administrative decisions[24] and, in exceptional cases, directing the administrator or any other party to the proceedings to pay compensation.[25]

2.3.5 Promotion of Equality and Prevention of Unfair Discrimination Act (Act No 4 of 2000)

This Act gives effect to Section 9 of the Constitution by providing for:

- The equal enjoyment of all rights and freedoms by every person;
- The promotion of equality;
- The values of non-racialism and non-sexism contained in Section 1 of the Constitution;
- The prevention of unfair discrimination and protection of human dignity as contemplated in sections 9 and 10 of the Constitution; and
- The prohibition of advocacy of hatred, based on race, ethnicity, gender or religion, that constitutes incitement to cause harm as contemplated in Section 16(2)(c) of the Constitution.

The Act, *inter alia*, provides for measures to educate the public and raise public awareness on the importance of promoting equality and overcoming unfair discrimination, hate speech and harassment and to provide remedies for victims of unfair discrimination. The Act provides for the establishment of equality courts, whose powers and functions are set out in Section 21. The court has the power to make any appropriate order including:

- An order for damages;
- An order of a deterrent nature, including the recommendation to the appropriate authority, to suspend or revoke the licence of a person;
- An order directing the clerk of the Equality Court to submit the matter to the Director of Public Prosecutions having jurisdiction for the possible institution of criminal proceedings in terms of the common law or relevant legislation;
- An appropriate order of costs against any party to the proceedings; and
- An order to comply with any provision of the Act.

These provisions, stated above, relating to provisions of remedies for victims of unfair discrimination and the establishment of equality courts, came into affect on 16 June 2003, and to date, a number of cases have already been instituted in equality courts.

20. M.4.2.3
21. M.4.2.4
22. See, for example, S2 read with S4.
23. Ss 6 and 7.
24. S8 ©
25. S8 (1) (bb)26. M.4.2.9

Those provisions of the Act dealing with the promotion of equality, together with corresponding regulations, came into effect on 9 August 2004. These provisions codify important conduct requirements listed in the Code. They include, *inter alia*, the employee's duty to respect and protect every person's dignity and his or her rights as contained in the Constitution,[26] or the employee's duty not to unfairly discriminate against any member of the public.[27]

2.3.6 The Public Finance Management Act (Act No.1 of 1999)[28]

The Public Finance Management Act (PFMA) gives effect to the general public finance provisions in the Constitution, including the requirement that the budgetary process "must promote transparency, accountability and the effective financial management of the economy, debt and the public sector."[29]

Although the applicability of the Act is largely limited to duties and obligations of accounting officers, there are provisions in the Act pertaining to the duties and obligations of, *inter alia*, departmental officials tasked with the control and management of public finances. Thus, for example, an official "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."[30] Furthermore, an official "is responsible for the management, including the safeguarding, of assets and the management of the liabilities within that official's area of responsibility".[31]

Similar requirements are reflected in the Code, which stipulates that an employee, in performing his or her duty, must be honest and accountable in dealing with public funds and must use the Public Service property and other resources effectively, efficiently, and only for authorised official purposes.[32]

In terms of Section 40(d) read with Section 40 (3)(b) of the PFMA, an accounting officer must make available for inclusion in an annual report and audited financial statements, particulars of loss through criminal conduct, unauthorised or irregular expenditure, and fruitless and wasteful expenditure.

The Code provides for a similar reporting obligation in that an employee in the course of his or her official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other acts which constitute an offence, or which is prejudicial to the public interest.[33] This obligation under the Code however pertains to all employees whereas the reporting obligations under the PFMA extend to the accounting officer only.

The Act also defines misconduct and deals with procedures for disciplining public officials guilty of financial misconduct.[34] Provision is also made for criminal prosecution in instances of gross financial misconduct.[35]

Clearly, provisions in the Code requiring employees to be honest and accountable when dealing with public funds and public assets find strong support in the PFMA, which also provides for stringent disciplinary and, in certain instances, criminal sanction in the event of non-compliance.

2.3.7 Prevention and Combating of Corrupt Activities Act (Act No. 12 of 2004)[36]

The Act, which replaces the largely ineffectual Corruption Act of 1992, has been developed as part of an overall anti-corruption strategy. In this regard, its provisions follow the trend of modern international legislation, namely, the "unbundling" of corruption, in terms of which various specific corrupt actions

27. M.4.2.6
28. The PFMA must be read together with the Public Finance Management Amendment Act 29 of 1999, as the two Acts, together cover both the national and provincial spheres of government.
29. S 215 of the Constitution.
30. S 45 (c) of the PFMA.
31. S 45 (e) of the PFMA
32. M4.4.8
33. M 4.4.10
34. See Ss 81 and 84
35. S 86
36. The Act came into operation on 27 April 2004.

and corrupt practices are defined and prohibited. In essence, the Act seeks to codify the offences relating to corruption and extends to the criminal activity of corruption beyond its application not only to officials in the Public Service but also to the private sector as a whole.

Chapter 2 sets out the offences in respect of 'corrupt activities'.[37] The offences are divided into:

- **Part 1**: the general offence of corruption in terms of Section 3;
- **Part 2**: offences in respect of corrupt activities relating to specific persons in terms of Sections 4 to 9;
- **Part 3**: offences in respect of corrupt activities relating to receiving or offering of unauthorised gratification in terms of Section 10;
- **Part 4**: offences in respect of corrupt activities relating to specific matters in terms of Sections 11 to 16;
- **Part 5:** offences relating to acquisition of private interest in contract, agreement of investment of public body in terms of Sections 17 to19; and
- **Part 6:** other offences relating to corrupt activities in terms of Sections 20 and 21.

2.3.8 Offences created in Chapter 2 of the new Corruption Act which are pertinent to the conduct of public servants.

- A general offence of corruption is created in terms of Section 3. This offence pertains to 'any person' who gives or receives, directly or indirectly, 'gratification'[38] to act in essentially an unethical manner, or to act in a manner which amounts to an abuse of power, breach of trust, or a violation of a legal duty or set of rules, or which amounts to an unauthorised or improper inducement to do or not to do anything.

Hence, Section 3 has a general applicability to the Code, in so far that any employee who accepts or gives any gratification which induces an act in contravention of the provisions of the Code, would in terms of the wide ambit of Section 3, be guilty of corruption.[39]

- Section 4 creates the offences in respect of corrupt activities relating to public officials. Public officials are defined in the Act to include, *inter alia*, persons employed in the Public Service. The offence is similar to that set out in Section 3, save that the offence in terms of Section 4 can only be committed by either a public official accepting a gratification in order to act unethically as set out in subsections (i) to (iv), or by a person offering a gratification to a public officer to act in the manner set out in the subsections. The meaning of 'act' for the purpose of this Section, as specified in subsection (2), is, *inter alia*, performing or not adequately performing any official function or aiding, assisting or favouring any particular person in the transaction of any business with a public body. Clearly then, a contravention of the standards of conduct stipulated in the Code, could be held to be corrupt activities, if the said contraventions are causally linked to the receiving of any gratification.

- Section 10 prohibits both the receipt and offering of unauthorised gratification by or to a person within an employment relationship that influences an employee in his or her performance of his or her duties. This Section, in essence, governs the receiving or offering of bribes, hence it codifies directly the provision in the Code that employees do not abuse their authority or accept bribes.[40]

- Section 17 stipulates that any person employed in the Public Service, who knowingly acquires or holds, a private interest in any contract, agreement or investment emanating from or connected with the department, component or office in which he or she is employed or which is made on account of

37. This term is not defined in the Act.
38. 'Gratification' is defined to mean, *inter alia*; money, donation, reward, property or interest in property, the avoidance of loss, liability, penalty, a right or privilege, and any benefit of any kind.
39. It must be noted, however, that the Act in its present form, is cumbersome in its drafting making it difficult to follow logically in places. This is likely to raise problems of interpretation, in the absence of any amendments to the text.
40. C.3.3 and C.5.3

the Public Service, is guilty of an offence. This offence does not apply in instances, *inter alia*, whereby the public official holds such an interest in terms of his or her conditions of employment.[41]

- Section 34 creates a duty on persons holding positions of authority to report corrupt transactions. A failure to report, where a person knows or ought reasonably to have known or suspected, a corrupt transaction, is an offence. For the purpose of this Section, persons holding positions of authority include, *inter alia*, any public officer in the Senior Management Service of a public body.[42]

2.4 Extent of enforceability

Below in table format (Table A), are legislative enactments directly pertinent to specific provisions in the Code, and a further assessment of the extent to which such legislation enforces the provisions in the Code.

LEGISLATION	PROVISION IN THE CODE	EXTENT OF ENFORCEABILITY
The Public Service Act		
• The Code of Conduct for the Public Service.	Relates to all provisions in the Code	Enforceable through the provision for disciplinary action to be taken against employees not complying with the content of the Code.[43]
The Public Service Act		
• Section 30: Other work by officers and employees.	C.5.5	Enforceable through disciplinary procedures provided for in the Act, as amended.
• Section 31: Unauthorised remunerations.	C.5.4 C.5.5	Enforceable through disciplinary procedures provided for in the Act, as amended. The Act also provides for such unauthorised remuneration to be recouped from the employee.
The Public Service Regulations		
• Reg 7.1 of the Public Service Regulations: Obedience.	C.3.2	Enforceable through disciplinary procedures provided for in the Public Service Act, as amended.
• Reg A11 of the Public Service Regulations: Acceptance of gifts, commission, money or reward.	C.5.3 C.5.4 C.5.5	Enforceable through disciplinary procedures provided for in the Public Service Act, as amended.
• Reg A17 of the Public Service Regulations: Confidential nature of documents concerning officers and employees.	C.4.12 C.5.4	Enforceable through disciplinary procedures provided for in the Public Service Act, as amended.

41. S17 (2).
42. S34 (4) ©.
43 All disciplinary proceedings would be subject to the provisions of the Labour Relations Act 66 of 1995.

LEGISLATION	PROVISION IN THE CODE	EXTENT OF ENFORCEABILITY
The Constitution of the Republic of South Africa		
	Relates to all provisions in the Code	Enforceable only to the extent that a breach of the content of the Code is unconstitutional, or infringes on an individual's human rights. In instances where legislation has been passed to give effect to a right in the Bill of Rights, that enactment provides for the mechanisms and procedures to protect the right in question, and the enforcement thereof.
Promotion of Administrative Justice Act		
• Sections 2,3,4,6 and 8.	C.2.2 C.2.3 C.2.4 C.4.9	Enforceable to the extent that a breach of the Code amounts to an administrative action that materially affects the rights or legitimate expectations of any person or the public at large, and which is not procedurally fair or where the administrator making the decision acted in an unlawful manner as listed in Section 6(2) of the Act. The Act provides for the judicial review of administrative action and empowers a court to grant any order as listed in Section 8.
Promotion of Access to Information Act		
• Part 2 and sections 78 & 90.	C.2.9	Enforceable should the breach of the Code infringe upon a person's right to information held by a public body as provided for in the Act. The Act provided for a civil remedy whereby a member of the public may make application to court for the information in question. In instances where an employee deliberately conceals or destroys information requested for, he or she commits a criminal offence in terms of Section 90 of the Act.

LEGISLATION	PROVISION IN THE CODE	EXTENT OF ENFORCEABILITY
Promotion of Equality and Prevention of Unfair Discrimination Act		
	C.2.1 C.2.4 C.2.7 C.2.8 C.3.6	Enforceable should the breach of the Code be deemed by the Equality Court to be an infringement of a person's right to equality. This includes behaviour that is discriminating on the basis of race or gender. The equality court has wide powers to make orders, including the referral of matters for criminal prosecution.
The Public Finance Management Act		
• Sections 40, 45, 81, 84 and 86.	C.4.8 C.4.10	Enforceable to the extent that the breach of the Code by an employee contravenes the stringent provisions in the Act pertaining to the management and control of public funds. The Act provides for disciplinary proceedings to be instituted against public servants guilty of financial misconduct, as well as criminal sanction for gross financial misconduct.
Prevention and Combating of Corrupt Activities Act		
• Section 3: General offence of corruption; and • Section 4: Offence in respect of corrupt activities relating to public offices.	Any provision in the Code contravened in connection with the receipt or offer of any gratification. More specifically: C.1.2 C.2.6 C.2.7 C.3.2 C.3.3 C.3.6 C.4.1 C.4.4 C.4.5 C.4.6 C.4.8 C.4.12 C.5.3 C.5.4	Enforceable by criminal sanction in so far as it can be proved beyond reasonable doubt that any breach of the Code is causally connected to the receipt or offer of any gratification.

LEGISLATION	PROVISION IN THE CODE	EXTENT OF ENFORCEABILITY
• Section 10: Offence of receiving or offering an unauthorised gratification to a party in an employment relationship. • Section 17: Offence relating to a private interest or a contract connected with a public body. • Section 34: Offence related to a duty to report corrupt transactions.	C.3.3 C.5.3 C.4.5 C.4.8 C.5.3 C.4.10	Enforceable by criminal sanction in so far as it can be proved beyond reasonable doubt that the breach of the Code is causally connected to an employment relationship and the receipt or offer of a gratification. (i.e. proof or bribery). Enforceable by criminal sanction in so far as it can be proved beyond reasonable doubt that the breach of the Code is causally connected to an unauthorised private interest, as stipulated in S17. Enforceable by criminal sanction in so far as the breach was committed by an employee in a position of authority (i.e. in the Senior Management Services of a public body).

CHAPTER THREE ~ Findings, analysis of findings and assessment of the Code of Conduct

3.1 Introduction

This chapter puts forward the findings of both the open-ended interviews as well as the findings of the Integrity Thermometer Survey. An analysis of the findings is also made in this chapter, together with an assessment on the Code pertaining to its contents, implementation and compliance.

3.2 Findings from open-ended interviews

The findings as indicated in this section emanated from open-ended interviews. The interviews were mainly held with Heads of Department who participated in the survey. The findings cover general indicators as well as principles contained in the Code.

3.2.1 General

In general, as far as the application and utilisation of the Code are concerned the percentages are well worth noting. In terms of the findings, the graph (Figure 1) indicates that:

- Only 30% of the participating departments have supplemented the Code;
- In 80% of the participating departments, the Heads of Department have ensured that staff are acquainted with the Code; and
- The majority of the participating departments (more than 80%) have records pertaining to induction/ training and self-development as well as indicators that the Code has been used as part of disciplinary cases.

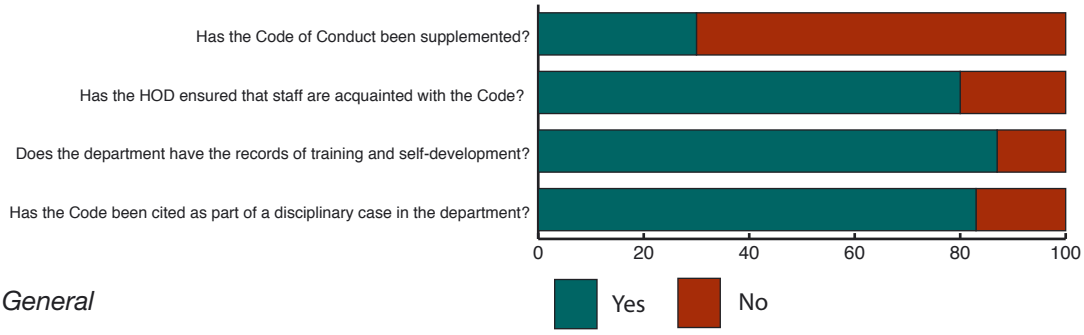


Figure 1: General

3.2.2 Relationship with the public

Although the majority of departments have a system to monitor comments or complaints received from the public, only about fifty percent (50%) of departments monitor time elapsed before queries are solved, arguably the most important indicator from the public's point of view. However, it is encouraging to see that the majority of departments have monitoring systems in place.

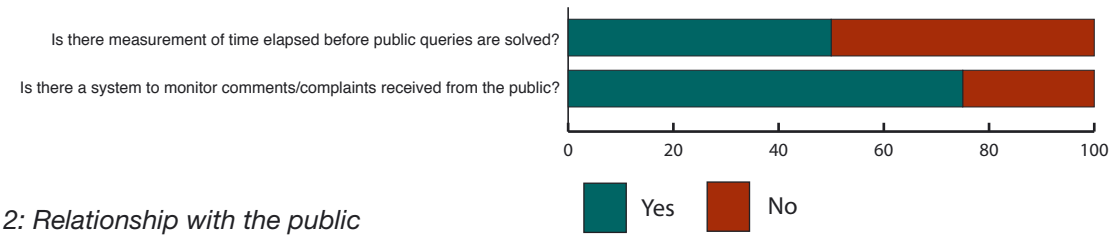


Figure 2: Relationship with the public

3.2.3 Relationship amongst employees

Only about twenty five percent (25%) of departments monitor political activities hosted at the workplace. This might be one of the reasons why – in the Integrity Thermometer survey – a significant percentage of respondents either disagree or disagree strongly with the statement: "Most public servants do not abuse their positions to promote the interest of any political party or interest group". There seems to be sufficient monitoring of time taken to execute instructions, instructions not executed and the reason therefor, as well as grievances aired and the manner in which they were aired. Almost forty percent (40%) of departments do not monitor productive and idle hours of staff.

Figure 3: Relationship amongst employees

3.2.4 Performance of duties

One hundred percent (100%) of respondents indicated that there is a system to monitor instances of fraud and corruption reported. All the components in this section scored relatively well. Regulating access to confidential information and the distribution thereof provided the weakest score, relative to the others.

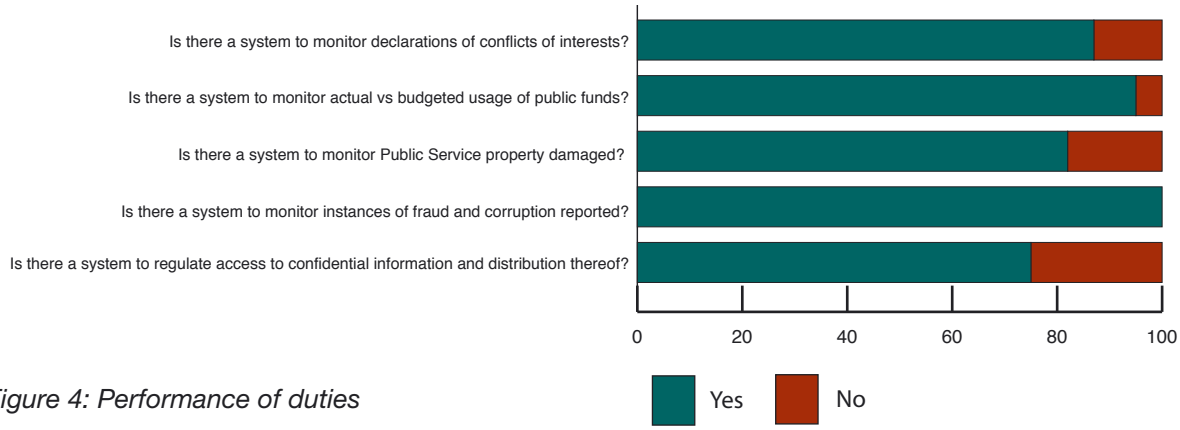


Figure 4: Performance of duties

3.2.5 Personal conduct

In terms of personal conduct, abuse of official information once again was highlighted as the biggest area of concern, with forty percent (40%) of departments without a system to monitor disciplinary procedures related to abuse of official information. Systems to monitor disciplinary procedures seem to be best established in the areas of alcohol abuse and gifts, while unauthorised remunerative work was identified as the second biggest area of concern in this section.

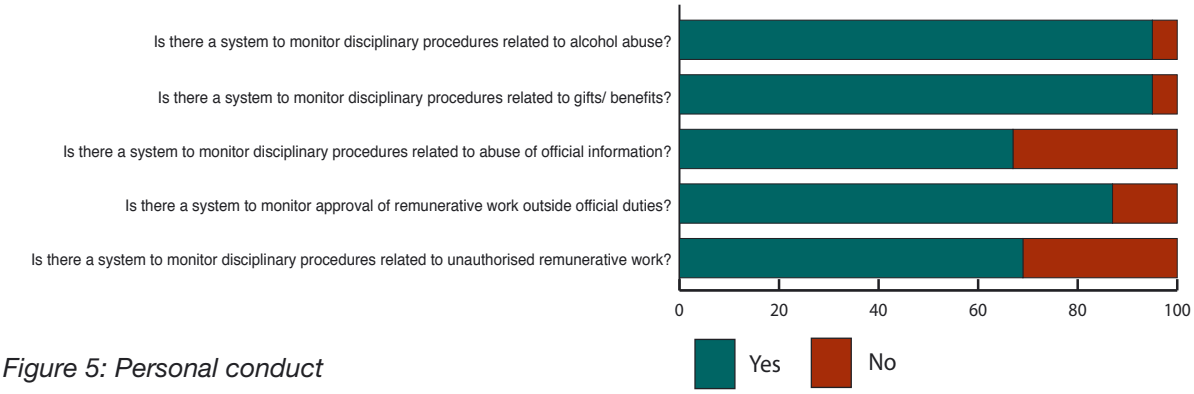


Figure 5: Personal conduct

3.3 Departmental results

The graph below (Figure 6) displays the overall departmental results, ranked from most positive to most negative. The remainder of this section presents the summarised departmental results, using the structure of the open-ended questionnaire categories, i.e. general, relationship with the public, relationship amongst employees, performance of duties and personal conduct.

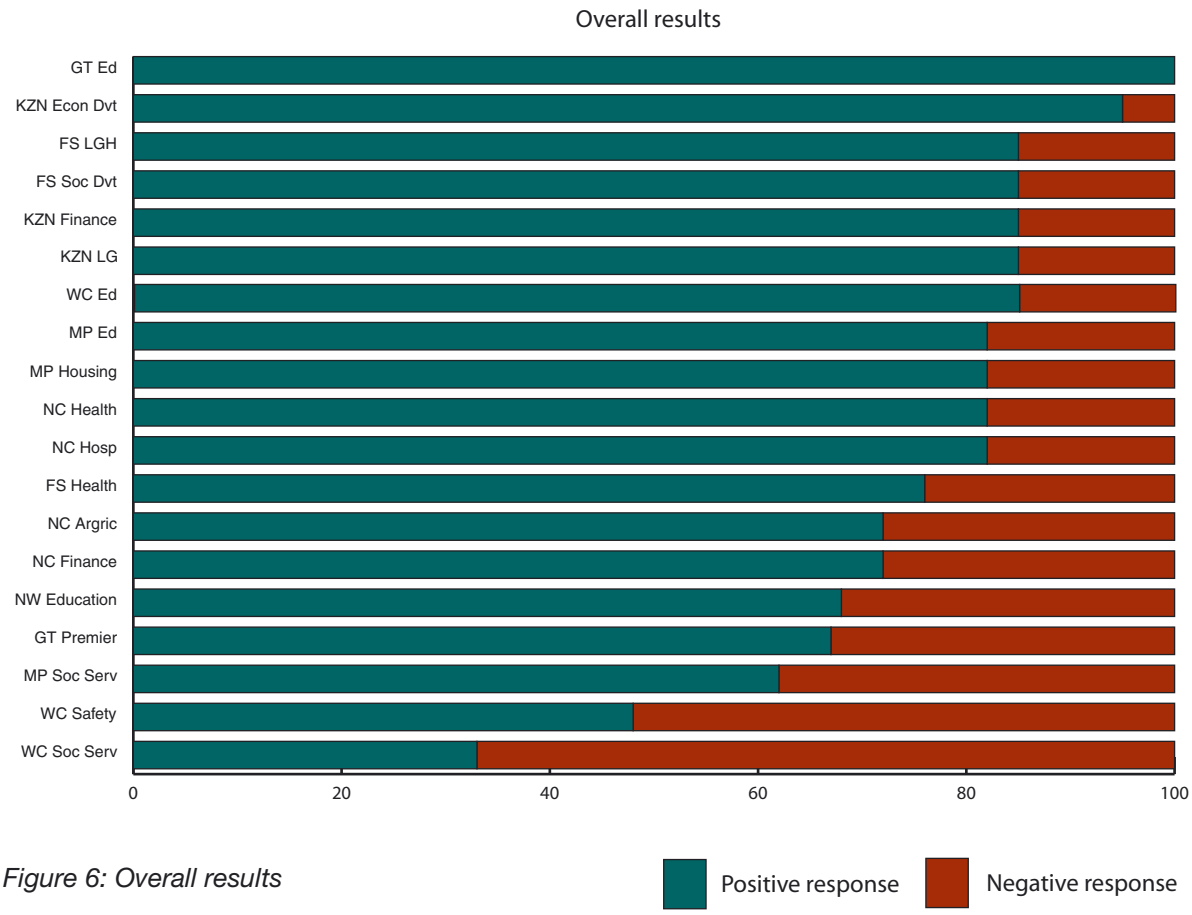


Figure 6: Overall results

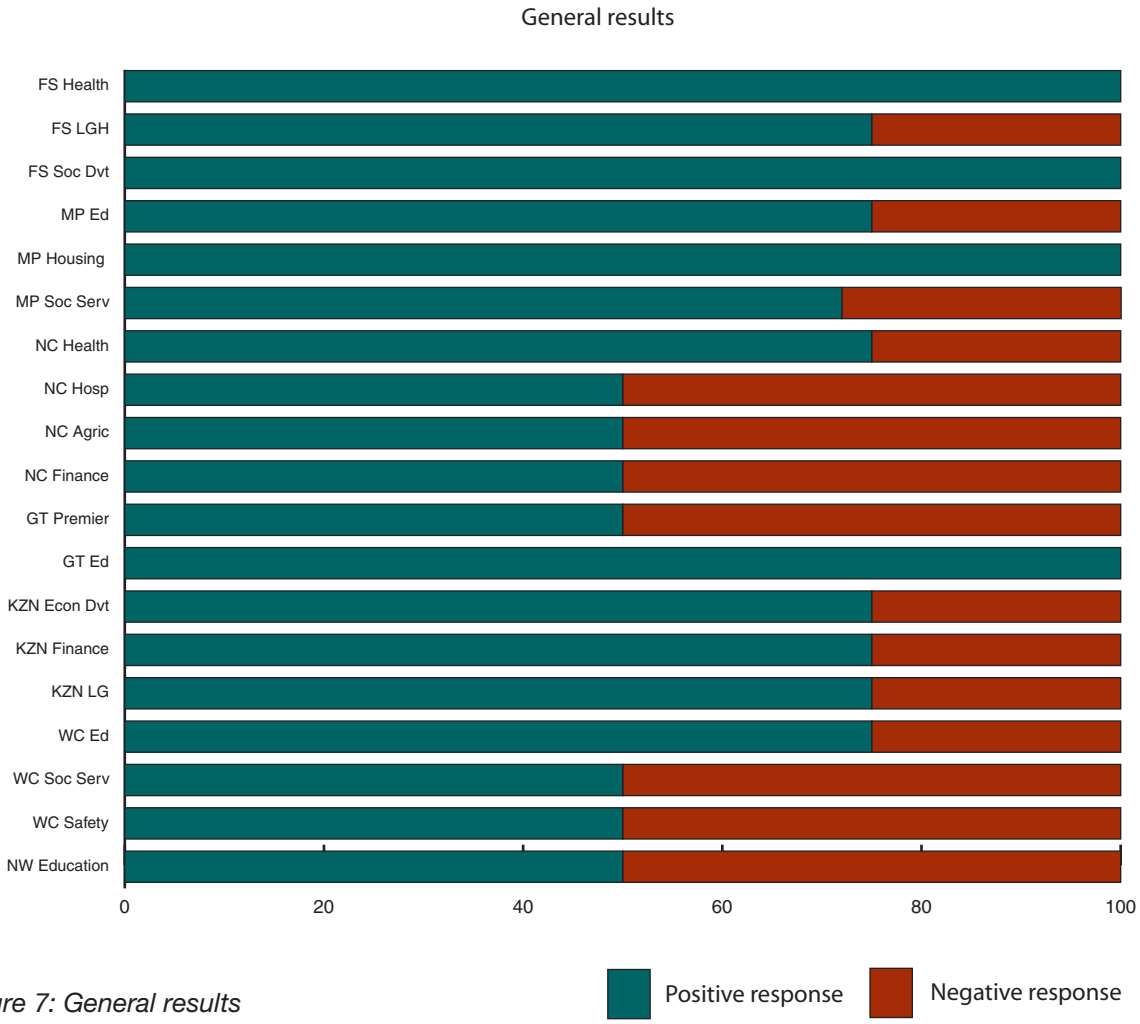


Figure 7: General results

In terms of the general results as indicated in Figure 7, the following needs to be noted:

- Four departments scored maximum results: - Department of Health and the Department of Social Development (Free State); Department of Housing (Mpumalanga) and the Department of Education (Gauteng).
- Seven departments scored only 50%, which is a matter of concern since the Code of Conduct is the baseline document in the Public Service for ethical conduct.
- The remaining eight departments scored at least 75%, which is encouraging but there is room for improvement.

In terms of the relationship with the public (Figure 8 see page 20) the following needs to be noted:

- Eleven out of eighteen departments showed a 100% result in terms of relationship with the public. This is encouraging from the point of view of service delivery.
- Ten of these departments have a direct service delivery function to the public.
- Of concern are the Departments of Safety and Security (Western Cape) and the Premier's Office in Gauteng. Such key departments need to give immediate attention to such a critical requirement of the Code of Conduct.

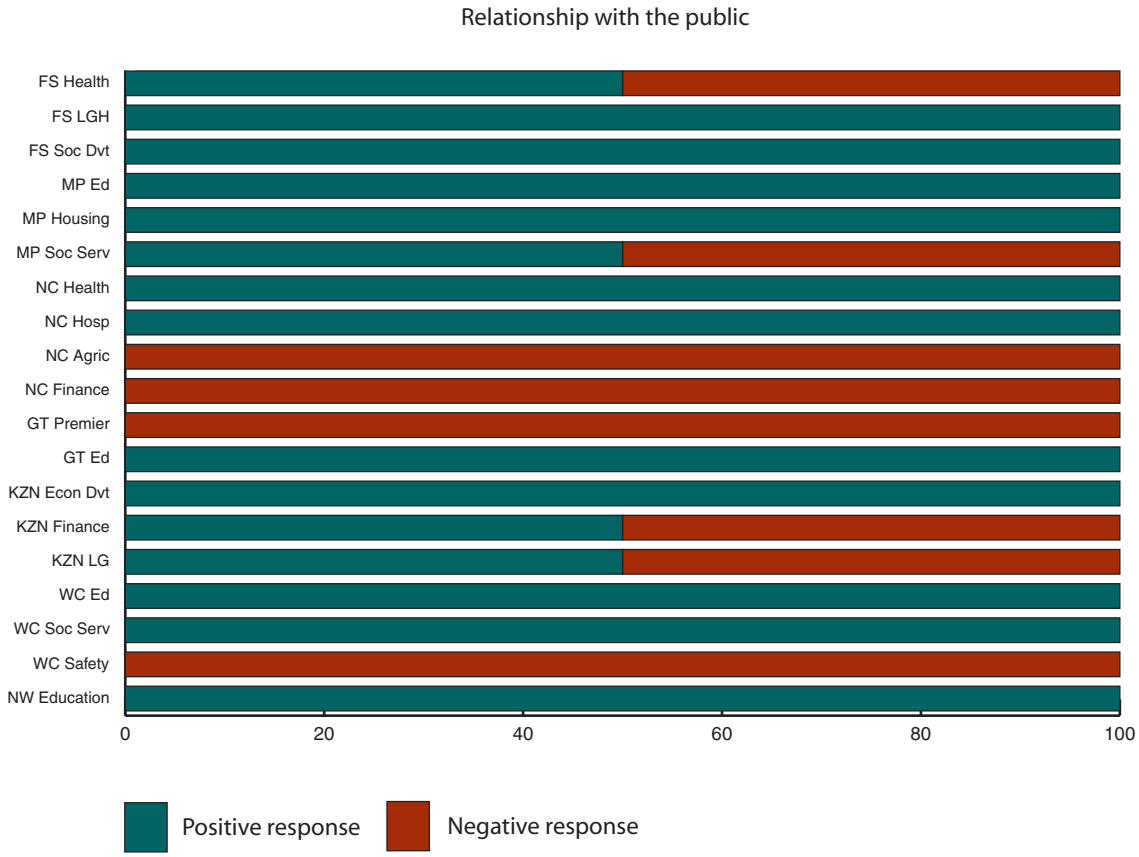


Figure 8: Relationship with the public (pertaining to departmental results)

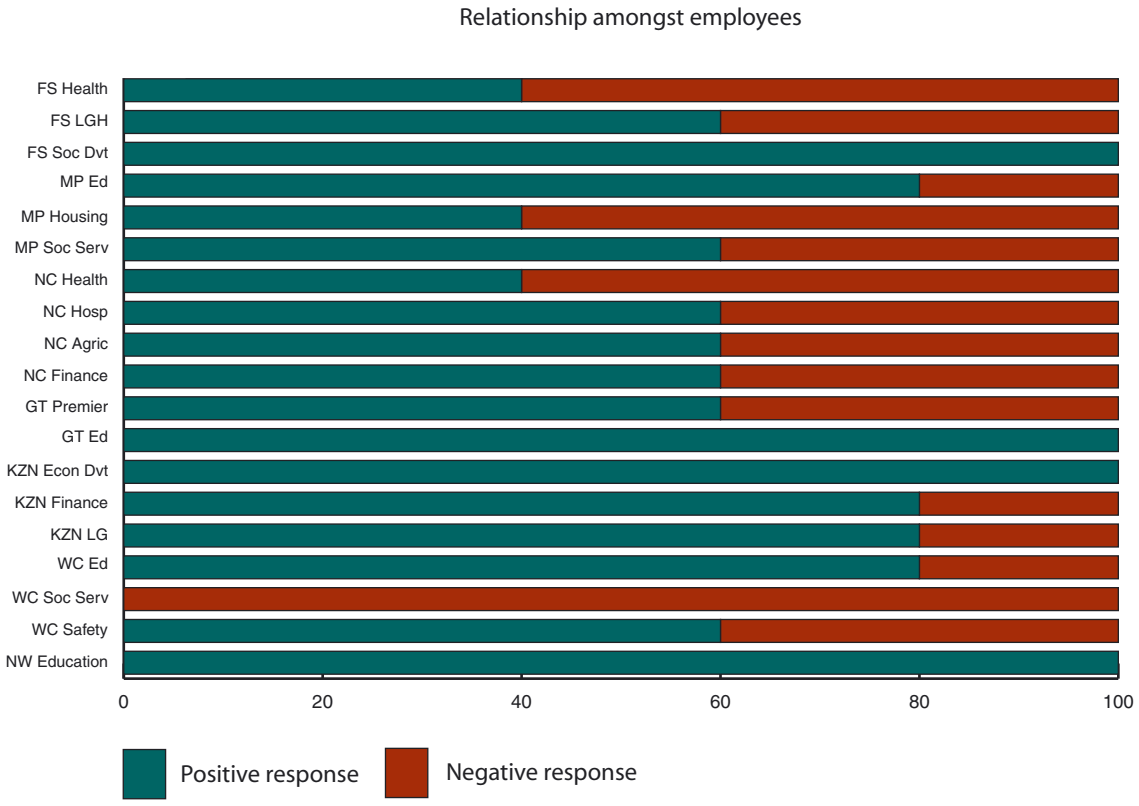


Figure 9: Relationship amongst employees (pertaining to departmental results)

In terms of the relationship amongst employees (Figure 9) the following were found:

- Relationships amongst employees are weakest at the Department of Health (Free State); Department of Housing (Mpumalanga); Department of Health (Northern Cape) and the Department of Social Services (Western Cape). Of concern should be the fact that all four of these departments are service related.

- The Department of Education (North-West); Department of Social Development (Free State); Department of Education (Gauteng) and the Department of Economic Development (Kwazulu-Natal) have scores of 100% in terms of relationships amongst employees.

- The Department of Social Services (Western Cape) scores a totally negative response. As a key delivery department in direct relation to the public, such a situation could affect staff morale severely and therefore the capacity of the department to deliver effective social services.

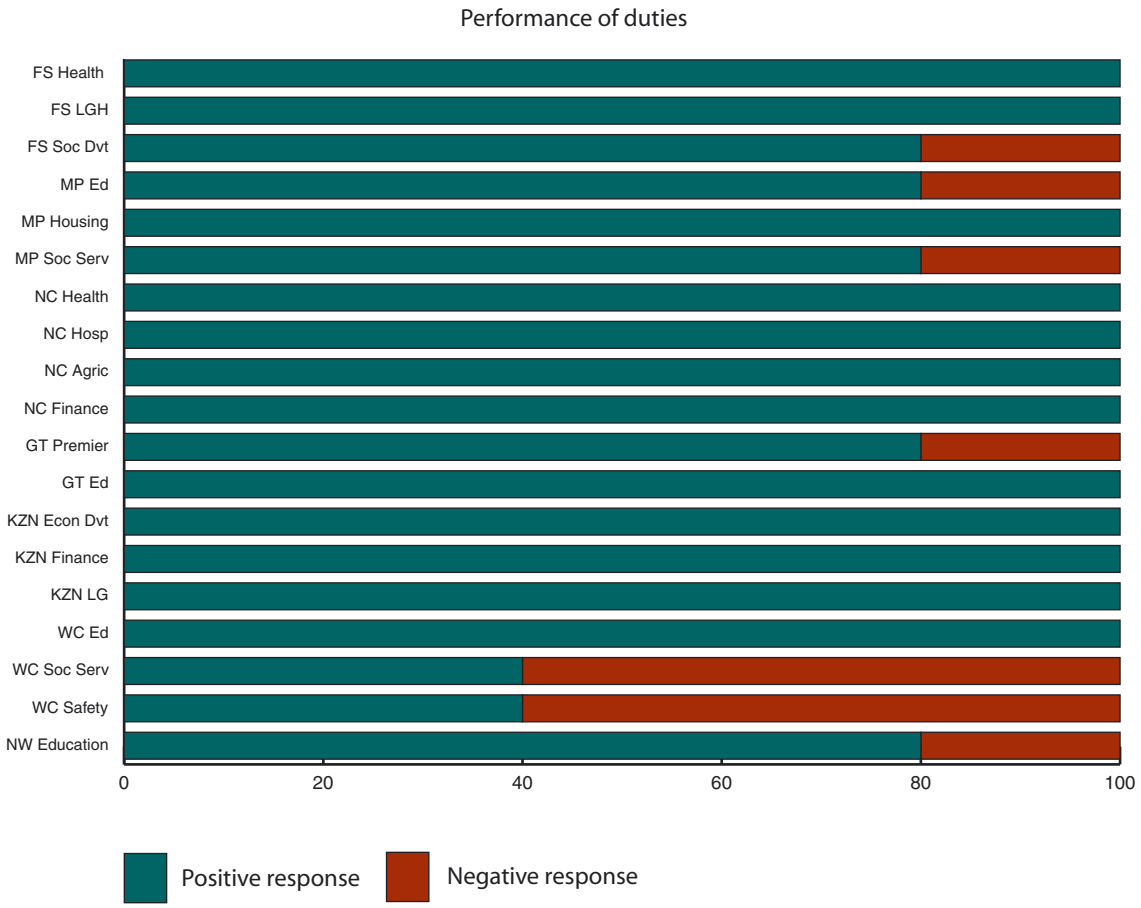


Figure 10: Performance of duties (pertaining to departmental results)

Where performance of duties is concerned (Figure 10) the findings suggest the following:

- Most departments surveyed scored either very high or 100%.

- Only two departments i.e Safety and Security and Social Services (both Western Cape) had a low score i.e. 40%. Again, this may be cause for concern as both relate directly to the public.

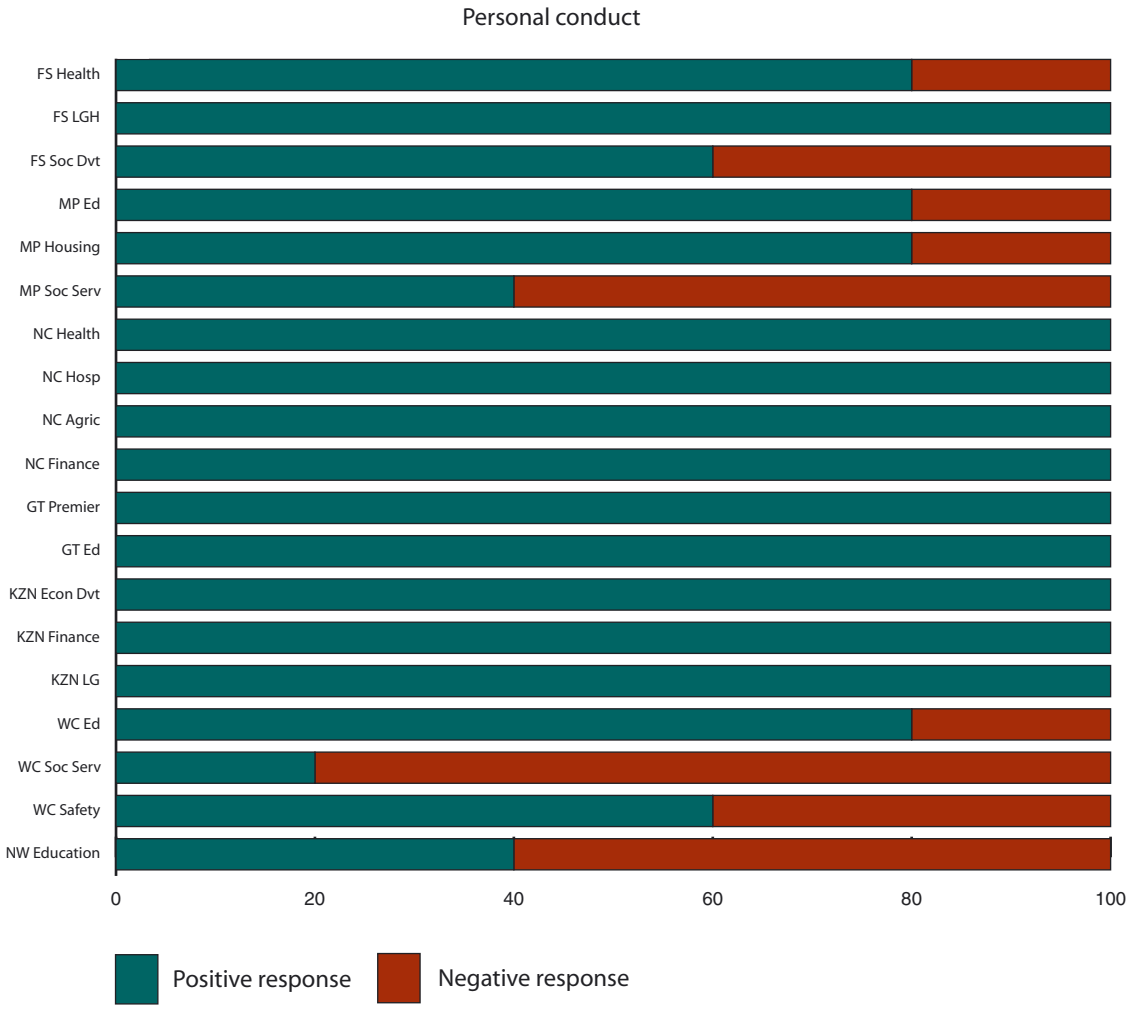


Figure 11: Personal conduct (pertaining to departmental results)

The findings pertaining to personal conduct (Figure 11) are as follows:

- Personal conduct of employees amongst the surveyed departments was found to be generally good. Ten (10) departments scored 100% as can be seen from Figure 11. Three other departments scored 80%. They are: Department of Health (Free State), Department of Education and Department of Housing (Mpumalanga).

- Only three (3) departments scored rather low. These are the Department of Social Services (Western Cape); Department of Social Services (Mpumalanga) and the Department of Education (North West). All three (3) departments have a direct bearing on service delivery to the public and this is therefore a matter for concern.

3.4 Integrity Thermometer survey results

The graphs below present the results of the customised questions as well as selected sections from the questionnaire. For ease of reference the responses of "strongly disagree" and "disagree" have been grouped together, as well as "strongly agree" and "agree". The "partially agree" and "partially disagree" responses have been removed, therefore the percentages do not add up to one hundred percent (100%).

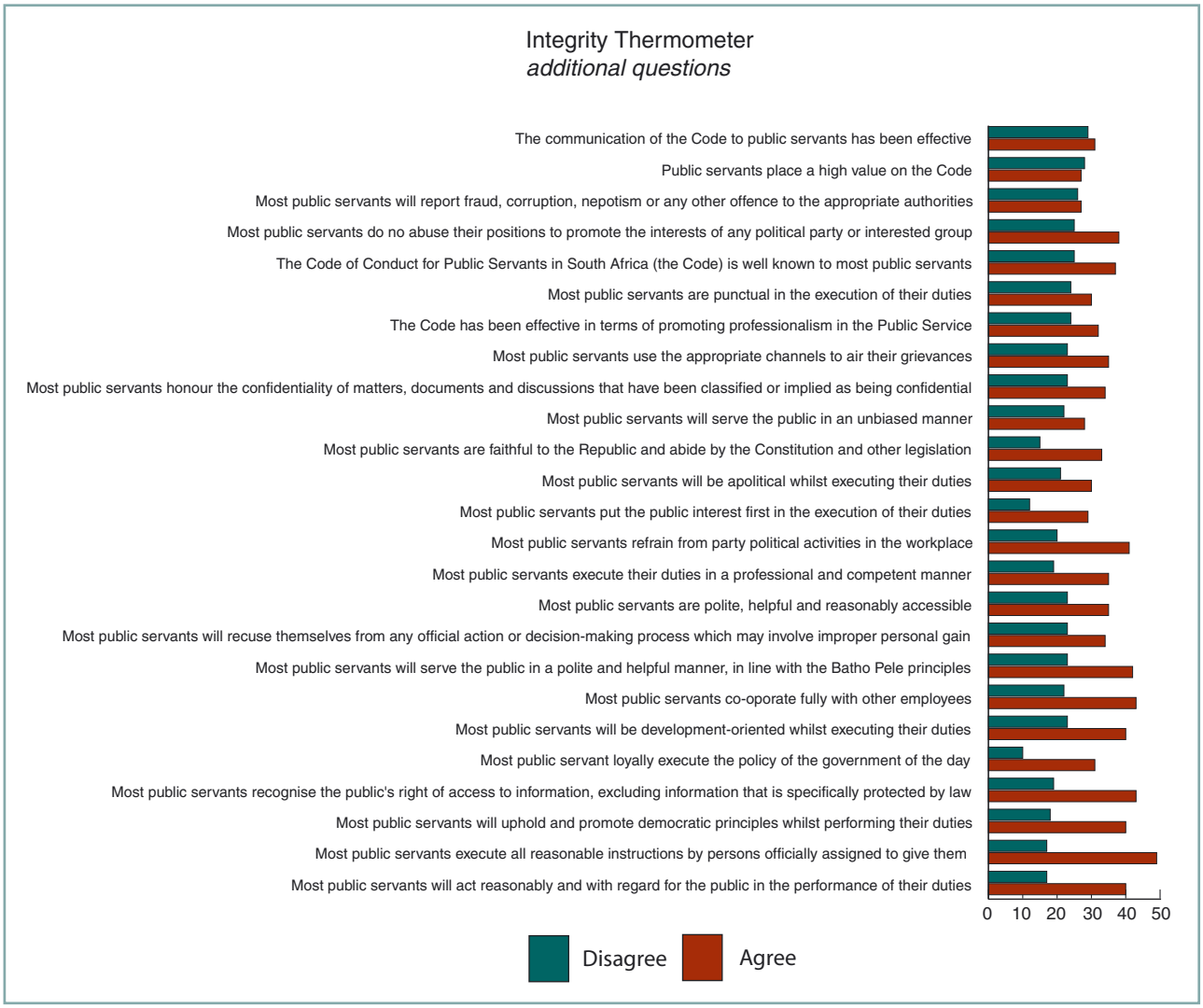


Figure 12: Customised questions

It is significant to note the high levels of uncertainty, illustrated by an average of 49% of the respondents who indicated either partial agreement (13%) or partial disagreement (36%) with the customised questions.

The highest levels of disagreement were in response to the following statements (for comparative purposes the levels of agreement are also included):

- The communication of the Code to public servants has been effective (28% disagreed and 30% agreed);
- Public servants place a high value on the Code (28% disagreed and 25% agreed); and
- Most public servants will report fraud, corruption, nepotism or any other offence to the appropriate authorities (26% disagreed and 25% agreed).

Summaries of the main behavioural sections of the report are presented in the graphs below:

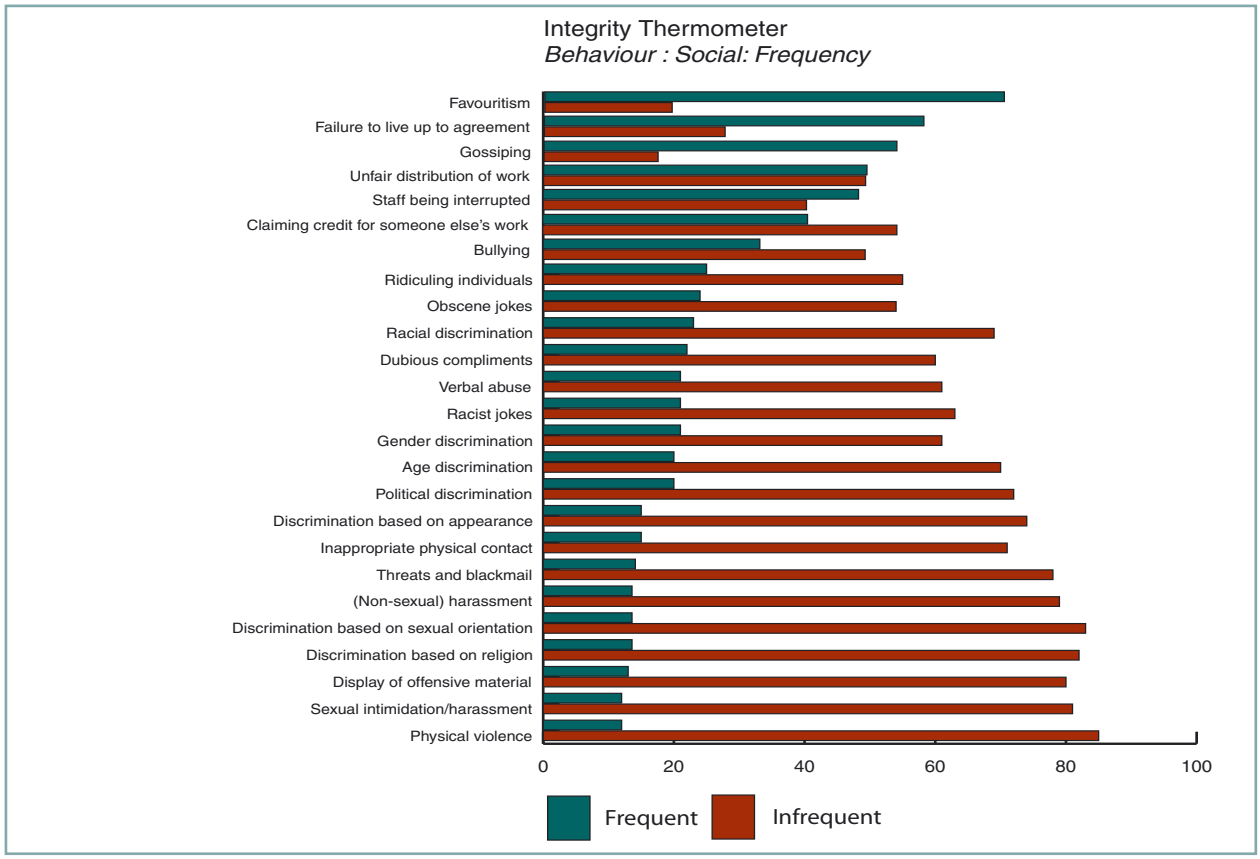


Figure 13: Social behaviour, measured from the biggest perceived risk (favouritism) to the smallest perceived risk (i.e. physical violence).

In terms of the findings (Figure 13) the following should be noted:

- The bigger risks (physical violence, sexual discrimination/harassment, etc) appear not to be a problem in the workplace.
- The biggest problem is favouritism within the organisation followed by failure to live up to work-related agreements.

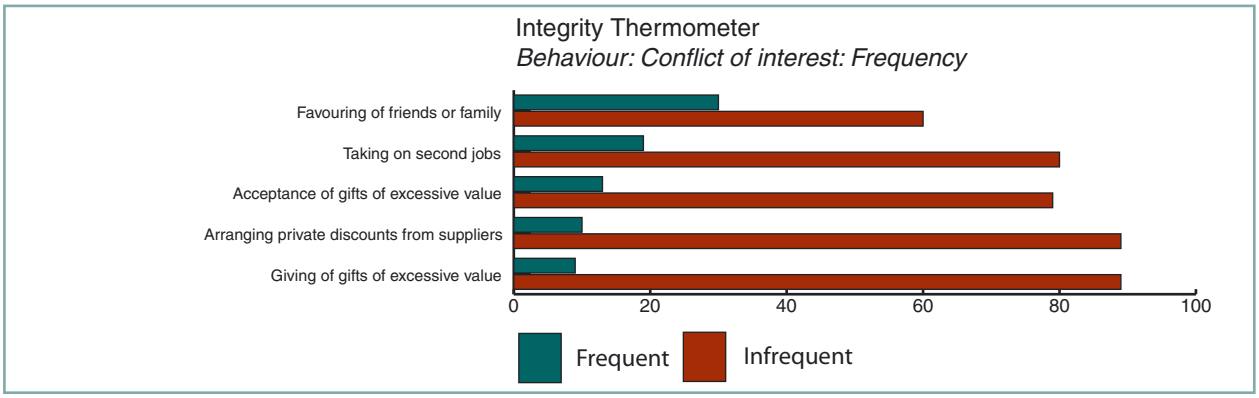


Figure 14: Conflict of interest, measured from the biggest perceived risk (favouring friends or family) to the smallest perceived risk (giving gifts of excessive value).

Where conflicts of interest are concerned (Figure 14) the following should be noted:

- Favouring friends or family is perceived to be the biggest problem.
- Encouraging too is the finding that acceptance of gifts of excessive value is perceived to present the smallest threat to departments.

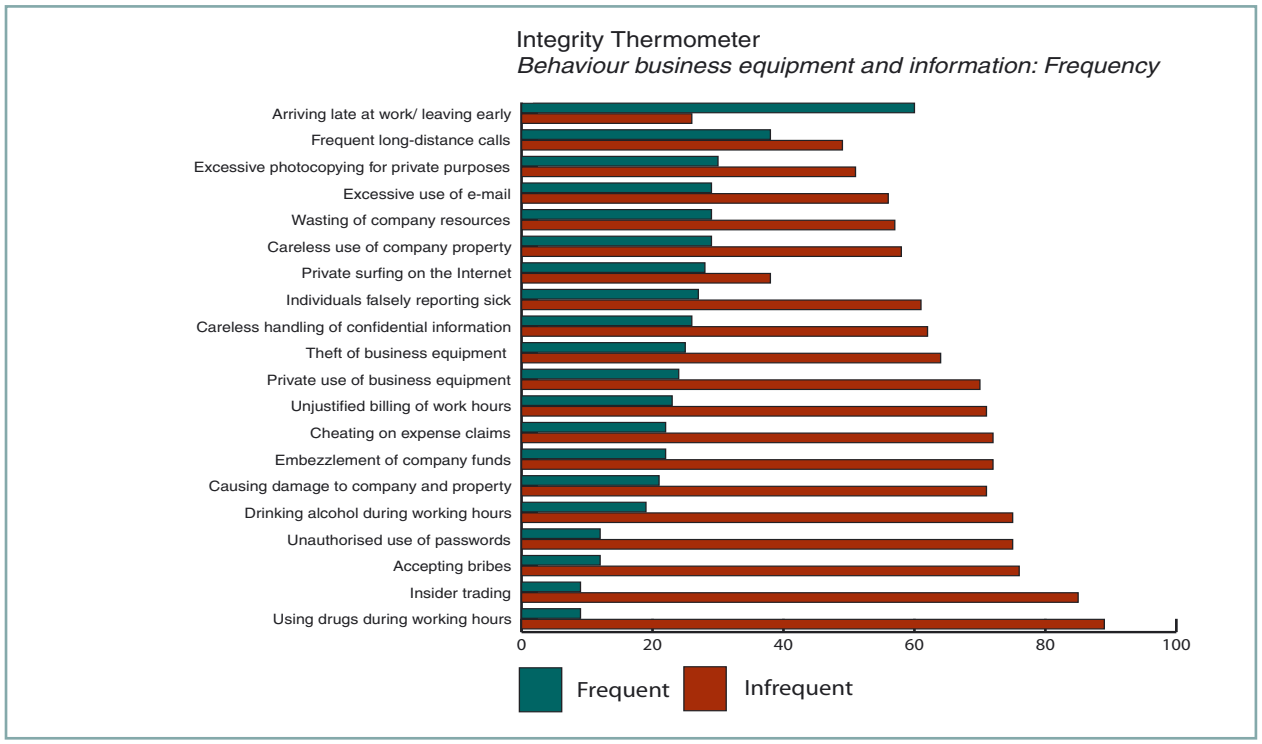


Figure 15: Business equipment and information measured from the biggest perceived risk (arriving late at work / leaving early) to the least perceived risk (using drugs during working hours).

In terms of business equipment and information (Figure 15) the following findings should be noted:

- Contrary to expectations, private surfing on the Internet is a much smaller problem than expected.
- Disturbing, especially in terms of service delivery, is the high frequency experienced of either arriving late for work, or leaving early.
- With respect to the abuse of business equipment and confidential information, it appears to be at an unacceptably high level i.e. over 20%.

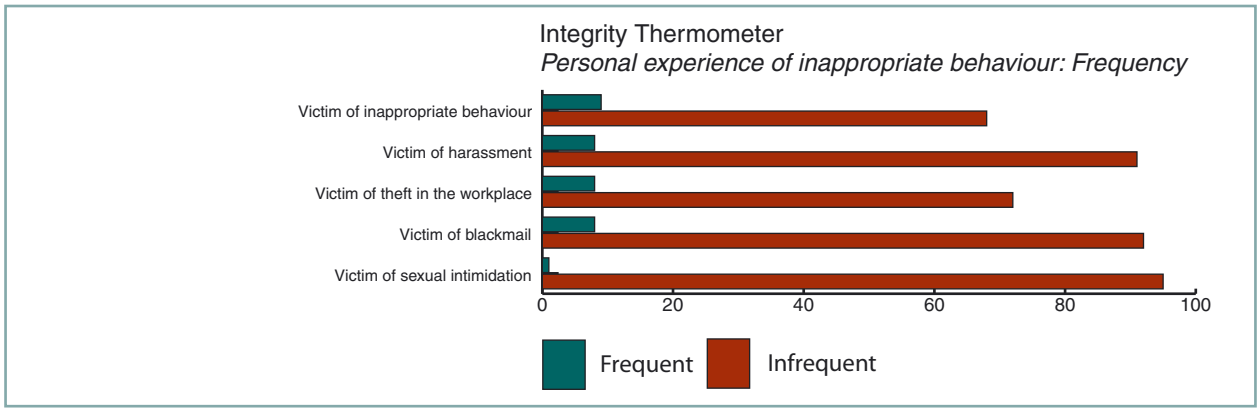


Figure 16: Personal experience of inappropriate behaviour measured from the biggest perceived risk (victim of inappropriate behaviour) to the lowest perceived risk (victim of sexual intimidation).

There is an even distribution of the findings pertaining to Figure 16 in which personal experience of inappropriate behaviour measuring from the least perceived risk (i.e. victim of sexual intimidation) to the highest perceived risk (i.e. victim of inappropriate behaviour) were measured. In this respect it needs to be noted that all categories show a very low result.

3.5 Analysis of findings of the survey

Generally speaking, the uptake of the Code has been good. The reason for this is that it has been found that in 80% of the participating departments the Heads of Department have ensured that the staff are acquainted with the Code. In addition, more than 80% of the participating departments have records pertaining to training and self-development and indicated that the Code has been used as part of disciplinary processes. This gives reason to believe that a Code of Conduct is absolutely necessary in the day-to-day administration of a department.

The findings of the survey also suggest that the Code is an important document pertaining not only to the maintenance of discipline, but also for the building of integrity systems. For example, in terms of the findings departments do have systems to monitor disciplinary procedures in place. Furthermore, 100% of respondents indicated that fraud and corruption are monitored and reported. One worrying factor though is that almost 40% of the participating departments indicated that productive and idle hours of staff are not monitored. This is a point of concern as this has a direct bearing on service delivery.

In terms of the departmental results it needs to be reported that as far as the relationship with the public, relationship amongst employees, performance of duties and personal conduct are concerned the responses were highly positive. Many departments scored 100% for these categories.

This is encouraging from a service delivery point of view. However, the Departments of Safety and Security and Social Services (Western Cape) appeared to be cause for concern. In all the categories of the Code they scored relatively low in relation to the other departments. Both these departments are service delivery orientated and as such they need to give immediate attention to the key requirements of the Code.

In terms of the Integrity Thermometer, social behaviour and conflicts of interest were measured from the least perceived risk to the biggest perceived risk. In terms of social behaviour, favouritism appears to present the biggest risk and in terms of conflicts of interest the favouring of friends appears to present the biggest problem. When a review of the Code is done, cognisance needs to be taken of these two factors as they are vital for building sound integrity systems. It may be necessary to introduce strong penalties if there is non-compliance with respect to these issues.

In addition to the above-mentioned the Integrity Thermometer also suggests that there is a high frequency of arriving late for work, or leaving early. In terms of the Code, a public servant should be committed to timely service to the development and upliftment of all South Africans. In terms of the survey it would appear that this principle is not being adhered to amongst many of the departments surveyed. Departments should take note of this principle as non-adherence will affect service delivery. Guilty officials should summarily be dealt with in order to address this problem.

From the whole survey it would therefore appear that both positive and negative indicators were revealed. In essence, departments need to be encouraged to continue with what is highly positive in their situations in terms of the Code. On the other hand, departments need to be encouraged to strengthen weak areas of compliance. This would not only lead to sound integrity systems but also to optimal service delivery in general.

3.6 Assessment of the Code of Conduct

The assessment of the Code focuses on three different components. These are the

i. Contents of the Code;
ii. Implementation of the Code; and
iii. Compliance with the Code.

3.6.1 Contents of the Code

The Code was developed in 1997. Best practice requires ethical policies to be reviewed from time to time. Although there are no generally accepted guidelines in terms of the frequency of such reviews, it is safe to say that a period of almost nine years is too long.

The Code – in its present format – is not very reader-friendly, although the Explanatory Manual on the Code of Conduct for the Public Service, of which more than a million copies were printed and distributed both nationally and provincially during 2002 would have had a positive impact on the understanding of the contents by public servants. A project is currently underway to translate this manual into all official languages – this will make a further important contribution in terms of the Code's accessibility. However, the Code remains difficult to implement because it comprises elements of both an aspirational and a compliance-based code. Given the current South African context, and the fact that the Code was promulgated in 1997, it is suggested that the Code should be subjected to a comprehensive review. This review should address the structure, context and style of the current Code.

3.6.2 Implementation

Although there have been some examples of effective implementation of the Code, this has not been the case in all departments surveyed. The Code was rolled out to all provinces during 1999. This comprised provincial launches as well as workshops on the Code. Although the majority of the departments that participated in the interviews have managed to get the basics right, the following were found:

(i) In four departments from the sample, the Heads of Department have not ensured that staff are acquainted with the Code. These are:

NAME OF DEPARTMENT	PROVINCE
Department of Health	Northern Cape
Department of Agriculture Land Reform Environment and Conservation	Northern Cape
Department of Finance	Northern Cape
Department of Education	North West

(ii) In two departments no records of training and self-development existed, namely:

NAME OF DEPARTMENT	PROVINCE
Office of the Premier	Gauteng
Department of Community Safety	Western Cape

(iii) It was found that in three departments the Code has never been cited as part of disciplinary procedures; these are:

NAME OF DEPARTMENT	PROVINCE
Department of Community Safety	Western Cape
Department of Education	Western Cape
Department of Social Services and Poverty Alleviation	Western Cape

(iv) With regard to the implementation of the Code the performance of two provinces were not assessed because no responses were received from them. These are:

- Eastern Cape
- Limpopo

Based on the evidence available, it would seem that there have been gaps in the roll-out of the Code throughout the country, and that certain departments have not been able to perform certain basic activities. It is not possible to provide reasons for the failures of these departments. To determine the exact reasons for below average performance in specific departments will require more extensive research.

3.6.3 Compliance with the Code

Because of the low response rate to the Integrity Thermometer, a clear opinion on levels of compliance with the Code cannot be provided. It might be necessary to conduct further research in this area. If the responses received are indeed indicative of behaviour in the public service, then there are low levels of compliance with the Code.

CHAPTER FOUR ~ Recommendations

4.1 Introduction

In essence the recommendations pertaining to the Code as derived from the findings of this survey are based on the following:

- The Code should be subjected to a comprehensive review. This review should address the structure, contents and style of the current document.
- An ethics training and induction programme linked to a revised Code of Conduct should be activated.
- A review of its whistle blowing mechanisms should be done.
- A visible and credible ethics champion, should be appointed.

4.2 Review of the Code of Conduct

The Public Service Commission should review the Code and clear guidance should be given with regards to the tone and structure of the Code. Public servants should be given the opportunity to participate in the development process, possibly through countrywide focus groups, interviews and surveys.

4.2.1 Generic process to develop a successful code

The development of an organisation-specific code of ethics[45] is a complex process. David Murray[46] lists the following critical success factors for the development of a code:

- *There has to be a clear purpose* – the board and senior management should know why they want to develop a code and what the benefits will be. To do it simply in order to comply with corporate governance requirements, or to superficially enhance the reputation of the organisation is not acceptable. Senior management should be committed to the process and should be prepared to lead from the top.

- *There has to be a development process* – this has to involve participation from employees at all levels, as well as the inclusion of other stakeholders in the process.

- *A clear understanding of existing values or principles* – the code has to be based on existing values or values that the organisation wants to aspire to, otherwise employees will not be able to associate with or endorse the contents. For example, departments could aspire to fairness, transparency, honesty, non-discrimination, accountability and responsibility, and respect for human dignity, human rights and social justice[47].

- *There has to be agreement on the required tone and structure of the code*. For example, depending on the culture within the organisation the code would be developed as either a values-based or a compliance-based document. The code has to give clear guidance on what would constitute unethical behaviour and should guide ethical decision-making. This will be informed by the tone of the document, e.g. a compliance-based code will be more prescriptive and specific in terms of the outcome of decisions ("do this, not that"), while a values-based code will emphasise the process of reaching a decision rather than prescribing a "correct" outcome.

- *An effective implementation process, comprising communication and training*.
  In addition, there has to be regular reviews and – where appropriate – the code has to be updated.

45. This document uses the term "codes of ethics". Quite often companies have documents that fulfill a similar purpose, albeit with a slightly different focus. These documents are sometimes referred to as mission or value statements, code of conduct, statements of business principles, credos,etc.
46. Murray, David: 1997. Ethics in Organisations. London: Kogan Page Limited .
47. These values are suggested in the second King Report on Corporate Governance for South Africa (2002).

4.2.1.1 Purpose

What is the purpose of a code of ethics? There are many different purposes that a code can serve, but the most important purpose should be to clearly demonstrate a sound commitment by senior management to incorporate ethical behaviour. Deon Rossouw[48] makes a further distinction between developing a code for internal and external purposes:

Internal purposes include the following:

- Reaching agreement about standards of morally acceptable behaviour within an organisation.
- Providing guidance in moral decision-making.
- Promoting organisational integration and coordination.

External purposes include the following:

- Enhancing the reputation of an organisation amongst its external stakeholders.
- Deflecting state interference in the internal affairs of a business or industry.
- Pre-empting legal action against an organisation.[49]

4.2.1.2 Development process

One of the most critical success factors for a successful code is that there should be a clearly defined development *process* – this implies participation or involvement from everybody who will be expected to comply with the code. A participative process will ensure that nobody (even those who might be inclined not to support the code) will be able to argue that the code has been imposed on him or her by senior management. A champion should be appointed within an organisation that will assume overall responsibility in ensuring that the Code reflects best practice.

International benchmarking is a small, albeit very important part of the process. It is very useful to know what best practice is, and to test organisation-specific ideas against what seems to work well for other departments. The big danger here is the temptation to simply copy another organisation's code because it seems to work well – *this will not work*, because there will be no buy-in from employees as a result of their exclusion from the process, and the issues, style and structure might be inappropriate for an organisation.

One of the most important parts of the development process is to identify the most appropriate issues that should be addressed by the code. There are many issues that are addressed in the vast majority of codes at an international level: for example, conflicts of interest, gifts and entertainment policies, private use of office equipment, etc. usually feature prominently. However, there might be other issues that are relevant to a particular organisation only, based on recent events within the organisation (e.g. a merger between two companies with different cultures), negative press coverage, the position of the organisation within a particular industry (especially within controversial industries such as tobacco, gambling or arms manufacturing), etc. Quite often, these issues will be identified through a combination of surveys, interviews and focus groups. In the present case, the results of the Integrity Thermometer survey and the responses to the open-ended interviews used, suggest that a list of issues should be addressed.

48. Rossouw, Deon, 2002. "Business Ethics in Africa". Cape Town: Oxford University Press.
49. This is particularly relevant in the United States of America, where the Federal Sentencing Guidelines provide incentives for companies to establish ethics programmes.

4.2.1.3 Tone and structure

The tone and structure of the code are extremely important, and will determine – to a large extent – eventual compliance with the document. If the tone does not reflect the existing culture within the organisation, it will be difficult for employees to associate with its contents and they would be less likely to comply with the code.

Below are three examples of a gifts policy[50]. Although the intention of the policy is the same ("Do not accept inappropriate gifts"), the tone is different in every case:

- No employee will give, offer or promise to give, or ask for or accept anything of value … with the following exceptions: items of a strictly advertising nature (that is, imprinted with the company's name) which are less than $10 in value. [51]
- Nothing may be given or received which might distort commercial judgement or harm the Group's reputation … any business-related personal benefit which you or your family give or receive must be reported in writing within three working days to the person to whom you normally report.[52]
- We must not accept gifts or hospitality of significant value from firms or individuals ... these are deemed business favours and by accepting them we might compromise our position.[53]

The afore-mentioned three examples reflect the shift from a compliance-based (Honeywell) to a values-based (British Airways) approach. Both approaches have their strengths and weaknesses, as outlined below:

	STRENGTHS	WEAKNESSES
Values-based code		
	• Does not prescribe, but focuses on the values underpinning an action. • Concise. • Flexible and easier to implement in multi-national organisations. • Focuses on positive behaviour.	• Leaves loopholes as a result of different interpretations, therefore difficult to enforce.
Compliance-based code		
	• Very specific, does not leave loopholes. • Easy to enforce – specific sanctions could be introduced for transgressions.	• Does not sharpen ethical reasoning skills, therefore will not help to resolve ethical dilemmas that are not addressed directly by the code. • Usually a very comprehensive document, it is not always clear how familiar employees are with its contents. • Usually focuses on negative behaviour.

50. Described by Simon Webley in "Business Ethics: Facing up to the issues", edited by Chris Moon and Clive Bonny, The Economist Books, 2001, p. 167.
51. Honeywell policy
52. Standard Chartered Bank policy
53. British Airways policy

A combination of the two approaches is possible, and is the one that is usually recommended. This implies a clear focus on the values of the organisation, but is complemented by more practical guidelines that could assist ethical decision-making. This structure does not negate the need for employees to understand and support the organisational values and to always base their decisions on those values, but it acknowledges that sometimes it is necessary – especially with regards to more junior members of staff – to give clear guidelines on what would constitute acceptable and unacceptable behaviour.

The following list[54] suggests some characteristics of a good code of ethics. The code should:

- Make clear what is acceptable and unacceptable practice;
- Guide organisation policy by providing a set of corporate ethical standards (values);
- Encourage ethical behaviour of the board, managers and employees at all levels;
- Guide difficult decision-making;
- Make ethical infringements easy to identify;
- Promote awareness of, and sensitivity to, ethical issues;
- Help to resolve conflicts;
- Specify the enterprise's social responsibility;
- Cover relations between stakeholders; and
- Enhance the ethical reputation of the organisation.

4.3 Ethics training / induction programme linked to a revised Code of Conduct

The second recommendation is the activation of an ethics training and induction programme linked to a revised Code of Conduct.

The following structure for the revised code is recommended:

- ***Introduction:*** Why is ethical behaviour critical for public servants? (This will be a personal message from the proposed ethics champion).

- ***What is the status of the code and what are the consequences of non-compliance?*** (This will be a brief section that summarises the legal standing of the code. It will not go into detailed specifications, but will mention the most important laws that govern the code and ensures enforceability).

- ***Key principles:*** (This section will provide the key principles that should govern the everyday behaviour of public servants). To some extent, it summarises the aspirational elements of the current code, and could include some of the following principles:
  i. Public servants are required to abide by all legislation, including the Constitution;
  ii. It serves the public and puts the public interest first;
  iii. It executes the policies of the government of the day, regardless of individual political affiliations; and
  iv. Promotes sound, efficient, effective, transparent and accountable administration.

- ***Conduct:*** This section will outline the minimum standards for ethical conduct in the Public Service (For an example see Annexure A).

- ***Frequently asked questions:*** (An addendum to the Code, to be updated from time to time, based on actual case studies to assist interpretation of the Code – this section will not form part of the regulations).

54. This list is based on the recommendations of the second King Report on Corporate Governance for South Africa (2002).

- ***Quick test:*** (A few questions, based on the key principles, to guide conduct. Examples of questions are: Is it illegal? Will I try to hide my actions? Will this really put the public interest first?).
- ***Where to find help:*** (A list of contact persons in all provinces, as well as the number of the toll free hotline).

4.3.1 Implementation

Even the best possible code will be ineffective if it is not implemented properly. The main components of an effective implementation process are communication and training.

Communication: A comprehensive communication campaign should be developed that will involve the following:

- Ensuring that a copy of the Code is presented to all public servants.
- Informing external stakeholders, primarily members of the public, about the policy.
- Media releases.
- Ensuring visibility in offices through the use of posters and flyers.
- Discussing the policy in employee forums.
- Establishing management responsibility for ethics communication.
- Making the Code available on the internet and intranet.
- Issuing newsletters on the Code.

Training/induction: A training/induction strategy that supports the implementation of the Code and integrates ethics training with the organisation's total training strategy will need to be developed. In this regard the process should be driven by the South African Management Development Institute (SAMDI).

Due to the specialised nature of ethics training, the development of a high quality training video in all official languages should be developed. The possibility of an ethics game that could be developed specifically for the Public Service should be investigated to complement the video-based material.

4.3.2 Regular future reviews

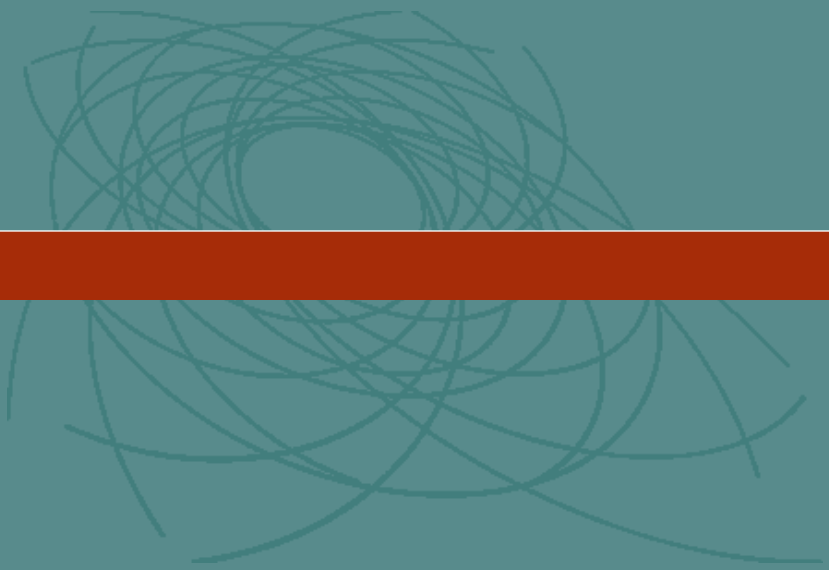
Codes should be updated from time to time to reflect changing attitudes and standards. The following is an extract from a code that was developed in the mid-nineteenth century: "Any employee who is in the habit of smoking Spanish cigars, getting shaved at a barber's shop, going to dances and other such places of amusement will surely give his employer reason to be suspicious of his integrity and all-round honesty". Clearly, this policy would be inappropriate for most modern organisations! It is therefore suggested that – at least once every four years – any organisation should engage its stakeholders (both internal and external) to determine whether there is a need to update the Code.

4.4 Whistle blowing mechanism

Another recommendation is that a review of the Code's whistle-blowing mechanisms should be done. Section C.4.10 of the Code states that: "in the course of his/her official duties, an employee **shall report** to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest". It needs to be noted that the State Law Reform Commission is currently conducting a comprehensive review of the Public Service whistle blowing mechanism and a report will be forthcoming towards the end of 2005. Detailed recommendations in this regard therefore fall outside the scope of this report.

4.5 Ethics champion

No ethics programme will succeed if there is not a clear message from the top that the executive supports ethical behaviour. There should be clear evidence of ethical leadership from the top. Although it is unlikely that South Africa will follow the Ugandan example of appointing a Minister for Ethics and Integrity, there should be a clear focal point for ethics within the Public Service. This position should be clearly communicated to both public servants and members of the public. Thus, whilst the Public Service Commission is responsible for promoting professional ethics, the appointment of an ethics champion for each department is recommended.



CHAPTER FIVE ~
Conclusion

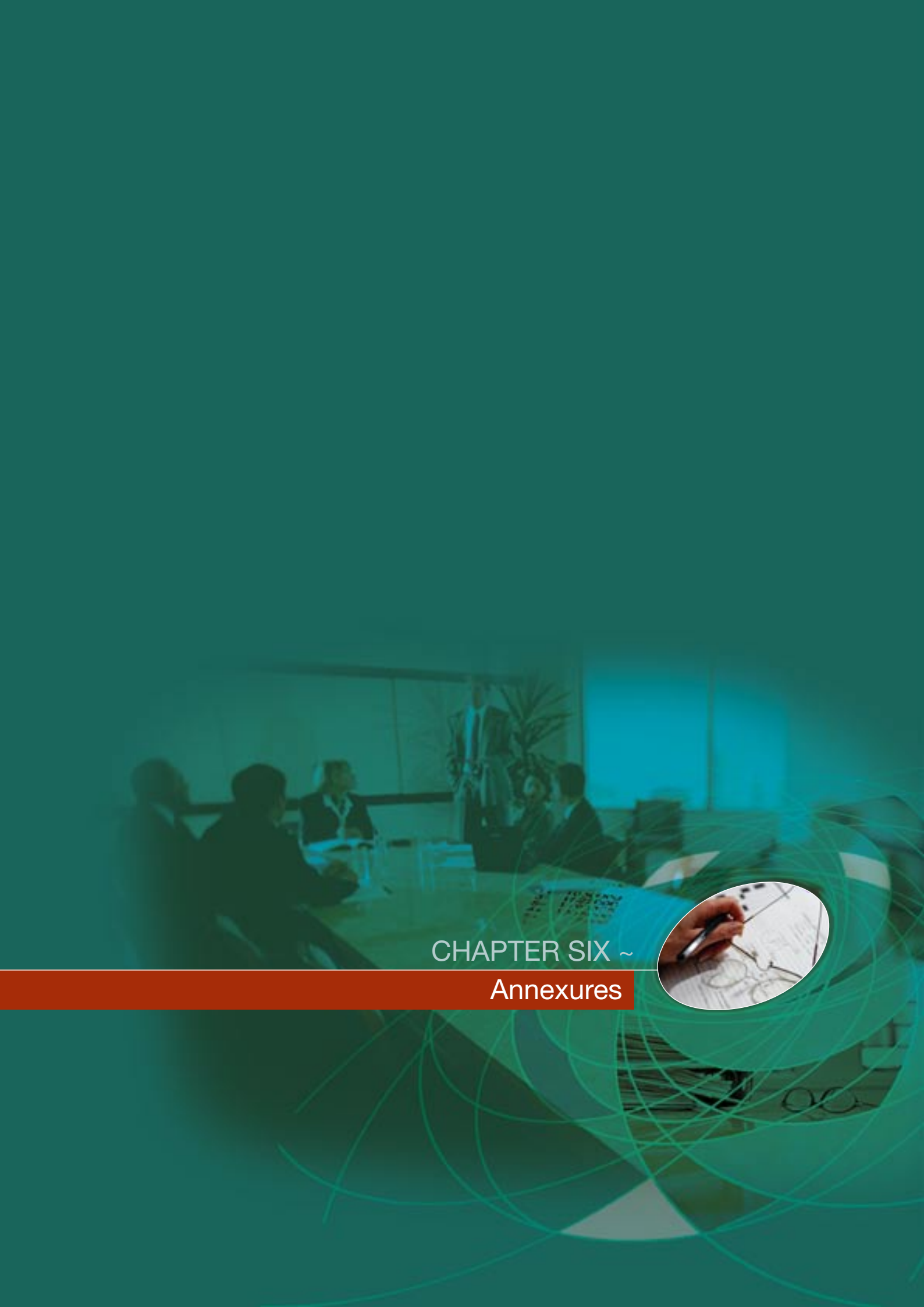
5. Conclusion

In conclusion, it needs to be mentioned that this is the first time that a survey on the uptake and impact of the Code has been done since its inception in 1997. The research that was done covered a representative sample of public servants and government departments. Irrespective of the limitations of the research project, as indicated in Chapter 1 of this report, the recommendations have to be taken seriously.

In terms of the desk study pertaining to the Code in relation to national enactments, clear measures of enforceability are indicated. Heads of Department should not shy away from enforcing the provisions of the Code provided all legal requirements are met. If public servants know what is required of them in terms of the Code, then it is clear that one will see improved ethical behaviour. Therefore, raising awareness of the Code through training and workshops is essential.

In terms of the findings of the survey it should to be noted that the Code itself, read with the provisions of the Public Service Act (Act No: 103 of 1994) provides the primary driver for its enforceability by making non-compliance with its provisions a disciplinary offence. The findings of the survey also suggest that public servants do have confidence in the provisions of the Code. For example, only 15% of the respondents disagree that most public servants will report fraud, corruption, nepotism or any other offence to the appropriate authorities.

In general it is expected that the recommendations contained in this report will be implemented. One of the recommendations is to have a review of the Code. A review of the Code is long overdue as the Code has been in operation for eight years. Hopefully such a review will not only lead to stronger enforcement mechanisms but also to greater awareness of the provisions of the Code thereby augmenting the ethics infrastructure in the South African Public Service.



CHAPTER SIX ~

Annexures

Annexure A

Minimum standards for ethical conduct in the public service

ISSUE	CODE REFERENCE	RELEVANT LEGISLATION
No unfair discrimination		
	C.2.6 / C.3.6	Constitution, Promotion of Equality and Prevention of Unfair Discrimination Act
No conflicts of interest		
	C.4 5	Prevention and Combating of Corrupt Activities Act
No party political activities in the workplace		
	C.2.7	
No favouritism		
	C.3.3	Prevention and Combating of Corrupt Activities Act (only when linked to benefit being given); depending on circumstance, possibly also Promotion of Equality and Prevention of Unfair Discrimination Act
No abuse of equipment and / or information		
	C.2.9	Promotion of Access to Information Act (depending on nature of abuse of information)
No disclosure of information classified or implied as being confidential or secret		
	C.4.12 / C.5.4	Public Service Act
No remunerative work without approval, possibly prohibited altogether for certain levels		
	C.5.5	Public Service Act
No abuse of alcohol or other intoxicating substances		
	C.5.2	
No gifts (including entertainment) of excessive value to be given or received – value to be specified, all gifts given or received to be recorded in a register		
	C.5.3	Public Service Act
All examples of fraud, corruption, nepotism, maladministration or any other act that constitutes an offence to be reported to manager or to a confidential helpline		
	C.4.10	Protected Disclosures Act

Annexure B

RESPONSES RECEIVED FROM SURVEY

The identification of departments to participate in the survey was done through random selection and restricted to provincial departments. The following three departments from the Eastern Cape were excluded from the selection process upon request, because it was felt that they were already burdened with too many other projects: Public Works, Health and Social Development and Education. The departments that were selected were:

- Eastern Cape — Department of Housing and Local Government
- Eastern Cape — Department of Transport
- Eastern Cape — Provincial Legislature
- Free State — Department of Social Development
- Free State — Department of Local Government
- Free State — Department of Health
- Gauteng — Office of the Premier
- Gauteng — Department of Social Services and Population Development
- Gauteng — Department of Education
- KwaZulu-Natal — Department of Local Government
- KwaZulu-Natal — Provincial Treasury
- KwaZulu-Natal — Department of Economic Affairs and Tourism
- Limpopo — Department of Welfare
- Limpopo — Department of Finance
- Limpopo — Department of Safety and Security
- Mpumalanga — Department of Housing
- Mpumalanga — Provincial Legislature
- Mpumalanga — Department of Education
- North West — Department of Education
- North West — Department of Arts and Culture
- North West — Department of Health
- Northern Cape — Department of Agriculture and Nature Conservation
- Northern Cape — Department of Health
- Northern Cape — Department of Finance
- Western Cape — Department of Community Development
- Western Cape — Social Services and Poverty
- Western Cape — Western Cape Education

Responses were received from the following departments:

- Free State — Department of Health
- Free State — Department of Local Government and Housing
- Free State — Department of Social Development
- Gauteng — Department of Education
- Gauteng — Office of the Premier
- KwaZulu-Natal — Department of Economic Development and Tourism
- KwaZulu-Natal — Department of Traditional and Local Government Affairs

- KwaZulu-Natal Provincial Treasury
- Mpumalanga Department of Education
- Mpumalanga Department of Housing and Land Administration
- Mpumalanga Department of Social Services and Population Development
- Northern Cape Department of Agriculture, Land Reform, Environment and Conservation
- Northern Cape Department of Finance
- Northern Cape Department of Health (only the Kimberley Hospital complex)
- Northern Cape Department of Health (the entire department excluding the Kimberley Hospital complex)
- North West Department of Education
- Western Cape Department of Community Safety
- Western Cape Department of Education
- Western Cape Department of Social Services and Poverty Alleviation

A total of 537 responses were received from the survey. Selected results have been included in the main body of the report.

Annexure C

ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT: PRINCIPLES FOR MANAGING ETHICS

The Organisation for Economic Cooperation and Development (OECD) has published the following principles for managing ethics in the Public Service:

- Ethical standards for Public Service should be clear.
- Ethical standards should be reflected in the legal framework.
- Ethical guidance should be available to public servants.
- Public servants should know their rights and obligations when exposing wrongdoing.
- Political commitment to ethics should reinforce the ethical conduct of public servants.
- The decision-making process should be transparent and open to scrutiny.
- There should be clear guidelines for interaction between the public and private sectors.
- Managers should demonstrate and promote ethical conduct.
- Management policies, procedures and practices should promote ethical conduct.
- Public service conditions and management of human resources should promote ethical conduct.
- Adequate accountability mechanisms should be in place within the public service.
- Appropriate procedures and sanctions should exist to deal with misconduct.

These principles neatly summarise the need for an effective code to be complemented by an entire support network, also referred to as an ethics infrastructure. In other words, not only is there a need for a proper code (e.g. clear ethical standards), but this code should be supported by – amongst others – political will and ethical leadership.

Annexure D

CODE OF CONDUCT FOR THE PUBLIC SERVICE

A. PURPOSE

A.1 In order to give practical effect to the relevant constitutional provisions relating to the Public Service, all employees are expected to comply with the Code of Conduct provided for in this Chapter.

A.2 The Code should act as a guideline to employees as to what is expected of them from an ethical point of view, both in their individual conduct and in their relationship with others. Compliance with the Code can be expected to enhance professionalism and help to ensure confidence in the Public Service.

B INTRODUCTION

B.1 The need exists to provide direction to employees with regard to their relationship with the legislature, political and executive office-bearers, other employees and the public and to indicate the spirit in which employees should perform their duties, what should be done to avoid conflicts of interests and what is expected of them in terms of their personal conduct in public and private life.

B.2 Although the Code of Conduct was drafted to be as comprehensive as possible, it is not an exhaustive set of rules regulating standards of conduct. However, Heads of Department, by virtue of their responsibility in terms of Section 7(3)(b) of the Act of the efficient management and administration of their departments and the maintenance of discipline, are, *inter alia*, under a duty to ensure that the conduct of their employees conform to the basic values and principles governing public administration and the norms and standards prescribed by the Act. Heads of Department should also ensure that their staff are acquainted with these measures, and that they accept and abide by them.

B.3 The primary purpose of the Code is a positive one, viz. to promote exemplary conduct. Notwithstanding this, an employee shall be guilty of misconduct and may be dealt with in accordance with the relevant collective agreement if she or he contravenes any provision of the Code of Conduct or fails to comply with any provision thereof.

C. CODE OF CONDUCT

C.1 RELATIONSHIP WITH THE LEGISLATURE AND THE EXECUTIVE

An employee -

C.1.1 is faithful to the Republic and honours the Constitution and abides thereby in the execution of his or her daily tasks;

C.1.2 puts the public interest first in the execution of his or her duties;

C.1.3 loyally executes the policies of the government of the day in the performance of his or her official duties as contained in all statutory and other prescripts;

C.1.4 strives to be familiar with and abides by all statutory and other instructions applicable to his or her conduct and duties; and

C.1.5 co-operates with public institutions established under legislation and the Constitution in promoting the public interest.

C.2 RELATIONSHIP WITH THE PUBLIC

An employee -

C.2.1 promotes the unity and well-being of the South African nation in performing his or her official duties;

C.2.2 will serve the public in an unbiased and impartial manner in order to create confidence in the Public Service;

C.2.3 is polite, helpful and reasonably accessible in his or her dealings with the public, at all times treating members of the public as customers who are entitled to receive high standards of service;

C.2.4 has regard for the circumstances and concerns of the public in performing his or her official duties and in the making of decisions affecting them;

C.2.5 is committed through timely service to the development and upliftment of all South Africans;

C.2.6 does not unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language;

C.2.7 does not abuse his or her position in the Public Service to promote or prejudice the interest of any political party or interest group;

C.2.8 respects and protects every person's dignity and his or her rights as contained in the Constitution; and

C.2.9 recognises the public's right of access to information, excluding information that is specifically protected by law.

C.3 RELATIONSHIP AMONG EMPLOYEES

An employee -

C.3.1 co-operates fully with other employees to advance the public interest;

C.3.2 executes all reasonable instructions by persons officially assigned to give them, provided these are not contrary to the provisions of the Constitution and/or any other law;

C.3.3 refrains from favouring relatives and friends in work-related activities and never abuses his or her authority or influences another employee, nor is influenced to abuse his or her authority;

C.3.4 uses the appropriate channels to air his or her grievances or to direct representations;

C.3.5 is committed to the optimal development, motivation and utilisation of his or her staff and the promotion of sound labour and interpersonal relations;

C.3.6 deals fairly, professionally and equitably with other employees, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language; and

C.3.7 refrains from party political activities in the workplace.

C.4 PERFORMANCE OF DUTIES

An employee -

C.4.1 strives to achieve the objectives of his or her institution cost-effectively and in the public's interest;

C.4.2 is creative in thought and in the execution of his or her duties, seeks innovative ways to solve problems and enhances effectiveness and efficiency within the context of the law;

C.4.3 is punctual in the execution of his or her duties;

C.4.4 executes his or her duties in a professional and competent manner;

C.4.5 does not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties;

C.4.6 will recuse himself or herself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee;

C.4.7 accepts the responsibility to avail himself or herself of ongoing training and self-development throughout his or her career;

C.4.8 is honest and accountable in dealing with public funds and uses the Public service's property and other resources effectively, efficiently, and only for authorised official purposes;

C.4.9 promotes sound, efficient, effective, transparent and accountable administration;

C.4.10 in the course of his or her official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest;

C.4.11 gives honest and impartial advice, based on all available relevant information, to higher authority when asked for assistance of this kind; and

C.4.12 honours the confidentiality of matters, documents and discussions, classified or implied as being confidential or secret.

C.5 PERSONAL CONDUCT AND PRIVATE INTERESTS

An employee -

C.5.1 during official duties, dresses and behaves in a manner that enhances the reputation of the Public Service;

C.5.2 acts responsibly as far as the use of alcoholic beverages or any other substance with an intoxicating effect is concerned;

C.5.3 shall not, without prior written approval of the Head of Department, obtain or accept any gifts, benefits or item of monetory value (a description and the value and source of gift with a value

in excess or R350) from any person for himself or herself during the performance of duties as these may be construed as bribes;

C.5.4 does not use or disclose any official information for personal gain or the gain of others; and

C.5.5 does not, without approval, undertake remunerative work outside his or her official duties or use office equipment for such work.

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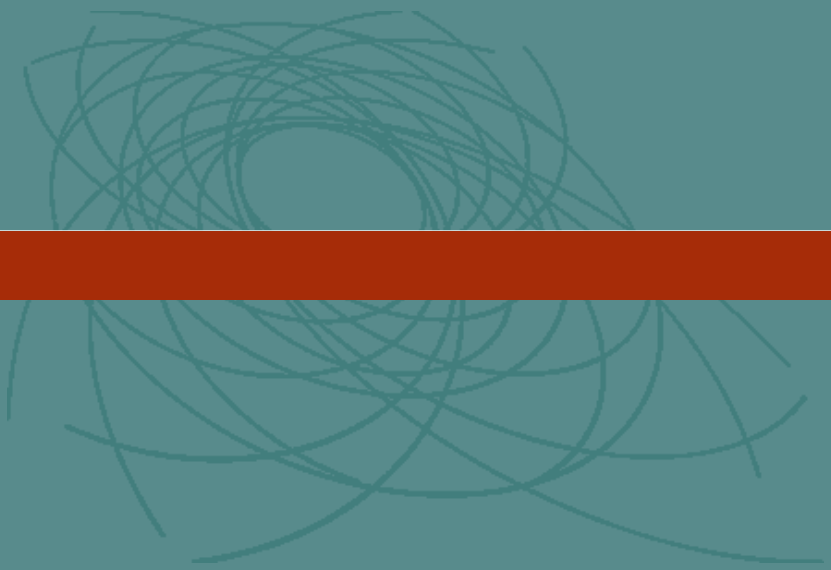

Public Service Commission (PSC)

Pretoria
Commission House
cnr Hamilton & Ziervogel Streets
Arcadia 0083

Private Bag X121
Pretoria

Tel: (012) 328 7690
Fax: (012) 325 8382

Cape Town
21st Floor
Sanlam Gold Acre Building
Adderley Street

PO Box 746
Cape Town 8000

Tel: (021) 418 4940
Fax: (021) 418 5040

National Anti-corruption Hotline 0800 701 701

www.psc.gov.za