Report on Management of Precautionary Suspension in the Public Service

Public Service Commission

June 2011
Vision

The Public Service Commission is an independent and impartial body created by the Constitution, 1996, to enhance excellence in governance within the Public Service by promoting a professional and ethical environment and adding value to a public administration that is accountable, equitable, efficient, effective, corruption-free and responsive to the needs of the people of South Africa.

Mission

The Public Service Commission aims to promote the constitutionally enshrined democratic principles and values of the Public Service by investigating, monitoring, evaluating, communicating and reporting on public administration. Through research processes, it will ensure the promotion of excellence in governance and the delivery of affordable and sustainable quality services.
Foreword

The precautionary suspension of employees within the Public Service is one of the measures which departments can use in the course of instituting disciplinary procedure. When an employee is put on precautionary suspension, there are certain processes that must be complied with to certify that the suspension is legitimate, and that it can safeguard the interests of both the employer and the employee. The employer must make certain that the precautionary suspension does not have the effect of breaching the contractual rights of an employee.

In ensuring that proper procedures are followed in the Public Service, the Disciplinary Code and Procedures (Resolution 2 of 1999) was promulgated. The Disciplinary Code and Procedures brought major changes to the application of suspensions within the Public Service. The Code provides, amongst others, that suspensions should be with pay and that a disciplinary hearing should be held within one month from when an employee is placed on suspension. However, Resolution 1 of 2003 extended the period of suspension to 60 days within which a hearing should be held.

Given that these prescripts regulate the manner in which precautionary suspensions should be administered, it was envisaged that departments would be required to develop their own internal policies to ensure compliance, monitoring and consistent application of precautionary suspensions internally. However, it was noted in the PSC’s report in 2000 that there is non-compliance with the prescripts. The current study has thus been undertaken to review the management of precautionary suspensions in the Public Service and to establish, amongst others, how precautionary suspensions are being handled within departments currently. The Public Service Commission is gravely concerned about non-compliance with the prescribed 60 days for conclusion of cases and the cost consequently incurred by the state. It is anticipated that this report will provide an understanding and useful contribution in the management of precautionary suspensions in the Public Service.

The PSC is, therefore, pleased to present this report on the Management of Precautionary Suspensions in the Public Service. The PSC wishes to extend a word of gratitude to all the participating departments who contributed to the study.

MS PM TENGENI
DEPUTY CHAIRPERSON: PUBLIC SERVICE COMMISSION
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## Acronyms and Abbreviations

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<thead>
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<th>Acronym</th>
<th>Description</th>
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<tr>
<td>DG</td>
<td>Director-General</td>
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<td>DPSA</td>
<td>Department of Public Service and Administration</td>
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<tr>
<td>PW</td>
<td>Department of Public Works</td>
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<td>FY</td>
<td>Financial Year</td>
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<td>KZN</td>
<td>KwaZulu-Natal</td>
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<td>PSC</td>
<td>Public Service Commission</td>
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<td>PSCBC</td>
<td>Public Service Coordinating Bargaining Council</td>
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<td>SMS</td>
<td>Senior Management Service</td>
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Executive Summary

1. INTRODUCTION

Government departments utilise the precautionary suspension of employees as a safety measure pending the institution of disciplinary procedures. In this way the employer ensures that the investigation of the misconduct within the workplace continues unhindered or without unnecessary interference. However, the employer is expected to firstly comply with one of the employees’ privileges enshrined in the Bill of Rights section 23(1) of the Constitution of Republic of South Africa, 1996, namely, the right to fair labour practice, and then follow specific prescribed procedures as provided for in the Disciplinary Code and Procedures for Public Service Employees and the Senior Management Service (SMS) Handbook. Following its observations that there seemed to be challenges particularly with employees who would remain suspended on full pay for very long periods, the Public Service Commission (PSC) decided to conduct a study on how departments manage precautionary suspensions.

2. THE OBJECTIVES OF THE STUDY

- This study was conducted to review the management of precautionary suspensions in the Public Service and to address, amongst others, the following relevant issues –

- The circumstances under which employees were placed on precautionary suspensions in the sampled departments.

- Establishing if the sampled departments were compliant or non-compliant with the prescribed 60 days period for precautionary suspensions in the Public Service.

- Determining the cost implications to the employer of placing employees under the precautionary suspensions in the Public Service.

- Finding out if the sampled departments, during the investigation of the case and or when the disciplinary procedure is underway, considered the transfer of employees as an alternative to placing employees under precautionary suspension.

- Verifying if the sampled departments had internal policies to sensitise employees and key role-players on the procedures relating to the disciplinary procedure and precautionary suspensions.

- Ascertaining the role of labour relations component in the management of precautionary suspensions, and the extent to which the sampled departments’ human resources components provide training and advisory support service in respect of the management of precautionary suspension.

3. METHODOLOGY

The methodology followed in the study included desktop research, literature review and interviews with labour relations practitioners and selected line function managers in the national Departments of Home Affairs and Public Works, provincial Departments of Transport; Education and Public Works in KwaZulu-Natal; provincial Department of Education and Department of Public Works, Roads and Transport in Mpumalanga; and the provincial Departments of Education, Transport and Public Works in Eastern Cape.
4. LIMITATIONS

- As the scheduled dates of interviews coincided with the Public Service wage strike it was not possible to interview all identified officials at levels 12 and downwards in some of the sampled provincial departments.
- In the KwaZulu-Natal Province, the week during which the PSC had agreed with the departments to collect data and conduct interviews coincided with the KZN Provincial Public Service week, and all SMS members were unavailable. This made the collection of data and verification of information received difficult as the PSC could only interview a few SMS members then and later had to finalise the tasks through other means of correspondence.

5. KEY FINDINGS

5.1 Circumstances under which employees are placed on precautionary suspensions

The Departments that were surveyed indicated that officials are put on precautionary suspensions depending on the nature of the charges which are being investigated. They indicated that the charges preferred against employees on precautionary suspension mostly related to serious misconduct.

The following are some of the serious charges which were laid against employees who were placed on precautionary suspension by managers in the departments that participated in this study –

- Financial misconduct;
- Insubordination;
- Failure to bank state money;
- Gross negligence resulting in loss of state monies;
- Theft;
- Drunken driving;
- Misuse of state property;
- Fraud;
- Corruption;
- Keeping dangerous weapons (firearm);
- Sexual harassment;
- Unauthorised expenditure; and
- Violation of tender process.

The charges mentioned above are all of a serious nature. For instance depending on its severity and the length of period as well as nature of tasks allocated, insubordination by an employee may lead to a department's loss of funds as well as failure to deliver effective and efficient service on time. The rest of the misconduct charges found to be laid against employees during the study are of a serious nature. All of them involve allegations of failure to handle state funds in accordance with the prescribed processes. Thus, unless an employee who was suspected of being involved in such misconduct was placed on precautionary suspension, the process of collecting evidence around such an allegation and formulation of relevant charges may be compromised.

It is the view of the PSC that placing such employees on precautionary suspension whilst conducting an investigation was appropriate and not heavy handed in the circumstances. Apart from the nature of the misconduct being a justification for the precautionary suspension, the period of suspension should be proportionate with the investigation processes and not be too drawn out to be indistinguishable from a suspension that is a sanction.
5.2 How long do the majority of the precautionary suspensions last?

It was established from the records of the sample departments that generally there was non-compliance with the prescribed 60 days period to institute disciplinary hearings against the employees who are on precautionary suspensions. The majority of sampled departments indicated that it took up to three months, on average, to conclude an investigation, during which period employees would be placed on precautionary suspensions. The Mpumalanga Department of Education indicated that it took around two months to conclude the investigation of cases of employees placed on precautionary suspensions. However, the KwaZulu-Natal Department of Transport reported that it takes more than 10 months on average, before disciplinary hearings are instituted, and all this time the suspended employee would not be at work. The departments provided various reasons behind the non-compliance with the prescribed 60 days period. Some of the departments cited, as the reason for non-compliance, investigations taking too long to finalise.

In respect of reviews of precautionary suspensions, most of the sampled departments indicated that they reviewed the precautionary suspensions on a bi-monthly basis. None of the sampled departments provided the PSC team with evidence of control measures which were used to monitor the adherence to the timelines, such as computer systems and or manual registers to show the practicality of the departmental monitoring. In the Eastern Cape Department of Public Works, it was mentioned that the reviews of suspensions are done on a weekly basis during the Labour Relations Directorate meetings although minutes of such meetings were not provided to the PSC. Despite the lack of evidence of the weekly reviews, this was the only unique department in dealing with precautionary suspension cases because they have Labour Law Specialists who deal with and control the disciplinary cases. It was established that the said department's weekly review of suspensions made it possible for it to deal more effectively with suspension cases than other departments.

5.3 Why do precautionary suspensions last so longer than 60 days?

The precautionary suspensions last longer than the prescribed 60 days even after the investigation of the case has been concluded. In respect of the investigation the complication in nature of the matter which may require experts to unravel the pieces of information and formulate nature and extent of misconduct may cause delays in conclusion of the investigation. Besides the drawn out investigations, the PSC found that the following were reasons provided for the extension of the period for precautionary suspensions during the disciplinary procedure:

- Unavailability of Representatives of the employees charged.
- Witnesses not being available.
- Request for additional information unavailable at the date of disciplinary hearing,
- Interpreter not available.
- Employee being booked off sick.
- A criminal case was opened and has to run concurrently with the disciplinary procedure
- The recusal of the presiding officer.

5.4 Transfer of an employee under investigation as an alternate to suspension

The Code provides for transfer of employees who are under investigation as an alternative to precautionary suspension. Only three of the sampled departments indicated that they do favour the transfer of employees as an alternative to precautionary suspensions. The Department of Transport in KwaZulu-Natal Province indicated that consideration is given to the financial loss which could potentially be incurred by the employer in having employees being paid but not performing their duties. Hence transferring of an employee under investigation is effected where possible. The National Departments of Home Affairs and Public Works do consider transfers and in so doing specifically the National Department of Home Affairs assesses the extent to which the image of the Department could be affected if the employee is not transferred. In addition the National Department of Public
5.5 Totals of employees placed under precautionary suspensions during the periods under review

In total the PSC found that the sampled departments had placed 293 employees under precautionary suspensions, inclusive during the two periods under review. During the first period, that is FY 2008/2009, there were 103 employees placed under precautionary suspension in the sampled departments, whereas in the FY 2009/2010, there were 190 employees placed under precautionary suspensions. In respect of both periods the largest numbers of employees placed under precautionary suspensions were located in the levels 1 – 8 who totalled 228 out of 293. The second highest was employees at levels 9 – 12 totalling 46 out of 293 and the lowest numbers were in the SMS level totalling 19 out of 293.

5.6 The cost implications of the precautionary suspensions

In terms of the Department of Public Service and Administration’s (DPSA) internal report on precautionary suspensions for the period 2009/2010, the combined amount of the remuneration paid to Public Service employees placed on precautionary suspension was more than R45 million. The eight provincial departments which participated in the PSC study indicated that for the financial years 2008/2009 and 2009/2010, a total amount of R15,513,978.84 was paid to employees who were on precautionary suspension. The two national departments indicated that for the financial years 2008/2009 and 2009/2010, a total amount of R7,963,028.33 was paid to such employees.

It is disconcerting that there was such a huge amount paid to employees who were placed on precautionary suspension before their disciplinary cases could be concluded during the two periods under review. It is apparent that the departments’ failure to consider using transfers instead of precautionary suspension exacerbates the situation where huge compensation is paid to the Public Service employees suspended during these periods.

5.7 Do departments have internal policies to sensitisce employees and key role-players on the procedures relating to disciplinary procedure and precautionary suspensions?

In view of the noticeable non-compliance with Public Service Rules and Regulations established from PSC reports in previous studies, it was expected of departments to have developed internal step by step guidelines on the implementation of key policies on labour relations. If that was done, it could ensure that there is minimal deviation and enhanced compliance at all levels including the role-players in the disciplinary procedure. Out of the 10 departments that participated, only one department namely KwaZulu-Natal Department of Transport produced a departmental policy on the management of precautionary suspensions. The rest of the Departments indicated that they relied mainly on Resolution 1 of 2003 as they regard it as providing clear guidelines on the subject.

It should be noted that Resolution 1 of 2003 does not elaborate much on the procedure that should be followed when precautionary suspension is under consideration. The PSC believes that a Departmental policy on the management of precautionary suspensions/ transfers would strengthen and make clear the procedure that should be followed. This is necessary to make sure that such suspensions/transfers are managed in accordance with the principles of administrative justice, natural justice and fairness. Apart from considerations of equity and natural justice, the maintenance of a sound labour relations atmosphere in the workplace requires that acceptable and fair procedures are in place and adhered to.
Typically, a departmental policy on the management of precautionary suspensions should address inter alia aspects such as the reasons for suspending employees, the charges preferred against an employee which may warrant suspension, the process followed in considering representations made by employees against their suspensions, consideration of transfers as an alternative to suspension and reasons for extension of the suspension period.

The National Departments of Home Affairs and Public Works indicated that their employees are informed about the prescripts relating to suspensions, including Resolution 1 of 2003 by way of workshops, formal training sessions and circulars. The PSC found that some of the supervisors in the provincial departments do not know the meaning of precautionary suspension. Furthermore, the PSC found that Labour Relations officers and managers are not well trained to manage precautionary suspensions. In most instances the extension of the precautionary suspension periods are directly linked to the inadequate competency levels of Presiding officers and Employee Representatives in the disciplinary hearings.

With regard to the effect of requests of employees who are on precautionary suspension for postponement of disciplinary hearings, it was established from interviews with the managers that the employer representatives are not able to argue convincingly against such requests. Thus, the presiding officers end up also deciding on postponement without any convincing counterargument. This contributes towards the lengthy periods of precautionary suspension of employees pending finalisation of the cases.

The other problem areas that were identified related to capacity and competence of senior managers, employer representatives/investigators and presiding officers. One of the main reasons for the extension of precautionary suspensions beyond two months is the unavailability of effective and proficient presiding and investigating officers. Whilst most departments have indicated that training was conducted, from the interviews conducted there was no evidence of transfer of knowledge or communication to lower level employees which contributed to the lengthy delays before conclusion of investigation and disciplinary hearings.

5.8 The role of Labour Relations Components

In departments, Labour Relations Components play a key role in the facilitation and ensuring that all prescribed procedures are adhered to with regard to the management of precautionary suspensions. Out of the 10 departments that participated, only one department, namely, KwaZulu-Natal Department of Transport produced a departmental policy on the management of precautionary suspensions. It was emphasised that the role played by the Labour Relations Component with regards to precautionary suspensions was to advise management. Labour Relations officers also do not appoint the Presiding officers or Employer Representations but the head of the department plays that role of appointing them.

During interviews conducted with managers and supervisors, it became clear that not all employees who are supposed to know about disciplinary processes and measures know and understand such. Having supervisors who are not knowledgeable about disciplinary matters can lead to a gross dereliction of duty as it is their responsibility to ensure that the utilisation of employees is optimised to serve the operational needs of the department. This raises concerns about how such supervisors would handle employees who commit transgressions if they do not know basic principles of discipline. As a rule of thumb, all employees, managers and juniors alike must be sensitised about disciplinary procedures.

6. CHALLENGES

The Departments have cited, amongst others, the following as the challenges they are facing in the management of precautionary suspensions:

- The posts in the departments remain vacant for a long time pending the finalisation of cases, which is detrimental to other employees who have to take over the responsibilities and functions of the employees who
are on suspension.

- Inadequate training all round contributes towards undue lengthy periods of precautionary suspensions.
- Poor compliance with timeframes by investigators and the Presiding officers.
- Investigations take too long to finalise, which impacts on the period for the formulation of charges and ensuring that witnesses are notified timeously to attend the hearings.

7. RECOMMENDATIONS

The following recommendations are made to improve the management of precautionary suspensions:

- Departments must, through assistance of the DPSA, develop their own internal departmental policies on the management of precautionary suspensions and or transfers linked to investigation of misconduct within the 2011/2012 Financial Year.
- All employees, managers and juniors alike must attend training on disciplinary issues facilitated through the DPSA to enable compliance by departments with the applicable prescripts not later than 2012/2013 Financial Year.
- Each department must develop a database and profile the systematic issues that contribute towards the extension of precautionary suspensions within the 2011/2012 Financial Year.
- Precautionary suspension cases must be recorded in detail and reviews must be conducted with immediate effect, on a weekly basis preferably rather than on any other interval basis as practised by most departments that participated in the study.
- Due to the high cost implications of placing employees on precautionary suspensions, departments must with immediate effect, commence with processes to finalise all cases that have been outstanding for far longer than the prescribed 60 days.
- Even though in departments which have large numbers of employees and have as such decentralised management of discipline, the labour relations units must be utilised to assist in keeping track of all cases of misconduct so that there will be uniform and consistent manner of reporting on management of precautionary suspensions.
- There must be a database of capable presiding officers and investigating officers internally within departments and centrally through the DPSA and offices of the Premier commencing from the 2011/2012 Financial Year.
- There should be a requirement for departments to extend the 60 days period of precautionary suspension of SMS members (including HoDs) only after consultation with the Minister for Public Service and Administration (MPSA) with effect from the 2011/2012 Financial Year.
- Departments must consider transfers as opposed to precautionary suspension to avoid payment of salaries to employees who are not at work.

8. CONCLUSION

Through this report, the PSC has highlighted the need to improve the management of precautionary suspensions, and it is hoped that the report will help Departments to undertake prompt investigations and finalisation of cases. The longer the postponement of cases, the greater the financial losses and service delivery deficiencies incurred. Departments need to aim at ensuring strict adherence to timeframes and work towards minimising costs relating to employees who are on precautionary suspensions.
Chapter One

Introduction
1.1 BACKGROUND

In the period prior to 1994, the framework for the labour relations in South Africa was provided in the Labour Relations Act 28 of 1956, which had numerous subsequent amendments. The Labour Relations Act, 1956 was not prescriptive on matters relating to precautionary suspensions. Subsequently the Labour Relations Act of 1956 was replaced by the Labour Relations Act (LRA), 1995 and other labour legislation governing the Public Service, including the Public Service Act of 1994. The LRA introduced a Code of Good Practice: Dismissal, which provides guidelines on dealing with disciplinary cases. The spirit of the Code can be seen from clause 1(3) of the Code, which determines that “While employees should be protected from arbitrary action, employers are entitled to satisfactory conduct and work performance from their employees”. The Code further provides for employers to adopt disciplinary rules which establish the conduct that is required from their employees.

In line with the provisions of the LRA, the now repealed section 22(7) of the Public Service Act of 1994 provided that “an officer may, at any time before or after he or she has been charged under this section, be suspended from duty on such conditions as may be prescribed.” The regulations under this section provided that “an officer who has been suspended from duty in terms of section 22(7) of the Act shall not receive any emoluments during the period of his suspension: provided that the head of department may in his or her discretion direct that the emoluments be paid to the officer, in full or in part…” It should be noted that this provision in the regulations was repealed together with the corresponding section in the Public Service Act. In the place of the repealed section 22(7) of the Act, the Public Service negotiated and agreed on a Disciplinary Code and Procedures for the Public Service, on 29 January 1999. Item 7.2 of the Disciplinary Code and Procedures provide for the suspension of an employee as a precautionary measure.

The precautionary suspension of employees in the Public Service is certainly a necessary tool, especially where the allegations being investigated are of a serious nature. The precautionary suspension enables the employer to conduct an investigation without any fear of interference with the process or intimidation of potential witnesses who could be a fellow employee in the department. However, such precautionary suspension of employees must be with full compensation. This is because in terms of the Constitution of the Republic of South Africa, every employee has a right to fair labour practice which includes the right to be presumed innocent until proven guilty and the due process that takes into consideration the rules of natural justice, that is, audi alteram partem rule.

Thus, as opposed to the period prior to 1997 when a head of department (HoD) could use his or her discretion to direct whether or not the salary should be paid to a suspended employee, the Constitution now prevails. Prof Carole Cooper stated that in the period prior the 1994 “in adjudicating the individual rights disputes before it, the Industrial Court developed over time a jurisprudential standard of fairness that required that both the employer’s commercial interests and the legitimate workplace interests of the employees be taken into account. In essence the employer’s conduct in the realm of individual rights had to be based on a fair reason and executed in terms of a fair procedure”.

2. Republic of South Africa, Labour Relations Act 28 of 1956, which was repealed in terms of section 212 of Labour Relations 66 of 1995, read with Schedule 6 of the same LRA of 1995.
3. Ibid.
6. Republic of South Africa, Public Service Act, section 22 (7); repealed by the Public Service Laws Amendment Act 1997.
9. Republic of South Africa Constitution, section 23 (1) everyone has the right to fair labour practice.
10. Republic of South Africa, Public Service Act, section 22 (7) suspension without pay unless HoD directs otherwise.
11. Supra.
12. Prof Carole Cooper in her article titled Right to fair labour practice 2005 p 199 confirming the situation which prevailed before section 23 of the Constitution of Republic of South Africa became applicable.
During the era prior to 1994, Departments could also rely on the precedents from the court decisions for guidance on whether or not to suspend an employee without pay. For instance in the case of Jacobs en andere the court decided that ‘to suspend an employee cannot be objectively judged, and can only be set aside if it so grossly unreasonable as to justify the conclusion that the decision maker was mala fide’ or failed to properly apply his or her mind to all relevant facts. In such instances ‘the onus rested on an employee to prove on the balance of probabilities that the decision to suspend without pay was improperly taken and ought to be set aside’.

However, as indicated an employer is currently obliged to comply with one of the rights enshrined in the Bill of Rights. That is, the right to fair labour practice which is peremptory, and amongst others, entails that the employer must not withhold compensation of an employee whose alleged misconduct is under investigation or pending the finalisation of the disciplinary procedure. Otherwise any employer, who withholds the salary of an employee placed under precautionary suspension pending investigation of misconduct or finalisation of a disciplinary hearing, would be acting unconstitutionally and could be challenged by an employee so suspended in a court.

In line with its Constitutional mandate, the Public Service Commission (PSC) in 2000 conducted a survey on the management of precautionary suspensions in the Public Service. Following this survey a need for the development of guidelines on the management of precautionary suspensions in the Public Service was identified. The guidelines were aimed amongst others, at providing the departments with a framework to assist them in drafting their own internal policies on the management of precautionary suspensions.

Although the PSC drafted the guidelines on the management of precautionary suspensions during 2002, after which workshops were conducted countrywide, no further follow-up on the findings and the implementation of the recommendations of the PSC’s 2000 report on the survey has been made. Furthermore, the PSC’s survey on precautionary suspensions conducted in 2000 was designed to assess the application and effectiveness of the Public Service Coordinating Bargaining Council (PSCBC) Resolution 2, of 1999 which was applicable then, but was later amended by the PSCBC’s Resolution 1 of 2003. According to Resolution 2 of 1999 a disciplinary hearing was supposed to be held within a month from the date of suspension of an employee. Resolution 1 of 2003 on the other hand amended the clause and extended the period of suspension to 60 days.

In terms of the two Resolutions, the employer may suspend an employee on full pay or transfer the employee if the employee is alleged to have committed a serious offence, and the employer believes that the presence of an employee at the workplace might –

- jeopardize any investigation into the alleged misconduct, or
- endanger the well being or safety of any person or state property.

In the Public Service, a precautionary suspension under such circumstances is regarded as a protective measure (for other employees as well as the assets of the employer) and must be on full pay as it could otherwise be regarded as a judgment against an employee allegedly involved in the misconduct. Furthermore, in terms of Resolution 1 of 2003, should an employer decide to suspend or transfer an employee as a precautionary measure, a disciplinary hearing must be held within 60 days.

15. Republic of South Africa Constitution, section 196 established one Public Service Commission for the Republic.
18. PSCBC Resolution 2 of 1999 Clause 7.2 which is the same as in PSCBC Resolution 1 of 2003.
The feasibility of holding the disciplinary hearing within the 60 days period is dependent on the complexity of the case as well as the time required to obtain information from potential witnesses and identifying the necessary documents as well as the scrutiny thereof. The availability and attendance of the key role-players such as the presiding officer, the representatives of the two parties and their witnesses amongst others, also influence the practicality of conclusion of a disciplinary case within 60 days.

The Disciplinary Code and Procedures for Public Service Employees\textsuperscript{19} (the Code) and the Senior Management Service (SMS) Handbook\textsuperscript{20} were issued as guidelines on the management of disciplinary procedures in the Public Service. Additionally, the Code of Conduct for the Public Service, contained in the Public Service Regulations,\textsuperscript{21} provides prescriptive measures to bring about uniformity in the management of employees’ conduct and to provide common objective in the Public Service.

Given that these prescripts regulate the manner in which, amongst others, precautionary suspensions should be administered, ideally departments should supplement these with more specific prescriptive details in their own internal policies to ensure compliance, consistency in the approach on handling precautionary suspensions, as well as internal monitoring mechanism by the authorities.

1.2 MANDATE OF THE PUBLIC SERVICE COMMISSION

The PSC derives its mandate from sections 195 and 196 of the Constitution\textsuperscript{22} (1996) and the Public Service Commission Act\textsuperscript{23}, (1997). In terms of section 196(4)(b)(c)(d)(e) of the Constitution, (1996), the PSC has a mandate to give directions aimed at ensuring that personnel procedures comply with the values and principles set out in section 195, and recommend appropriate remedies to the Executive Authorities.

The PSC’s role and functions with regard to management of precautionary suspensions in the Public Service, as contained in the Constitution, (1996), are as follows:

- Section 196(4) (f)(iii) (iv) of the Constitution, (1996), the PSC monitors and investigates adherence to applicable procedures in the Public Service and advises national and provincial organs of state regarding personnel practices in the Public Service, including those relating to the transfer, discharge and other aspects of the careers of employees in the Public Service.

- Section 196(4) (a) of the Constitution, (1996) provides that the PSC’s powers and function are amongst others to propose measures to ensure effective and efficient performance within the Public Service.

Furthermore in terms of section 11(a) of the Public Service Commission Act, (1997) the PSC may make rules in respect of the investigations, monitoring and evaluation of those matters contained in section 196(4) of the Constitution, 1996. Thus, the PSC’s Guideline on the Management of Suspensions, 2002 was developed in line with these foregoing provisions outlined in the Constitution of the Republic of South Africa read with the Public Service Commission Act.

In terms of section 196 (4) (e) (5) and (6) of the Constitution, 1996, the PSC is obliged to report at least once a year to National Assembly and the provincial legislatures in respect of its activities and the performance of its functions, including any finding it may make and directions and advice it may give, and to provide an evaluation of the extent to which the values and principles set out in section 195 are complied with.

\textsuperscript{19} Republic of South Africa. PSCBC Resolution 1 of 2003.
\textsuperscript{20} Republic of South Africa. Department of Public Service and Administration (DPSA). Senior Management Service Handbook.
\textsuperscript{21} Republic of South Africa. DPSA. Public Service Regulations (PSC) [as published in Government Notice No. R.382 of 14 May 2010 with effect from 17 May 2010].
\textsuperscript{23} Republic of South Africa. The Public Service Commission Act, 1997.
1.3 OBJECTIVES OF THE STUDY

The objectives of the study are as follows:

This project is a follow-on study to the report which the PSC produced in 2000 and it is intended to review the management of precautionary suspensions in the Public Service and to specifically establish the following –

The circumstances and conditions under which employees were placed under precautionary suspensions in the sampled departments.

Establishing if the sampled departments were compliant or non-compliant with the prescribed 60 days period for precautionary suspensions in the Public Service.

Determining the cost implications to the employer of placing employees under the precautionary suspensions in the Public Service.

Finding out if the sampled departments, during the investigation of the case and or when the disciplinary procedure is underway, considered the transfer of employees as an alternative, to placing employees under precautionary suspension.

Verifying if the sampled departments had internal policies to sensitise employees and key role-players on the procedures relating to the disciplinary procedure and precautionary suspensions.

Ascertaining the role of labour relations component in the management of precautionary suspensions, and the extent to which the sampled departments' human resources components provide training and advisory support service in respect of the management of precautionary suspension.

1.4 METHODOLOGY

The methodology followed for this study included desktop research, literature review and interviews with line managers, labour relations practitioners and selected managers in the following Departments:

- National Departments of Home Affairs and Public Works;
- In KwaZulu-Natal Province - Department of Transport, Department of Education as well as Department of Public Works;
- In Mpumalanga Province - Department of Education and Department of Public Works, Roads and Transport; and
- In the Eastern Cape Province - Department of Education, Department of Transport and Department of Public Works.

It was envisaged that at least 200 interviews would be conducted, but only 88 employees were available for the interviews. The reasons for not reaching the target number are explained in the limitations. Nonetheless all departments provided the PSC with the required information.

During the 88 interviews, 88 questionnaires were completed and the information gathered in the questionnaires
was analysed and evaluated. In loco inspections were also conducted, where documents were requested from relevant officials in the sample of the national and provincial departments mentioned above to confirm information provided during interviews.

1.4.1 Desktop research and literature review

The following documents were reviewed:

- Public Service Commission’s report on “management of suspensions in the Public Service as from 1 July 1999 until 31 July 2000” published in 2001
- The Department of Public Service and Administration’s (DPSA) internal data on precautionary suspensions as provided by the departments for the Financial Year (FY) 2009/2010
- Persal reports on precautionary suspensions
- Local newspaper articles on precautionary suspension
- PSCBC Resolution 2 of 1999
- PSCBC Resolution 1 of 2003
- The applicable prescripts, reports and articles on the implementation of precautionary suspensions in the United Kingdom and Kenya

The principal sources utilised for the study were Resolution 1 of 2003, documentation on disciplinary procedures obtained from departments including the articles and previous reports on the subject in South Africa generally and specifically PSC reports, as well as the reports and articles on the application of precautionary suspensions in the United Kingdom and Kenya. The prescripts on the management of precautionary suspensions in the three countries were compared and any differences identified were highlighted. The South African newspaper articles and news from the general media on the subject demonstrated the level of interest and awareness on the financial effect precautionary suspension in the Public Service has on the country. The DPSA reports and Persal reports were also scrutinised and compared with details received from departments.

1.4.2 Data collection methods and instruments

A questionnaire was developed to solicit information from labour relations officials within the sampled departments, employees who had subordinates under their supervision as well as a few representatives from organised labour. The information obtained was used to draw comparative conclusions on the management of precautionary suspension. The questionnaires included questions relating to the role played by the Labour Relations office/component in handling precautionary suspensions and the procedural aspects thereof. The questionnaires further probed how well supervisors are familiar with their departmental processes specifically with regards to the number of cases of employees placed on precautionary suspensions within their departments and the potential resultant cost implication.

The questionnaire also requested biographical information of the employees who were placed on precautionary suspension. The information specifically obtained included the levels occupied by the employees placed on precautionary suspension, their gender and race groups as well as the nature of the misconduct linked to the precautionary suspension. Additionally, information was required on how long it took departments to finalise the disciplinary procedure and the types of sanctions meted out subsequent to the disciplinary hearings.

24. Although this agreement does not apply to the employer and employee relationship covered by a Disciplinary Code and Procedure concluded in other sectoral councils and approved by the PSCBC, or contained in legislation or regulations, all employees appointed at level 1 to 12 in terms of Public Service Act, 1994 (as amended) are subject to this Code.
1.4.3 Data compilation and analysis

The employees from the sampled departments were requested to furnish the information in terms of the questionnaire attached to this report as Annexure A. The findings were then compared to the data obtained from the DPSA and Persal. The data computation and the analysis was done using MS Excel and presented in tables, figures and graphs for visualisation of the findings, with accompanying narrative.

1.5 LIMITATIONS

It was not possible to interview more than 88 officials in the identified sampled departments due to the fact that at the time of the study some of the departments could not avail more officials. The PSC’s financial constraints also limited the time for the visits to one week per province per team member during which interviews could be conducted and data collected. The other contributing factors for the limited number of interviews were that in KwaZulu-Natal, the week in which appointments were confirmed coincided with the Provincial Public Service week and key officials were not available.

Furthermore, as a result of the national Public Service strike action of 2010 several interviews could not be conducted as some officials in the Departments indentified were not available even though confirmation of dates and time were secured beforehand. However, it is submitted that the information obtained from the sampled departments would present a reasonable observation of how precautionary suspensions are managed in the Public Service.

1.6 REPORT STRUCTURE

The report is presented in four chapters.

**Chapter 1** Provides the background on the evaluation of the management of precautionary suspensions in the Public Service.

**Chapter 2** Discusses the comparative analysis on management of precautionary suspensions.

**Chapter 3** Discusses the overall findings of the study.

**Chapter 4** Presents the recommendations and conclusion.
Chapter Two

Comparative Analysis on Management of Precautionary Suspensions
2.1 INTRODUCTION

This chapter provides a comparative analysis of the applicable legal frameworks in three countries namely, South Africa, United Kingdom and Kenya. The three countries are notably members of the Commonwealth and all three rely on legislation and codes as a foundation in the management of precautionary suspensions in the respective Public Services.

The following table illustrates the key differences amongst the three countries in the management of precautionary suspensions.

**Table 1: Applicable prescripts on the management of precautionary suspensions in three countries**

<table>
<thead>
<tr>
<th>No</th>
<th>South Africa</th>
<th>United Kingdom</th>
<th>Kenya</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The responsibility for discipline of employees lies with the immediate supervisor/manager in terms of the respective legislative framework e.g. Public Service Act/Disciplinary Code and Procedures.</td>
<td>The UK Civil Service Management Code (CSMC) states that disciplinary decisions must be taken by someone at least one level higher than the individual concerned.</td>
<td>The Kenyan Public Service Commission has delegated some of the disciplinary powers to the supervisors or managers of the employees.</td>
</tr>
<tr>
<td>2.</td>
<td>The Executive Authority or delegated authority has powers to suspend an employee on precaution.</td>
<td>Senior management may suspend an employee at any time if circumstances so warrant e.g. due to gross misconduct or institution of criminal proceedings.</td>
<td>An employee with the delegated authority has powers to suspend a subordinate on precaution.</td>
</tr>
</tbody>
</table>
| 3. | • An employee is suspended for a period not exceeding 60 days.  
• There is no timeline specified by the Disciplinary Code and Procedures to review precautionary suspension.  
• Alternative of transferring an employee instead of suspending as a precaution is a consideration. | • No specified period stated but must be as brief as possible.  
• Precautionary suspension must be kept under review.  
• There is no equivalent or similar provision | • No specified timelines or period provided for but depends on the complexity of the matter.  
• No timeline specified for review of the precautionary suspension period.  
• There is no equivalent or similar provision |
| 4. | Precautionary suspension is effected with full pay. The Constitution of the Republic of South Africa in section 23 (1) provides that everyone has the right to fair labour practices. As precautionary suspension without pay may be regarded as unconstitutional, withholding an employee’s remuneration could only be possible if section 36 (1) on limitation of Bill of Rights is applied through terms of law of general application. | According to CSMC read with the Code of Practice on the Disciplinary and Grievance Procedure, an individual under criminal investigation or disciplinary procedures may be suspended from duty if necessary to protect the public interest. Pay may not be withheld or reduced to basic pay during suspension unless the appropriate steps under the department’s or agency’s dispute resolution procedures have been completed. | Suspension without pay is imposed in cases where:  
• there is prima facie evidence relating to the misappropriation of public funds.  
• where a public officer has been charged and remanded in custody awaiting trial.  
• the public officer has been convicted of a criminal offence. The level of salary to be withheld may not exceed the public officer’s basic pay. |

26. United Kingdom Constitutional Reform and Governance Act, 2010; Civil Service (Management Functions) Act 1992; and the Civil Service Management Code.
During suspension, all benefits are paid out by the employer since precautionary suspension is with full pay.

Table 2: Outline on sources of the applicable legislative frameworks in the three Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Constitutional provisions</th>
<th>Acts of parliament</th>
<th>Codes and Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Other service departments’ enabling Acts</td>
<td>• ServiceDepartments’ Codes on Disciplinary Procedure</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• The SMS Handbook</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Code of Practice 1: Disciplinary and Grievance Procedure</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• The Disciplinary Manual of July, 2008</td>
</tr>
</tbody>
</table>

Considering the prescripts that are applicable in the three countries, there are more similarities than differences on the procedures followed in the management of precautionary suspensions in the respective Public Services.

### 2.2 PRECAUTIONARY SUSPENSIONS IN THE PUBLIC SERVICE - SOUTH AFRICA

As indicated in Chapter 1, the repealed section 22(7) of the Public Service Act of 1994 effectively entrusted the HoD with a discretion that was broad in scope on placing employees on precautionary suspension with or without ‘emoluments’. The only basis to challenge the suspension without pay was to argue that the head of department acted *mala fide* or failed to properly apply his or her mind to all the relevant facts in making his or her decision.

Even though prescripts allowed the HoD to use his or her discretion to place an employee on precautionary suspension without pay, these were challenged by employees. There are several cases which were decided before the current position. In these decisions it was indicated that precautionary suspension without pay had underestimated the prejudice an employee might suffer by being suspended without pay.\(^{28}\)

Currently in South Africa precautionary suspensions are with full pay. The underlying principle for this is found within the legal framework originating from section 23 of the Republic of South Africa Constitution and section 186(2) (b) of the LRA. This follows from the fact that the purpose of the suspension is not to punish the employee but to temporarily place him or her in a situation where he or she cannot interfere with the investigation or place at risk, danger or embarrass the employer until the proceedings are over. In that way, the employer would not be accused of unfair labour practices and/or his or her conduct be regarded as pre-judging the suspended employee or being unconstitutional.

In terms of the Disciplinary Code and Procedure for the Public Service, prompt investigations must be conducted and disciplinary hearings must be held within 60 days from the date of suspension. Furthermore, the Code of

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28. See Muller & others v Chairman of the Ministers Council House of Representatives & others, 1992 (2) SA 508 (C).
Conduct for the Public Service, as contained in the Public Service Regulations, provides prescriptive measures to bring about standardized compliance in the management of employees’ conduct and to give greater clarity regarding suspensions in the Public Service.

The courts of law have also interpreted the underpinning legal framework on the management of precautionary suspensions. In one of the recent cases, in Mogothle v Premier of the Northwest Province & another 29, the Labour Court found that the contractual principle of fair dealing between employer and employee applies to the employment relationship under the LRA. This requires the following:

- that the employer has a justifiable reason to believe that the employee has engaged in serious misconduct;
- that there is some objectively justifiable reason to deny the employee access to the workplace based on the integrity of any pending investigation into the alleged misconduct or some other relevant factor that would place the investigation or the interests of affected parties in jeopardy; and
- that the employee is given the opportunity to state a case before the employer makes any final decision to suspend the employee.

While the Mogothle case concerned a public service employment relationship, the case has probably set the standard for precautionary suspension in other sectors as well. Employers need to be sure, before suspending the employee, that there is an objectively fair reason to suspend the employee. Even if there is an allegation of serious misconduct which may eventually lead to dismissal on the part of the employee, the employer should not be too hasty in suspending the employee without considering the consequences for the employer if the employee is not suspended.

In another labour case of Police and Prisons Civil Rights Union (POPCRU) on behalf of (obo) Masemola & Others v Minister of Correctional Services 30, the Labour Court set aside a precautionary suspension where the employee was not given an opportunity to state his case before a decision was taken. The court took into account that the precautionary suspension impacts on the employee’s reputation, dignity, and integrity as well as job security. It was decided that the employer had violated the employee’s rights in not affording him an opportunity to be heard prior to the implementation of the suspension.

In the final analysis, the employer is obliged to afford an employee a reasonable opportunity to state his/her case against a suspension in compliance with audi alteram partem rule. This need not be a full-scale hearing and would depend on the circumstances of the employer, the allegations levelled against an employee and whether the employer’s disciplinary code gives any direction on the matter. Thus, an employee should be given an opportunity to present reasons as to why the suspension should not be made final when an employer has circumstances that require such an employer to provisionally suspend an employee.

Therefore, it is according to the South African legal framework and interpretation by the courts on precautionary suspensions, that an employer may only suspend an employee with full pay for a specific period but the latter may make representation on why a precautionary suspension should not be imposed.

According to the DPSA’s internal report on the statistics relating to this subject, in the Public Service an overall total of 369 employees were placed on precautionary suspension during the financial year 31 April 2009 and 31 March 2010. The report indicated that those departments which provided the DPSA with statistics had spent at least R45 721 875, 36 on salaries for the 369 suspended employees.

The Department of Correctional Services had the highest number of suspended employees (73) costing the taxpayers at least R7m. It was followed by the Department of Justice and Constitutional Development with 41 suspended officials at a cost of R6.4m. With regards to the provinces, 171 employees were placed on precautionary suspensions during the FY 2009/2010.

The Table below shows a breakdown of the amount paid to Public Service employees on precautionary suspension during the FY 2009/2010 according to the DPSA’s internal report.

### Table 3: Participating departments in the study

<table>
<thead>
<tr>
<th>National Department/ Provinces</th>
<th>No Of Employees Suspended</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>National</td>
<td>204</td>
<td>R26 843 149,80</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>3</td>
<td>R 1 045 319,95</td>
</tr>
<tr>
<td>Free State</td>
<td>37</td>
<td>R 3 500 727,99</td>
</tr>
<tr>
<td>Gauteng</td>
<td>27</td>
<td>R 2 789 631,66</td>
</tr>
<tr>
<td>KZN</td>
<td>4</td>
<td>R 2 825 044,56</td>
</tr>
<tr>
<td>Limpopo</td>
<td>6</td>
<td>R 952 580,00</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>30</td>
<td>R 2 802 284,65</td>
</tr>
<tr>
<td>North West</td>
<td>31</td>
<td>R 4 328 196,47</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>2</td>
<td>R 598 940,36</td>
</tr>
<tr>
<td>Western Cape</td>
<td>No report provided</td>
<td>No report provided</td>
</tr>
<tr>
<td>TOTAL FOR ALL PROVINCES</td>
<td>171</td>
<td>R18 375 483,09</td>
</tr>
<tr>
<td><strong>Overall Total</strong></td>
<td><strong>369</strong></td>
<td><strong>R45 721 875,36</strong></td>
</tr>
</tbody>
</table>

Although the State spent in total almost **R46 million** on employees who were placed on precautionary suspension during the period under review, it could not be established from the said internal report of the DPSA how long the precautionary suspension had been running for and the ranks occupied by these suspended employees.

It should also be noted that at the time of the compilation of the report, some of the National Departments had not furnished their statistics and reports and/or did not have their data verified with the DPSA. For instance in the DPSA’s internal report no information was reflected in respect of the National Department of Public Works and Home Affairs. Nevertheless, during the study the PSC was provided with information on some employees who were on precautionary suspension during the FY 2009/2010 as indicated in Chapter 3 of this report. Thus, the total number of employees on precautionary suspensions in the Public Service as well as the amount spent on them if reflected against the DPSA’s internal report could potentially be much higher considering that not all departments provided the necessary data to the DPSA.

An employer is guided by internal processes to suspend an employee who is alleged to have committed serious misconduct, prior to the disciplinary enquiry taking place. Such precautionary suspensions are intended to safeguard the assets of the employer as well as protection of other employees from potential intimidation.

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2.3 PRECAUTIONARY SUSPENSIONS IN THE UNITED KINGDOM (UK)

Part 1 of the Constitutional Reform and Governance Act 2010\(^{32}\) is one of the foundations for the legislative framework on precautionary suspensions in the United Kingdom. This Act amongst others presents provisions relating to the civil service of the State, and the powers of the Minister of Civil Service to publish the Codes of Conduct for civil service (excluding the diplomatic service). The UK Civil Service Management Code lacks the force of law as it was not passed by Parliament but was promulgated under an Order in Council\(^{33}\), which is not a legislative authority. In terms of the Civil Service Management Code, departments and agencies are responsible for their own dismissal, disciplinary and grievance arrangements. The Minister for Civil Service requires of departments and agencies to act within the framework of the Civil Service Management Code and also to ensure that staff are sensitised about the applicable procedure in dismissals, disciplinary and grievance processes.

In the UK, in terms of the Civil Service Management Code civil service employees may be suspended to protect the public interest if they are under criminal investigation or disciplinary procedures. According to the Code, the employee’s salary may not be withheld or reduced during suspension unless the appropriate steps under the department’s or agency’s dispute resolution procedures have been completed. However, the Code does not specify the duration that an employee may be placed on precautionary suspension but does state that the matter must be handled as swiftly as possible.

Given the fact that the Civil Service Management Code in the UK does not provide detailed information on the disciplinary procedure and specifically the precautionary suspension, it was regarded as useful to consider other disciplinary codes within the UK which have been developed for application within specific public organisation. The Disciplinary Procedure for the Down District Council (UK) was perused to determine the manner in which precautionary suspensions are handled internally. According to the Disciplinary Procedure of the Down District Council, “if the alleged offence is one of gross misconduct, the disciplinary officer may suspend the employee from work, on full pay normally for not more than 5 working days, while the Council investigates the alleged offence”\(^{34}\).

The Conduct and Disciplinary Policy for the Lothian and Borders Police Department (LBP) in Scotland\(^{35}\), applies to all Support Staff of the Lothian and Borders Police, and through the same an employee may be suspended if “the nature of the allegation(s) is serious and may constitute gross misconduct, or where an employee is subject to a criminal conviction in a court of law”. In terms of the LBP Department in Scotland, employees placed on precautionary suspension due to the investigation of a gross misconduct receive full pay whilst their cases are being investigated. Such suspension of employees from work should be for a maximum of 20 working days (4 weeks), depending on the complexity of the case in question and the periods of suspension should not be prolonged unnecessarily. It is stated that normally, a disciplinary hearing should be held no later than 20 working days (4 weeks) from the date of suspension.

The Conduct and Disciplinary Policy for the LBP is unambiguous and provides that an employee who is suspended under these ‘circumstances must be advised of the reason(s) for the suspension, that they may not enter the workplace nor contact any member of staff without prior authorisation, and that they will be contacted, in writing, in order to confirm the arrangements for a disciplinary hearing where appropriate’.

In respect of the Conduct and Disciplinary Policy for the LBP, ‘the decision to suspend an employee may be taken by Divisional Commanders, the Personnel Services Manager, or Departmental Heads. A personnel representative should also be present when an employee is advised of the decision to suspend. This should be confirmed immediately in writing to the employee’.

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32. United Kingdom Constitutional Reform and Governance Act 2010.
35. Lothian and Borders Police Department (LBP) in Scotland ([www.lbp.police.uk](http://www.lbp.police.uk)).
As compared to the South African situation, it is apparent that there is a legislative framework on the precautionary suspensions in the UK, but the details on the practical application are the responsibility of departments and agencies. This results in, for instance, the number of days for which an employee may be suspended on precaution differing from one agency to another. For instance in the case of Four Seasons Healthcare Limited v Maugham, the number of days of suspension was regulated by the employer's Disciplinary Procedure specifically clause 3.33. This Disciplinary Procedure provided that an employee could be suspended on precaution for seven days without remuneration pending finalisation of disciplinary procedures. In this case of Maugham, the former employee was suspended for the prescribed seven days but the period was extended due to the conditions imposed by the criminal court processes which continued to apply following the misconduct at the workplace. Maugham, the employee, then lodged a claim to be paid the suspended remuneration in a tribunal. The decision of the tribunal was in his favour. On appeal by the employer to the Employment Appeal Tribunal (EAT), the EAT decided to confirm that the employee was entitled to his suspended remuneration except for the seven days prescribed in the employer's Disciplinary Procedure. The rationale was that the seven days suspension without pay was prescribed but withholding pay for a period of suspension exceeding the seven days was not justified irrespective of the seriousness of the misconduct in question. Thus, in this example there was an agreement for suspension to be without pay but for a specific period only and nothing more.

In South Africa the Public Service framework on disciplinary procedures provides details on the system itself and the processes which should be followed step by step may be outlined in the internal departmental policy.

In addition the South African disciplinary procedure for employees on level 12 and below is a negotiated procedure and thus any amendments to the procedure would have to be subject to the negotiation process in the PSCBC or similar relevant Chamber. In respect of the UK there was no evidence that the Civil Service Management Code was negotiated. Instead it was developed by the Minister for the Civil Service who derives the powers from the Constitutional Reform and Governance Act 2010.

### 2.4 PRECAUTIONARY SUSPENSIONS IN KENYA

The Constitution of Kenya provides that the Public Service Commission of Kenya (PSC of Kenya) is charged with the Constitutional responsibility of exercising disciplinary control in the Public Service. It is further stated in section 13 of the Republic of Kenya Constitution that the Public Service Commission of Kenya is empowered to make regulations including those that govern disciplinary procedures and powers to issue formats and templates in the disciplinary processes. As a result of these powers to make regulations, the PSC of Kenya found it necessary to develop a manual which serves as a guide to assist the Ministers, Departments and Local Authorities in handling disciplinary cases. It is imperative that every Public Servant adheres to the rules of conduct and ethics as laid out in the law. In exercising its powers of disciplinary control and when dealing with cases of misconduct against employees, the PSC of Kenya gives regard to the fundamental principles of natural justice and ensures that each and every Civil Service employee's career and livelihood are not unnecessarily jeopardised. Each party is afforded an opportunity to be heard in disciplinary processes. As such employees can defend themselves against charges of acts of misconduct levelled against them.

Kenya holds the same principles as South Africa’s Disciplinary Code and Procedure. The suspension of employees is not viewed as a punishment against the officer but rather as a precaution to allow the investigations to be conducted without any likely interference. The Public Service Commission of Kenya’s Disciplinary Manual of July, 2008 and the Service Commissions Act are used as guidelines in managing precautionary suspensions.

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According to section 5(b) and 6 of the Disciplinary Manual of July, 2008, the PSC of Kenya has delegated some disciplinary powers to the Supervisors to manage discipline. Where the powers have been delegated, the cases are considered and finalised by the delegated authority. If an employee who has been subjected to a disciplinary procedure is dissatisfied with a decision made by the delegated authority, such an employee has a right to appeal to the Commission within the prescribed period. In Kenya the Supervisor/Manager carries out a preliminary investigation to determine the circumstances surrounding the act of misconduct.

In Kenya a suspension without pay is imposed in cases where a civil servant was charged and remanded in custody awaiting trial, or the civil servant had been convicted of a criminal offence. This situation is similar to the one in the UK where the Disciplinary Procedure prescribes the withholding of remuneration of a suspended employee even though the offence concerned may not necessarily relate to the internal disciplinary procedure per se.

If the suspension has lapsed because the civil servant was found not guilty, according to the Kenyan framework on suspensions, the civil servant will receive all monies that may have been withheld during the period of suspension. In the event the civil servant is found to be blameworthy but is allowed to continue in employment, the Accounting Officer would have the discretion to make up the wages paid during the period of suspension to the level of earnings the civil servant would have received (excluding overtime) had she or he not been suspended.

2.5 CONCLUSION

This Chapter outlined the origins of the different legislative systems of managing precautionary suspension in the three countries as well as the outline of the applicable procedures. Although it is apparent that in all three countries the foundation of the discipline management is legislation, it is only in South Africa where the actual procedure is a result of negotiations between the employer and labour in respect of the procedure for employees below senior management service level.

Furthermore, even though there are similarities in respect of placing employees on precautionary suspension with full remuneration for acts of gross misconduct, there is dissimilarity in respect of the period within which the disciplinary procedure is expected to be concluded from the date when the precautionary suspension came into effect. Additionally, in South Africa, supervisors are required to hold disciplinary hearings within a period of 60 days from the date of suspension, whereas in the UK the period depends on what the respective agency or department has laid out in their internal Codes. What is noticeable in the UK is that in some agencies the period of suspension is kept as short as possible and that the suspension is reviewed not later than 10 working days from the date that the precautionary suspension was imposed and at 10 working days intervals thereafter. This is good practice that could be emulated in other countries like South Africa.

41. section 5(b) and 6 of the Public Service Commission of Kenya Disciplinary Manual of July, 2008.
Chapter Three

Findings and Analysis
3.1 INTRODUCTION

This chapter provides an outline of the analysed data furnished by the sampled departments which participated in the study. The previous survey report on the Management of Precautionary Suspensions in the Public Service as from 1 July 1999 until 31 July 2000 focused on information provided by 34 national departments and 9 provincial administrations. Of the entire number of the sampled departments then, 81.4% complied with all the requirements for managing precautionary suspensions.

It was on this premise that the current study focused on a smaller number of departments to obtain more details on the compliance rate and a better understanding of how departments manage precautionary suspensions. In this study 100% cooperation was attained from all departments even though the Department of Transport in the Eastern Cape Province provided a nil report on number of employees placed under the precautionary suspension for the two periods under review.

This Report covers two successive financial years, and it was done to facilitate a comparison to determine amongst others, whether departments strive to reduce the financial loss they suffered in a previous year compared to the subsequent financial year due to the poor management of the precautionary suspension of employees. In having the study covering two successive periods, the departments were also afforded an opportunity to demonstrate the level of improvements gained in this crucial area of labour relations.

3.2 RESPONSES RECEIVED FROM THE DEPARTMENTS

The study was conducted in two national departments and eight provincial departments from three provinces. All the sampled departments responded and the total number of employees interviewed was 88, and questionnaires were completed with each one during the interviews. Table 4 shows the departments that participated in the study:

<table>
<thead>
<tr>
<th>Province</th>
<th>Department</th>
<th>Number Of Interviewees</th>
</tr>
</thead>
<tbody>
<tr>
<td>KwaZulu-Natal</td>
<td>Transport</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Public Works</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Education</td>
<td>12</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>Transport</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Public Works</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Education</td>
<td>13</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>Public Works, Roads and Transport</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Education</td>
<td>14</td>
</tr>
<tr>
<td>National Departments</td>
<td>Public Works</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Home Affairs</td>
<td>1</td>
</tr>
</tbody>
</table>
3.3 THE NUMBER OF EMPLOYEES PLACED ON PRECAUTIONARY SUSPENSION DURING THE PERIOD 1 APRIL 2008 – 31 MARCH 2009

The sampled departments provided the manual records of employees who were placed on precautionary suspension during the period under review. Figure 3.1 below shows the number of employees at salary levels 1 to 8 placed on precautionary suspension for the FY 2008/2009.

**Figure 3.1: Employees on salary levels 1-8 placed on precautionary suspension for FY April 2008 -March 2009**

![Employee suspension chart]

According to the information provided by the sampled departments, a total of 78 employees on salary level 1-8 were placed on precautionary suspension during the FY 2008/2009. The Department of Home Affairs had the highest number of employees placed on precautionary suspension during the period under review, followed by the Department of Transport in KwaZulu-Natal Province. It is noted that the Department of Transport in the Eastern Cape Province as well as Public Works in KwaZulu-Natal Province did not have any employees on precautionary suspension during the financial year 2008/2009. The national Department of Public Works had only one employee placed on precautionary suspension during this period.

It is noted that except for the KwaZulu-Natal Provincial Department of Transport, generally there was a lower number of employees placed under precautionary suspension as compared to the national Department of Home Affairs. Employees at level 1 – 8 are usually located at the coal face of service delivery in the Public Service. The high number of employees placed on precautionary suspension in the Home Affairs Department may be a signal that during the period under review, this department was sincerely attending to reported acts of misconduct especially where the allegations were serious enough for the involved employees to be removed temporarily from their workstation in order to avoid unnecessary and potential interference in the investigations.

The sampled departments reported that a total of 19 employees who were on middle management, that is at salary levels 9 - 12, were placed on precautionary suspension during FY 2008/2009. Figure 3.2 on the following page provides a breakdown of this total per department.
The total number of employees on middle management placed on precautionary suspension during this period was much lower at 19 as compared to the 78 of the ones at level 1 – 8. The highest number of employees placed on precautionary suspensions was the national Department of Public Works, followed by Home Affairs and Education in KwaZulu-Natal province.

At the level of senior management service (SMS), a total of six (6) employees were on precautionary suspension during the period under review in the sampled departments.

The highest number of employees at SMS level placed under precautionary suspensions was in the Department of Education in Mpumalanga. Except for KwaZulu-Natal Department of Transport and Department of Home Affairs, there were no other employees at SMS level who were placed on precautionary suspension in all sampled departments.

Overall there were 103 employees placed on precautionary suspension in the sampled departments during the FY 2008/2009. Of these employees 76% were at salary levels 1 – 8, whereas 18 % were in middle management and only 6% were members of SMS. It is trusted that this does not suggest that Public Service supervisors find it more difficult to manage, without any reservation or fear the allegations of gross or serious acts of misconduct which relate to the employees on higher salary levels than the ones at administrative level.
3.4 THE NUMBER OF EMPLOYEES PLACED ON PRECAUTIONARY SUSPENSION FOR 1 APRIL 2009 – 31 MARCH 2010

The following is an analysis of employees who were placed on precautionary suspension in the sampled departments during the FY 2009/2010.

Figure 3.4 below, shows that 150 employees on salary level 1-8 were suspended on precaution during FY 2009/2010. Again the highest number of employees placed on precautionary suspensions was in the Department of Home Affairs whereas there was none in Department of Public Works in KwaZulu-Natal.

Figure 3.4: Employees on salary levels 1-8 placed on precautionary suspension for FY April 2009 - March 2010

In Figure 3.5 below a total of 27 employees at salary levels 9 to 12, were placed on precautionary suspension, and the highest number of which was in the Department of Public Works.

Figure 3.5: Employees on salary levels 9-12 placed on precautionary suspension for FY April 2009 - March 2010

The highest number of employees on salary level 9 – 12 placed on precautionary suspension was in the national Department of Public Works with 7, followed by KwaZulu-Natal's Provincial Departments of Education and Transport with 4 each. The national Department of Home Affairs as well as Eastern Cape and Mpumalanga's Departments of Education had 3 employees each placed on precautionary suspension. In the Eastern Cape Province the Departments of Transport and Public Works reported that only one employee was placed on
precautionary suspension during the FY 2009/2010.

Once more, the total number of employees at 27, who were placed on precautionary suspension falling within this salary levels is comparable with the total number for the preceding FY. It is disquieting that some employees are compelled during such suspensions to carry a bigger load of tasks to meet service delivery expectations for the respective departments, even though the 27 employees on precautionary suspension at salary level 9 - 12 is not comparable to 150 on salary levels 1 – 8 discussed above.

According to figure 3.6 below, a total of 13 employees at SMS level were placed on precautionary suspension during the 2009/2010. The Eastern Cape Department of Education had the highest number of employees placed under precautionary suspension at six (6) followed by the national Department of Public Works. It is commendable that five (5) of the sampled departments did not have any member of SMS placed on precautionary suspension for the reporting period.

**Figure 3.6: Employees on salary levels 13-16 placed on precautionary suspension for FY April 2009 - March 2010**

Again it is disconcerting that potentially 13 employees on SMS level were on precautionary suspension for a period of three months during which their responsibility was executed by employees at possibly lower levels. A member on SMS salary level earns at least an all-inclusive salary package of R692 616 per annum.

In the departments where two or less employees at SMS level were placed on precautionary suspension it could be an indication that there is higher level of honesty within members of SMS level or disciplinary action is taken against such employees without resorting to placing the employees on precautionary suspension.

### 3.5 RACE AND GENDER PROFILE OF EMPLOYEES ON PRECAUTIONARY SUSPENSIONS

The following Table shows the profile of employees across the entire Public Service as recorded by the DPSA, during the periods under review which does not differ with the South African national populations.
Considering the data stipulated above, and the national demographics of South African population, it is evident that the total number of Public Service employees is constituted largely by Africans followed by Whites, then Coloured and Indians in that order. Female employees in the Public Service constituted a larger number than male employees throughout the two periods under review. Data reflecting on sampled departments’ gender and racial profiles is provided in Annexure 2.

The manual records of the sampled departments were checked for details on the race and gender profile of employees placed on precautionary suspension. African male and female employees constituted the highest number of employees placed on precautionary suspensions as compared to other race groups as shown in Figure 3.7 below. This clearly is a reflection of the fact that in the Public Service, employees classified as African are in the majority as shown in Table 5 above.

### 3.6 THE REASONS FOR PRECAUTIONARY SUSPENSION

The departments surveyed indicated that the reasons for placing an employee on a precautionary suspension depend on the type of misconduct committed and the charges that are preferred against an employee as a result of the misconduct. The charges laid against employees on precautionary suspension in the sampled departments...
were indicated as follows in Table 6 below and are ranked from the most common to the least preferred –

**Table 6: The misconduct charges laid against employees placed under precautionary suspensions**

<table>
<thead>
<tr>
<th>Misconduct Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>THEFT</td>
</tr>
<tr>
<td>FINANCIAL MISCONDUCT</td>
</tr>
<tr>
<td>INSubORDINATION</td>
</tr>
<tr>
<td>FRAUD</td>
</tr>
<tr>
<td>GROSS NEGLIGENCE RESULTING IN LOSS OF STATE MONIES</td>
</tr>
<tr>
<td>FAILURE TO BANK STATE MONIES</td>
</tr>
<tr>
<td>UNAUTHORISED EXPENDITURE</td>
</tr>
<tr>
<td>MISUSE OF STATE PROPERTY</td>
</tr>
<tr>
<td>CORRUPTION</td>
</tr>
<tr>
<td>VIOLATION OF TENDER PROCESS</td>
</tr>
<tr>
<td>SEXUAL ASSAULT/SEXUAL HARASSMENT</td>
</tr>
<tr>
<td>KEEPING DANGEROUS WEAPONS (FIREARMS)</td>
</tr>
<tr>
<td>DRUNKEN DRIVING</td>
</tr>
</tbody>
</table>

It is apparent that except for the charges which relate to the improper conduct of employees in the workplace such as sexual harassment, drunken driving, insubordination, the majority of these misconduct charges involved allegations of failure to handle state funds or property in accordance with the prescribed processes. In respect of all these misconduct cases, unless the employer places an employee suspected of being involved on precautionary suspension, fellow employees may be badly affected by the continued presence of the former in the workplace, and or investigations may be hampered. For instance, the continued presence of an employee suspected of sexual harassment may be regarded as further traumatising to the one who has lodged the complaint and intimidating to potential witnesses.

Furthermore, depending on the nature of the insubordination, its severity and the length of period of refusal to execute lawful order, and the level of the insubordinate employee, departments may suffer in respect of service delivery when the employee continues to be around fellow employees who are compliant. As such, there is a possibility that collection of evidence around these charges may be compromised and also potential witnesses could be interfered with or intimidated, unless an employee who was suspected of being involved in such misconduct cases was placed on precautionary suspension.

Thus, it is the view that placing employees on precautionary suspension whilst conducting investigation in all the cases was appropriate and not heavy handed in the circumstances. Apart from the nature of the misconduct being a justification for the precautionary suspension, the period of suspension should be proportionate with the investigation processes and should not be too drawn out to be indistinguishable to a retaliatory action.

### 3.7 REASONS FOR THE EXTENSION OF SUSPENSIONS

Resolution 1 of 2003 determines that a disciplinary hearing should be held within 60 days after an employee has been suspended or transferred. Any further postponement, once the disciplinary procedure has commenced, is dependent upon the Chairperson’s discretion.

As indicated in **Figure 3.8** on the next page, the sampled departments indicated that the average time that it takes for the disciplinary hearing to be concluded from the date when employees are placed on precautionary
suspension to final decisions of the presiding officer ranges from two months to ten months. The KwaZulu-Natal Department of Transport had the longest period of an employee placed on precautionary suspension, which was for 10 months. The following reasons were provided as to why precautionary suspensions were extended:

- Unavailability of Representatives of the employees charged.
- Witnesses not being available.
- Request for additional information unavailable at the date of disciplinary hearing.
- Interpreter not available.
- Employee being booked off sick.
- A criminal case was opened and has to run concurrently with the disciplinary procedure.
- The recusal of the presiding officer.

All the reasons mentioned above, for the extension of the precautionary suspensions pending the finalisation of the disciplinary procedure do not relate to the investigation per se but all describe what transpires during the disciplinary hearings. It is evident and disconcerting that the human element was used more as an excuse which delayed the conclusion of the disciplinary hearings than the investigation of the allegations before the hearing was held.

Under the circumstances, once the allegations have been investigated and charges are formulated, it is crucial for proper planning to be done on time. For instance, it is important to ensure that there is synchronising of diaries of all involved parties who may be required during the hearing to be done long before the commencement of disciplinary hearing. The length of the hearing should also be prearranged taking into consideration the complexity of the misconduct as well as the number of witnesses identified. In that way unnecessary delays and potential loss of funds may be curbed.

3.8 AVERAGE NUMBER OF DAYS ON PRECAUTIONARY SUSPENSION

The average time lapse before disciplinary hearings for employees placed on precautionary suspensions are held varies from one department to the other as it is shown in Figure 3.8 below.

**Figure 3.8: Average time lapse when departments hold hearings for employees on precautionary suspension**
As Figure 3.8 on the previous page shows, the average time lapse ranged from 2 to just over 10 months. Thus, the stipulated 60 days time frame remains a challenge. Departments cited various reasons for the lengthy suspensions. The Department of Education in KwaZulu-Natal indicated that the dynamics of reason and allegation for the suspension impact directly on the length of the precautionary suspension. Certain cases are dependent on the rulings of the court. For example murder of a colleague is a criminal case which runs concurrently with the disciplinary hearing. The Department of Public Works, Roads and Transport (Mpumalanga) cited reasons such as the unavailability of the employee on the day of the hearing due to illness, or the unavailability of the presiding officer.

Table 7 below depicts the average time lapse by when national departments held the disciplinary hearings for employees on precautionary suspensions:

<table>
<thead>
<tr>
<th>Department</th>
<th>Average Time Lapse (Months)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home Affairs</td>
<td>3</td>
</tr>
<tr>
<td>Public Works</td>
<td>3</td>
</tr>
</tbody>
</table>

The national Department of Public Works cited the unavailability of records and witnesses on the day of the hearing as reasons why the period of precautionary suspension is extended. It is of concern that despite the prescribed period within which the disciplinary hearings should be held after employees were placed on precautionary suspensions, the periods are extended contributing to financial losses as employees are paid for staying at home.

3.9 TOTAL REMUNERATION PAID TO EMPLOYEES WHO WERE SUSPENDED ON PRECAUTION IN THE SAMPLE DEPARTMENTS

In accordance with Resolution 1 of 2003, an employee placed on precautionary suspension receives remuneration. The sampled departments indicated that for the financial years 2008/2009 and 2009/2010, a total amount of R21 004 160 was paid to employees on precautionary suspensions pending finalisation of disciplinary cases against them. The breakdown of the total amount is reflected in Table 8 below.

Table 8: Breakdown of total remuneration paid to employees who were suspended

<table>
<thead>
<tr>
<th>Province</th>
<th>Department</th>
<th>2008/09</th>
<th>2009/10</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>KwaZulu-Natal</td>
<td>Transport</td>
<td>R 1 027 908</td>
<td>R 1 092 778</td>
<td>R 2 120 686</td>
</tr>
<tr>
<td></td>
<td>Public Works</td>
<td>Nil</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Education</td>
<td>R 693 078</td>
<td>R 1 77 032</td>
<td>R 870 110</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>Transport</td>
<td>R 286 827</td>
<td>R 502 107</td>
<td>R 788 934</td>
</tr>
<tr>
<td></td>
<td>Public Works</td>
<td>R 277 493</td>
<td>R 966 952</td>
<td>R 1 244 445</td>
</tr>
<tr>
<td></td>
<td>Education</td>
<td>R 669 830</td>
<td>R 798 805</td>
<td>R 1 468 635</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>Public Works, Roads and Transport</td>
<td>R 350 341</td>
<td>R 624 708</td>
<td>R 975 049</td>
</tr>
<tr>
<td></td>
<td>Education</td>
<td>R 274 770</td>
<td>R 5 298 504</td>
<td>R 5 573 274</td>
</tr>
<tr>
<td>National Departments</td>
<td>Public Works</td>
<td>R 674 593</td>
<td>R 701 348</td>
<td>R 2 375 941</td>
</tr>
<tr>
<td></td>
<td>Home Affairs</td>
<td>R 147 544</td>
<td>R 5 439 542</td>
<td>R 5 878 086</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>R 5 402 384</td>
<td>R 15 601 776</td>
<td>R 21 004 160</td>
</tr>
</tbody>
</table>
The Department of Public Works (Eastern Cape) indicated that the disciplinary procedures in five of the eight precautionary suspension cases for the FY 2009/2010 had not been finalised at the end of the period under review. However, it should be noted that failure by departments to conduct prompt investigations and hold disciplinary hearings within 60 days results in departments spending millions of rands on employees who are not contributing to any service delivery in the Public Service. This figure of over R21 million is very high given the fact that only 10 departments were surveyed. It could, therefore, mean that the figure represents a fraction of the actual amount that all the departments spent on employees who were placed on precautionary suspensions during the period under review. Moreover, the DPSA’s internal report reflected a total of over R45 million paid to employees on precautionary suspension during the same period, and it did not even include the Department of Home Affairs which according to the PSC’s findings has the highest number of employees placed on precautionary suspension.

3.10 TRANSFERS AS AN ALTERNATIVE TO PRECAUTIONARY SUSPENSION

3.10.1 Provincial departments

According to Resolution 1 of 2003, the transfer of an employee may be considered as an alternative to precautionary suspension. Interestingly enough, as shown below, most of the officials interviewed at the departments do not support transfer as an alternative.

**Figure 3.9: Transfers as an alternative to precautionary suspension (Provincial Departments)**

<table>
<thead>
<tr>
<th>Never considered transfer as an alternative to precautionary suspension</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Department of Education (KZN; Eastern Cape &amp; Mpumalanga)</td>
</tr>
<tr>
<td>• Department of Public Works (Eastern Cape)</td>
</tr>
<tr>
<td>• Department of Public Works, Roads and Transport (Mpumalanga) &amp; Transport (Eastern Cape)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Used transfer as alternative to precautionary suspension</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Department of Transport (KZN)</td>
</tr>
</tbody>
</table>

All the provincial departments except the KwaZulu-Natal Department of Transport indicated that transfer as an alternative is never considered. Three of the Provincial Departments of Education indicated that this was due to the fact that most forms of misconduct involved children and transfer to another school was not an option. Moreover, the transfer of an educator into an administration position could be regarded as a promotion and could thus not be a consideration.

The KwaZulu-Natal Department of Transport KZN which was the only one that transferred employees as an alternative to precautionary suspension indicated that consideration is given to the potential financial loss which could be incurred by the employer in having employees being paid but not performing their duties. An example of transfer as an alternative to precautionary suspension would be a Provincial Inspector who is not assigned operational duties but performs administrative work during the period of precautionary suspension.

3.10.2 National departments

The Department of Home Affairs indicated that it considers transfers as an alternative to precautionary suspension especially in cases of employees working abroad in foreign missions. In this instance, such employees are brought back to South Africa and placed at different workstations. The Department stated that it regards the preservation of the image of the Department and South Africa as a determining factor.
The Department of Public Works also indicated that it considers transfers as an alternative to precautionary suspensions. The profile of the employee is checked before this is done. It was stated that problems arise when the supervisor of the employee allegedly does not want the employee back at the work station. However, the final decision to place an individual at a specific work station rests with the Minister. Nevertheless, once the individual is found innocent, she/he is sent back to her/his original workstation.

### 3.11 REVIEW OF PRECAUTIONARY SUSPENSIONS

<table>
<thead>
<tr>
<th>Province</th>
<th>Department</th>
<th>Frequency Of Review</th>
</tr>
</thead>
<tbody>
<tr>
<td>KwaZulu-Natal</td>
<td>Transport</td>
<td>Every 2 months</td>
</tr>
<tr>
<td></td>
<td>Public Works</td>
<td>No cases in both financial years</td>
</tr>
<tr>
<td></td>
<td>Education</td>
<td>Quarterly</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>Transport</td>
<td>Every 2 months</td>
</tr>
<tr>
<td></td>
<td>Public Works</td>
<td>weekly</td>
</tr>
<tr>
<td></td>
<td>Education</td>
<td>Every 2 months</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>Public Works, Roads and Transport</td>
<td>monthly</td>
</tr>
<tr>
<td></td>
<td>Education</td>
<td>monthly</td>
</tr>
</tbody>
</table>

In respect of the review of precautionary suspensions of employees in the sampled departments, the PSC was informed without any written support as follows:

- The KwaZulu-Natal Department of Education indicated that the precautionary suspensions of employees are reviewed quarterly. The control measures that are said to be utilized to monitor the timelines of employees on precautionary suspension are the manual registers. The department was said to be in the process of developing an electronic case management system.

- The KwaZulu-Natal Department of Transport indicated that their cases are reviewed on a two monthly basis. The tools used to control the timelines include the submission of statistical information on a monthly basis by various offices within the department to the Labour Relations Directorate. The effectiveness of these control measures needs careful consideration given that as shown earlier, this is one of the provincial departments whose suspensions tend to take the longest.

- As indicated above, the Department of Public Works did not have any reported cases.

- It was found that the Mpumalanga Department of Public Works, Roads and Transport review precautionary suspensions of employees on a monthly basis. Discussions and follow up with the investigating officer are continuously carried out.

- The Mpumalanga Department of Education reviews precautionary suspension cases on a monthly basis. Regular follow up and updates are held with the investigating officer to fast track the process.

- The Eastern Cape Department of Education indicated that the precautionary suspension of employees is reviewed in their bi-monthly meetings but most of the time it depends on the progress of the inquiry. They rely on their presiding officers to monitor the cases allocated to them as well as the statistical report of cases.
• The Eastern Cape Department of Transport also reviews precautionary suspension cases on a bi-monthly basis. The controlling tools they use to monitor the precautionary suspension timelines is the statistical report that is completed during bi-monthly meetings.

• In the Eastern Cape Department of Public Works the reviews of suspensions is done on a weekly basis during the Directorate meetings. The Department finds it so easy because the Directorate is the one that handles the department’s disciplinary cases. The prosecutor/the chairperson monitor their cases. This was the only department that was unique from the survey that was conducted on the way they deal with precautionary suspension cases because they have Labour Law Specialists who deal with and control the disciplinary cases.

• The National Department of Public Works reviews their precautionary suspension cases on a monthly basis. They indicated that a monthly review ensures that the timelines of employees on precautionary suspension are monitored properly.

It is encouraging to note that all departments in the sample study reviewed the precautionary suspension. However, the reviews do not seem to assist in ensuring that cases are concluded expeditiously as not all departments do it often enough. The KwaZulu-Natal Department of Transport reviews cases only after every two months, and it is not surprising that it had the longest period of suspension. However, the KwaZulu-Natal Department of Education had the longest wait between reviews of cases in that it was done after every three months.

3.12 FINDINGS OF THE DISCIPLINARY HEARINGS FOR THE SUSPENDED EMPLOYEES AND THE RELEVANT SANCTIONS WHERE APPROPRIATE

The table below shows the details on the outcome of the disciplinary procedure on the total of 255 employees in the sampled departments who were placed under precautionary suspensions during the periods under review. As it was indicated that all these employees subsequently underwent disciplinary processes, the outcomes and or sanctions imposed on these employees where appropriate, are accordingly reflected in the Table that follows:

Table 10: The totals of cases handled per department, at all levels as well as the outcomes and/or sanctions imposed for the two periods

<table>
<thead>
<tr>
<th>Outcome/ Sanction</th>
<th>Department</th>
<th>Salary levels</th>
<th>2008/2009</th>
<th>2009/2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dismissal</td>
<td>Transport (KZN)</td>
<td>1-8</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Education (KZN)</td>
<td>1-8</td>
<td>6</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Education (KZN)</td>
<td>9-12</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Public Works, Roads and Transport (Mpumalanga)</td>
<td>1-8</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Education (Mpumalanga)</td>
<td>1-8</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Public Works (Eastern Cape)</td>
<td>1-8</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Education (Eastern Cape)</td>
<td>1-8</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Education (Eastern Cape)</td>
<td>9-12</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>National Public Works</td>
<td>1-8</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>National Public Works</td>
<td>9-12</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Outcome/ Sanction</td>
<td>Department</td>
<td>Salary levels</td>
<td>2008/2009</td>
<td>2009/2010</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-------------------------------------------------</td>
<td>---------------</td>
<td>------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Final written warning</td>
<td>Public Works, Roads and Transport (Mpumalanga)</td>
<td>1-8</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>National Public Works</td>
<td>9-12</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>National Public Works</td>
<td>13-16</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>3 months suspension without pay</td>
<td>National Public Works</td>
<td>1-8</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>National Public Works</td>
<td>9-12</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>*Final written warning plus suspended pay</td>
<td>Transport (KZN)</td>
<td>1-8</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Fine imposed</td>
<td>Education (Eastern Cape)</td>
<td>1-8</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Education (Eastern Cape)</td>
<td>9-12</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Demotion</td>
<td>Education (KZN)</td>
<td>9-12</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Public Works, Roads and Transport (Mpumalanga)</td>
<td>9-12</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Education (Mpumalanga)</td>
<td>9-12</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Education (Eastern Cape)</td>
<td>9-12</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Appeal against sanction</td>
<td>Education (KZN)</td>
<td>1-8</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>National Public Works</td>
<td>1-8 ***</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>National Public Works</td>
<td>9-12</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Case pending</td>
<td>Education (KZN)</td>
<td>9-12</td>
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<td>1-8</td>
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<td></td>
<td>Public Works, Roads and Transport (Mpumalanga)</td>
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<tr>
<td></td>
<td>Education (Mpumalanga)</td>
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<td>1</td>
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<td></td>
<td>Education (Eastern Cape)</td>
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<td></td>
<td>Public Works (Eastern Cape)</td>
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<tr>
<td>Outcome/ Sanction</td>
<td>Department</td>
<td>Salary levels</td>
<td>2008/2009</td>
<td>2009/2010</td>
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<tr>
<td></td>
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<td>1-8</td>
<td>2</td>
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<td>Education (Eastern Cape)</td>
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<td>1-8</td>
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<td>1</td>
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<tr>
<td></td>
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<td>2</td>
</tr>
<tr>
<td>Case withdrawn</td>
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<tr>
<td></td>
<td>Education (Eastern Cape)</td>
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<td>0</td>
<td>1</td>
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<td></td>
<td>National Public Works</td>
<td>1-8</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Not guilty</td>
<td>Transport (KZN)</td>
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<td>9-12</td>
<td>1</td>
<td>0</td>
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<td></td>
<td>National Public Works</td>
<td>13-16</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Charges not laid</td>
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<td>2</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>National Public Works</td>
<td>9-12</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Resignation ac-</td>
<td>Public Works, Roads and Transport (Mpumalanga)</td>
<td>9-12</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>cepted by presiding officer</td>
<td>Education (Mpumalanga)</td>
<td>9-12</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

* Final written warning and 1 month suspension without pay.
** It is assumed that these cases were not concluded as no details were provided in respect of the stages at which the cases were, at the time of the study.
*** External appeals against final written warnings.

It is evident from Table 10 above that there are very few cases against members of the SMS who were placed on precautionary suspension for the periods under review. The majority of employees whose cases were heard and were finalised are within levels 1 to 8, whereas a large number of employees who were at levels 9 and upwards had pending cases for more than one financial year. It is disconcerting in that during these extended periods which are far in excess of the prescribed 60 days, these employees on precautionary suspension were receiving their remuneration and their responsibilities were carried out by their colleagues. It is encouraging to
note that departments were not afraid to impose the dismissal sanctions in 20% of all the cases (52 out of 255) against 20% of other sanctions were imposed (60% of cases were not finalised when the study was concluded). The PSC cautions that the departments’ determination to deal decisively with misconduct must be accompanied by appropriate processes of ensuring recovery of losses incurred by the state.

The practice adopted by some departments of accepting a resignation notices at a disciplinary hearing must be avoided at all costs. This has a negative financial implication because if the presiding officer was firm and the hearing was allowed to proceed and the employee was found guilty and dismissed, the monies paid to the employee could be recovered from the pension fund. However, if the employer accepts the resignation notice at the disciplinary hearing, there could be a risk on this decision. Firstly, the employee involved could get away with all monies paid to him/her whilst at home awaiting the outcome of the investigation, and secondly the employee’s reason for termination of service on the PERSAL system will reflect as resignation which grants him/her the additional advantage of being able to be reappointed at another government department. Instead if the resignation was not accepted during the precautionary suspension, and the process was concluded against the employee, then the employer could possibly recover the monies paid to such employees and no other department would be burdened to inherit such an employee as PERSAL will reflect termination of service as dismissal. The employer and presiding officer should note that the purpose of the disciplinary hearing is to conduct the hearing and not to accept resignation notices.

Figure 3.10 below reflects the total numbers on the status of the cases for the periods under review.

**Figure 3.10: The outcomes of hearings on the cases generally for the periods under review**

The following can be pointed out in respect of the outcomes of these cases:

- It is disconcerting to note that 60 % of the 255 cases were pending and only 20% of the 255 were concluded and resulted in dismissals. In this regard, the state continued to remunerate 60% of employees who remained on suspension pending the finalisation of their cases even though the disciplinary procedure had already commenced.

- In about 6% of the 255 cases, employees were found not guilty although it was after extended periods of postponements during which the employees were still on precautionary suspensions.

- In just over 7% of the 255 cases heard, various sanctions were imposed when the cases were finalised and these included final written warnings, a fine, demotions, and suspended salaries for a specific period were
imposed. No appeals in respect of these cases were lodged.

• In just over 2% of the 255 cases there were no conclusions reached because in three cases, the charges were withdrawn and in another three, charges were never laid against the suspended employees even though these employees were placed under precautionary suspension during the period when the investigation of the allegations were carried out.

• There were external appeals against the sanctions imposed in 4% of the 255 cases when the study was conducted. These cases will result in employees remaining on precautionary suspension pending finalisation of the appeals and relying on the external authorities’ timeframes and procedures.

• In 2 of the 255 cases originating from Mpumalanga departments, the presiding officers accepted the resignation of suspended employees at the hearing. In both cases the employees where on suspension for a long period. The presiding officers had erred in accepting the resignations in both cases. They were specifically appointed to preside on disciplinary cases they had nothing to do with the human resources management process such as Public Service termination of service processes.

In view of the above, it is disconcerting that the sampled departments were unable to finalise more than at least 60% of cases of employees who were placed under precautionary suspensions during the periods under review. The delays in the conclusion of these cases could be attributed to what was stated in paragraph 3.7 above and measures have to be put in place to ensure that presiding officers and representatives or the parties synchronise their diaries for speedy resolution of cases.

3.13 DEPARTMENTAL POLICY ON PRECAUTIONARY SUSPENSIONS

Figure 3.11: Departmental policies

Of the 10 departments which were sampled, only one department, namely the KwaZulu-Natal Department of Transport indicated that they had a departmental policy on the management of precautionary suspensions. Six departments indicated that Resolution 1 of 2003 provided clear guidelines on the management of precautionary suspensions, and that there was no need for an internal policy. The KwaZulu-Natal Department of Education, Mpumalanga Department of Public Works, Roads and Transport and the National Department of Home Affairs indicated that the Resolution itself was not sufficient and that a Departmental policy focusing on precautionary suspensions should be drafted to make the management of precautionary suspensions clear and easy to apply. It is unclear why policies had not been developed in these departments since 2003. Additional to Resolution 1 of 2003, the Department of Education also utilises the Education Act when dealing with precautionary suspensions.

3.14 TRAINING

Interviews with employees in some of the departments indicated that employees are informed of Resolution 1 of
2003 by way of induction, information sessions, workshops and circulars. The PSC noted with concern that most of the supervisors interviewed at the Mpumalanga Department of Public Works, Roads and Transport did not even know what a precautionary suspension entailed. However, a few indicated that a workshop was due to take place on 19-20 August 2010 to inform them about Labour Relations generally. This was also found to be the situation in the KwaZulu-Natal Department of Education.

A very important observation from the KwaZulu-Natal Department of Education showed that managers who had between 10-20 subordinates under their supervision did not know what precautionary suspensions were about. Managers from the Mpumalanga Department of Education showed that Senior Managers did not know about precautionary suspensions. Some of the supervisors who were interviewed at the Mpumalanga Department of Education indicated that they never disciplined their staff for fear of being victimised for disciplining them. It was noted that most of the supervisors in this department had never disciplined staff under their supervision. This is clearly a cause for concern, suggesting that not enough had been done to ensure that supervisors were familiar with the use of precautionary suspensions and were also hesitant to discipline their staff members.

3.15 ROLE OF THE LABOUR RELATIONS COMPONENT

All of the departments indicated that their Labour Relations office/Component plays a strictly advisory role in the management of precautionary suspensions. At the Department of Education, it was evident that any matter that related to misconduct was handled by the Labour Relations components. It was also observed that managers in the finance divisions did not receive any training on Labour Relations.

It was noted that the role played by the Labour Relations offices/Components with regards to precautionary suspensions were to advise the Superintendent General by means of a submission with recommendations regarding the precautionary suspension of an employee. It was further noted that the need to suspend an employee could be initiated by a member of the community, Public Service employees from district offices, and a member of the School Governing Body depending at the level of the school. While all these considerations can be helpful, ultimately it is supervisors themselves who should provide the right advice on when the precautionary suspensions would be an appropriate course of action to pursue.

The KwaZulu-Natal Department of Transport indicated that the supervisor of the employee initiates the intention to suspend the employee. The responsibility manager approves the suspension of the employee. This results in the Labour Relations component not knowing who is on precautionary suspension. Labour Relations also do not appoint the Presiding officers or Employer Representatives but they are appointed by the Head of the Department.

As the Department of Public Works (KZN) did not have any reported cases of precautionary suspensions for the period of assessment for the compilation of this report, questions relating to who initiates the intention to suspend an employee and who approves the suspension of an employee were not applicable. This department further indicated that they have not dealt with precautionary suspensions in the past seven years.

Considering all responses provided by the officials who participated in the study and record provided during collection of data, it is evident that despite the fact that the Disciplinary Code and Procedures has been in force for more than five years, there has not been adequate awareness raising internally. It is also disconcerting to realise that managers at higher levels within departments are not conversant with this mechanism which can be of great use in the management of discipline where protection of state assets as well as safeguarding of other employees may be necessary. It is encouraging to know that officials are confident to speak out on fear of victimisation albeit limited and confirmed by a small number of officials in departments. It could be a signal of worse situations elsewhere.
3.16 CONSIDERATION OF REPRESENTATIONS OF EMPLOYEES – PROVINCIAL DEPARTMENTS

Who considers representations made by employees who will be transferred instead of being placed on suspension? (See Figure 3.12 below)

Figure 3.12: Consideration of representation: Provincial Departments

The figure above shows that in only four departments the HoD considered representations made before a decision is taken to transfer employees. In respect of the other departments, it was found that representations are not considered, which is against the rules of natural justice, specifically *audi alteram partem* where a party who will be affected by an administrative decision must be heard before that decision is made.

**What factors are taken into consideration when representations are considered?**

In the case of the Mpumalanga Department of Public Works, Roads and Transport, the seriousness of the allegation is the main factor that is taken into consideration. Regarding the Eastern Cape Provincial Administration, there was no clear indication what factors are considered by the Heads of the Department of Education; Transport and Public Works when representations are made by employees in consideration of transfers instead of precautionary suspensions.

**What procedure is followed when considering representations?**

It was found that in the four departments where representations are considered, there were no prescribed procedures followed. Instead the HoD used his/her discretion. This is not considered to be good practice as there is potential of inconsistency in the whole process. Clear guidelines are required so that there should be standardisation of the employees’ submission and the required support documentation for their representation as well as the timelines within which all should be done for the assessment of the representation to be concluded by the HoD and the designation of the officials who will be assisting the HoD in that role and so forth.
3.17 CONSIDERATION OF REPRESENTATIONS OF EMPLOYEES – NATIONAL DEPARTMENTS

Who considers representations made by employees who will be placed on suspension or transferred?

The figure below reflects who considers representations made by employees who will be placed on suspension or transferred within departments.

**Figure 3.13: Consideration of representations: National Departments**

It was noted that the HoDs in the two national departments sampled, were not directly involved in the consideration of representations made by the employees. However, it was found that the HoD of the Department of Public Works could be involved in the consideration of representation depending on the amount of money involved. Although there were processes in place within these national departments, for consideration of representations from employees who were to be placed on precautionary suspension or transferred, it was disconcerting that there was no indication of the role of the supervisors as the latter are the first point of contact in ensuring that all details of the misconduct are well articulated showing the seriousness and impact and rationale for the proposed steps. Furthermore, the level of officials who are tasked with this huge responsibility is not high enough in the Department of Home Affairs.

What factors are taken into consideration when representations are deliberated upon?

In the Department of Home Affairs, it was indicated that the following factors were taken into consideration –
- Whether the person will jeopardise the investigation;
- Whether the person displays violence;
- The costs involved (in cases of financial misconduct); and
- The impact on service delivery and the possibility of transfer of the individual.

With regard to the Department of Public Works the seriousness of the offence and whether the employee could tamper with information or with witnesses are the factors that are considered where representations are made.

All the factors mentioned as being considered by the Department of Home Affairs when representations of an employee are submitted are well thought-out. It is the view that these factors would, without doubt, assist the decision makers in arriving at an informed conclusion which is not likely to be prejudicial to the parties involved.

What procedure is followed when considering representations?

The Department of Home Affairs indicated that it follows the *audi alteram partem* rule, and in some cases high level discussions are also held.
In the Department of Public Works, it was stated that a meeting was convened between the employee, their supervisor and Labour Relations. The employee was given the right to state his/her case. This was considered, whereafter discussions are held. No evidence was led in respect of the allegations as this was the preserve of the actual disciplinary hearing.

Although there seems to be processes in place in these departments for consideration of the employees’ representations, there is a need for a written procedure accessible to all, so that all employees can be conversant with what would be expected of them should they find themselves in such situations.

### 3.18 RECORD SYSTEM

The selected departments were requested to indicate how information was extracted to complete the questionnaire in an attempt to determine the type of record systems in place within departments. The table below indicates the responses received on this issue –

**Table 11: Departments’ record keeping feedback**

<table>
<thead>
<tr>
<th>Department</th>
<th>Does The Department Have A Record System?</th>
<th>How Was The Information Extracted?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Works (KZN)</td>
<td>Yes</td>
<td>Excel spreadsheet and PERSAL</td>
</tr>
<tr>
<td>Transport (KZN)</td>
<td>Yes</td>
<td>Knowledge of the cases, experience and circulars sent to the Directorates requesting information which is then compiled into a report for each financial year</td>
</tr>
<tr>
<td>Education (KZN)</td>
<td>No – in process of developing a case management system</td>
<td>Manual records are kept and a list is updated</td>
</tr>
<tr>
<td>Public Works, Roads and Transport (Mpumalanga)</td>
<td>Yes</td>
<td>Labour Relations database and files</td>
</tr>
<tr>
<td>Education (Mpumalanga)</td>
<td>Yes</td>
<td>Labour Relations database and PERSAL</td>
</tr>
<tr>
<td>Transport (Eastern Cape)</td>
<td>Yes</td>
<td>Labour Relations keep Manual Records</td>
</tr>
<tr>
<td>Public Works (Eastern Cape)</td>
<td>Yes</td>
<td>Knowledge of the cases and Statistics in the records</td>
</tr>
<tr>
<td>Education (Eastern Cape)</td>
<td>Yes</td>
<td>Request information from Regional Districts</td>
</tr>
<tr>
<td>Home Affairs (National)</td>
<td>Yes</td>
<td>Database and knowledge and experience of interviewees on the processes</td>
</tr>
<tr>
<td>Public Works (National)</td>
<td>Yes</td>
<td>Creation of spread sheets</td>
</tr>
</tbody>
</table>

The Department of Education in KwaZulu-Natal was the only one which did not have a record system in place. It is alarming that this department does not keep a central written record of precautionary suspensions cases, and thus, it can be deduced that what was mentioned to the PSC as reviews of cases at three months intervals was a mere supposition meant to provide the PSC with responses to the study and not practiced. It is, however, encouraging that they are addressing the issue in that they would create a case management system.

### 3.19 CHALLENGES FACED BY DEPARTMENTS IN THE MANAGEMENT OF PRECAUTIONARY SUSPENSIONS AND GENERAL COMMENTS MADE

Departments were given the opportunity to express the nature of challenges they face and to add any general comments that they may have as proposed solution as well as general comments. All the information provided in
In this regard was analysed and **Table 12** below provides a summary of this information.

**Table 12: Further inputs by interviewees**

<table>
<thead>
<tr>
<th>Department</th>
<th>Challenges Faced</th>
<th>Proposed Solutions</th>
<th>Other Comments</th>
</tr>
</thead>
</table>
| **Education (KZN)**             | • 58% of posts in the department were vacant. A moratorium was issued prohibiting them to fill posts.  
• IT resources are redundant  
• Labour Relations officers operate at district offices and Head office.  
• It is difficult to pressurise the appointed presiding officers (PO) and employer representatives (ER)  
• The competency levels of the POs and ERs are low. | • All posts should be filled based on competency tests.  
• Acquire modern IT resources  
• Increase number of POs and ERs  
• Train PO’s and ER’s to be more competent | The delegations should be revisited as all cases need to go up to the Superintendent General Manager. This should be lower to level of SMS members within respective Branches. |
| **Transport (KZN)**             | • Not knowing who is placed on precautionary suspension  
• Poor compliance to time-frames  
• PO’s who are not proficient  
• The Labour Relations component is not allowed to appoint their own PO’s and ER’s | • The support of senior managers is required  
• Proficiency level from pool of POs and ERs should be improved | Do not suspend employees if it is not necessary to do so. |
| **Public Works, Roads and Transport (MP)** | • Investigations take too long to finalise | • Work on prioritising investigations | Keep to the 60 days period to finalise all cases |
| **Education (MP)**              | • Precautionary suspensions are done without considering the Education Employment Act and the PSA. | • Comply strictly to Resolutions | Only Labour Relations Directorate should be mandated to manage precautionary suspensions |
| **Transport (Eastern Cape)**    | • Investigations are done by the external investigators and they take longer than the prescribed time frame.  
• It also has financial implications and it cripples the budget because they have to be paid a lot of money | • Train internal investigators  
• Have a departmental policy | • Capacitate the Senior Managers to understand the implications of the precautionary suspension because sometimes you suggest the transfer and they opt for precautionary suspension even when it is not necessary |
**Education (EC)**

- In terms of the Employment of Educators Act 76 of 1998, it is prescriptive on levels of presiding officer. A chairperson must be a level higher than the charged official. If a Chief Director is charged then ideally a DG should preside over the hearing. The challenge is that DGs are extremely busy and most of them are not empowered or trained to play a role as presiding officers.
  - This department deals with learners. Cases involving minors are a huge challenge.
- The issue of levels is very complicated and labour relations employees take the responsibilities of Attorneys and Lawyers. This field need to be classified as an OSD.
- The parents refuse with their children to be witnesses in the employers’ case.
- There should be a demarcated room to assist the minors not be seen by the offender.

**Public Works (EC)**

- Most of the posts in labour relations were said to be vacant. They need to be advertised as permanent positions.
- The establishment of Labour Relations should be looked at and posts be advertised.
- There is a need for the DPSA and OTP’s intervention on policy matters, especially on precautionary suspension.

**Home Affairs (National)**

- The Senior Managers need training to inform them on precautionary suspension as to when it is necessary.
- It is implemented for the wrong reason i.e. image of the country.
- Labour Relations should also be part of EXCO and be involved on discussion or meeting pertaining to labour issues because that is where a lot of decisions are taken.
- The resolution 1 of 2003 is not sufficient.
- There is a need for the policy and enforcement to itemise the types of misconduct which warrant precautionary suspension.

**Public Works (National)**

- Continuous postponement of pre-arbitrations
- Service providers reports are delayed and standards indicate reports cannot be used
- Investigations should be finalised sooner
- Perform internal investigations instead of service provider

Labour Relations is a specialised field and should be classed on the OSD.
3.20 CONCLUSION

This chapter has provided analysis of the key findings of the study. It has highlighted how the Departments managed precautionary suspensions during the two periods under review. It is apparent from the responses received and documents provided that there is non-compliance with the prescripts relating to the management of precautionary suspensions. Most of the Departments have not developed their internal policies in line with Resolution 1 of 2003. This has presumably led to the Departments incurring higher financial losses remunerating employees who are not rendering their services which would not have occurred had the Department developed a process through which they could monitor and ensure that the periods are not over extended. The provincial departments that participated in the study have already paid R15 513 978.84 to the employees who have been suspended pending the disciplinary hearings. The national departments that participated in the study have paid out R7 963 028.33. As the study focused on the sampled departments, the financial losses incurred is only a fraction of the true state of affairs in the Public Service for the period under review.

A large majority of misconduct cases for which departments have placed employees under precautionary suspensions relate to misconduct where state funds were misused. There are very few cases which relate to the other types of misconduct for instance sexual assault and drunken-driving.
Chapter Four

Recommendations and Conclusion
4.1 INTRODUCTION

The findings from this study indicate serious challenges that need to be addressed in order to improve the management of precautionary suspensions in the Public Service. The findings show that, there are serious inconsistencies amongst sampled departments which could be symptomatic of the situation across all other departments. In this chapter, recommendations for improvement of the situations are suggested by firstly, identifying problematic areas and where direction and guidance is required. This is because the objectives of this report were as follows –

- Under what circumstances are employees placed on precautionary suspensions?
- How long do the majority of the precautionary suspensions last?
- What are the cost implications of the precautionary suspensions?
- Is the transfer of an employee under investigation considered as an alternate to precautionary suspension?
- Do departments have internal policies to sensitise employees and key role-players on the procedures relating to the disciplinary procedure and precautionary suspensions?
- What is the role of labour relations component in the management of precautionary suspensions, and to what extent do the departments’ human resources components provide training and advisory support service in respect of the management of precautionary suspension?

4.2 RECOMMENDATIONS

4.2.1 Development of departmental policies

The previous report on the Management of precautionary suspensions in the Public Service as from 1 July 1999 until 31 July 2000 which covered 34 national departments and 9 provincial administrations indicated that only three national departments and two provincial departments have departmental policies on precautionary suspensions. In this report, it was established that only the Department of Transport (KZN) has a departmental policy in place.

The DPSA must assist departments in development of the Departmental policies on the management of transfers/suspensions as a necessity to ensure that such precautionary suspensions or transfers are managed in accordance with the principles of administrative justice, natural justice and fairness. Apart from considerations of equity and natural justice, the maintenance of a good labour relations atmosphere in the workplace requires that acceptable and fair procedures are in place and observed for maintenance of consistent application of the applicable prescripts.

In the interest of sound labour relations, policies on the management of suspensions must be recorded after consultation with labour. These must be popularised through the DPSA and PALAMA and be made available to all employees irrespective of rank or level in the Public Service.

Typically, the following issues should be addressed in a departmental policy -

- The reasons for suspending an employee.
- The charges preferred against an employee which may warrant suspension.
- The process followed in considering representations made by employees against their suspensions.
- Consideration of transfer as an alternative to suspension.
- The reasons for the extension of suspension of employees.
- The review of the suspension of employees.
- The employees authorised to consider transfers of employees instead of precautionary suspension.
- A database and record system (preferably both) with regard to employees on suspension. A note that PERSAL does not store information relating to precautionary suspensions indefinitely.
Such a policy would serve a dual purpose. On one hand, it would provide a framework enabling management to maintain satisfactory common standards, and on the other hand, employees have access to procedures where alleged failures to comply with these standards may be fairly and objectively addressed.

4.2.2 Training

During interviews conducted with managers and supervisors, it became noticeably clear that not all employees who are supposed to know about disciplinary procedures and measures know and understand such. The resultant implications of supervisors having subordinates under their control, and not being knowledgeable about disciplinary matters, are tantamount to a gross dereliction of duty. This is because management of discipline is an integral part of their responsibility to ensure that the discipline is maintained to optimally serve the operational needs of the department. The major question follows. How are these supervisors handling employees who commit transgressions if they do know basic principles of discipline? As a rule of thumb, all employees, managers and juniors alike must be sensitised about disciplinary procedures.

The problem areas that were identified related to capacity and competence of senior managers, employer representatives/investigators and presiding officers. One of the main reasons for extension of suspensions beyond two months is the lack of availability of effective and proficient presiding and investigating officers. Whilst most departments have indicated that training is conducted, the transfer of training points to a serious miscarriage of justice in practical application.

A very interesting observation made in departments is that employees are provided with training on how to be presiding officers and investigators. However, the departments encounter problems when trained employees refuse to be assigned cases. It is suggested that before employees are chosen to be trained on this more specialised area of discipline, the employee must make an undertaking that she/he will volunteer his/her service as and when required to do so. The DPSA must assist departments in keeping a central list of all the trained officials in the investigation of cases and being presiding officers so that there can be speedy identification of officials when so required across the entire Public Service. It would also be easier for these trained officials to adhere to the same norms and standards in respect of sanctions to be imposed and so forth.

The State invests millions of rands in empowering its workforce through training them, but if the training is not put into practice, this results in fruitless expenditure. The DPSA must assist departments through guidelines, to take a responsible stance when nominating candidates to receive training based on the candidates' personality and capability. When the State provides training to its workforce, the purpose is not only to improve the employees' credentials, but most importantly to improve on service delivery.

Much has been said about training supra, however, in essence, the PSC recommends that when selecting candidates to receive specialised training pertaining to presiding over and investigating cases, departments must meticulously endeavour to compile a profile of their candidates to ensure that the candidates can be used for future cases.

When selected in this way, departments can be assured that they will always have a pool of competent presiding and investigating officers to choose from. The Labour Relations component must play a crucial role in this process and they will be in the best position to know who to appoint for which case depending on the complexity of the case at hand. All employees should undergo basic training relating to disciplinary measures and actions in the workplace. Usually the information that is received at training sessions of this nature is elementary.

Finally, the PSC recommends that the departments must exercise caution when agreeing to pre-dismissal arbitration in terms of section 188A of the Labour Relations Act. The Department of Public Works (National) makes use of this provision and has experienced many problems when employees utilise the services of private attorneys to defend their cases. These cases are often long drawn out cases which result in employees being on precautionary
suspension for periods as long as a year or more. It is best for disciplinary hearings to be finalised internally without opting for the pre-dismissal arbitration process.

4.2.3 Development of database for cases where precautionary suspensions have been put in place

It is considered good human resource management practice to develop a reliable system where information on all disciplinary cases in any given year can be accessed by the appropriate persons in authority. The PSC recommends that each department must have a database within the 2011/2012 FY. This database could include the profile of the types of cases for which the employees have been suspended on precaution, the reasons why it took longer for the hearings to commence and if there were any extended periods of precautionary suspensions the reason considered for that should also be provided.

The database which will profile the nature of misconduct for which precautionary suspension was in place and the conclusion will be a useful tool for the top managers in departments to monitor and determine the cost implications incurred across the department. This may also prompt the top management to persuade supervisors in ensuring that the disciplinary processes are expedited within acceptable periods of time.

4.2.4 Record keeping and weekly review of cases

It is recommended that each labour relations officer and supervisor must within the 2011/2012 FY develop, and maintain a record of employees on precautionary suspension and that this record be collated on a weekly basis to certify that accurate records are readily accessible. Unfortunately, reliance on the PERSAL system for keeping a record of precautionary suspensions although desirable is improper because the system does not store such information indefinitely. This is in line with Resolution 1 of 2003 which provides for records to be destroyed after a predetermined period. Therefore, a case management system is crucial to make certain that departments maintain accurate records. All managers and labour relations components must have access to such database in order to update the system on a regular basis.

4.2.6 The cost implications of precautionary suspensions

The PSC recommends that departments must prioritise conclusion of all disciplinary cases where employees are placed under precautionary suspension with immediate effect but preferably not later than the FY 2011/2012. The clearance of the cases must commence with the oldest cases ones as more money has been spent on salaries for employees who are placed on such precautionary suspensions. It is suggested that 2 specialised task teams be put in place in each department with immediate effect. The first task team is to work at finalising all cases older than 2 months and the other team to work on current cases.

It is not in line with the Labour Relations Act to withhold an employee’s remuneration whilst on precautionary suspension. However, there is nothing that prevents departments from recovering monies from the pensions of employees who have been dismissed after having been found guilty at a disciplinary hearing/arbitration as the case may be, if impropriety was proven.

4.2.7 The role of labour relations component

Departments must utilise their Labour Relations Directorates for all matters related to disciplinary procedures. The DPSA must prohibit the practice whereby each Directorate in departments is responsible for conducting their own disciplinary hearings without the involvement of their Labour Relations unit. If the Labour Relations unit is not conversant with what is happening in their departments regarding precautionary suspensions, then departments are failing to fully utilise the expertise of such a unit. In circumstances huge mistakes are accordingly
bound to be made. The LR Units or components in departments must ensure that the employees placed on precautionary suspension are monitored to ensure that he/she is always available should the need arise for him/her to be contacted.

The DPSA must within 2011/2012, issue a directive to departments which would compel the LR units to be responsible for the assessment of precautionary suspension cases on regular basis and to report to the DPSA every six months. Through this process, departments would be made to account to the DPSA on the reasons why precautionary suspensions for each six months run over the prescribed period.

4.2.8 Consideration of reviewing the prescribed 60 days within which the disciplinary procedure should be finalised

Given the fact that the prescribed 60 days within which disciplinary procedure should be concluded inclusive of the investigation, was found to be hardly adhered in the sampled departments, there is a need to tighten compliance in the Public Service generally. The PSC is of the view that the DPSA must ensure that the uncooperative managers must no longer go unpunished. Throughout the PSC’s previous studies in relation to the assessment of the extent to which departments implement the human resources prescripts, it has been established that in most cases attitude of managers and their ignorance are contributory factors. Thus, even though the prescribed 60 days might seem to be too long, it would not be advisable to shorten the period as it is in fact inadequate especially when one considers all factors mentioned as reasons for exceeding the 60 days in this study. Instead the more stringent monitoring process for compliance must be introduced through the DPSA.

However, as the Code was developed through the process of negotiations at the PSCBC, any proposed amendments of the prescribed period would have to be tabled at the chamber for the employer and labour to discuss. The PSC recommends that through the DPSA, the parties at the PSCBC should consider reviewing the prescribed period of 60 days and decide on strict measures for ensuring compliance by departments.

In respect of the procedure applicable to the members of SMS, the departments must be held accountable if the prescribed 60 days are exceeded through the reporting compiled by the LR components and submitted to the DPSA. In complicated cases involving senior management service (including HoDs), should the executive authority (EA) realise that there is a need to extend the 60 days period of precautionary suspension of such an SMS member, then the Minister of Public Service and Administration (MPSA) must be approached with reasons for approval of the extension. The EA’s must when requesting the MPSA for extension of the 60 days, submit reasons which influenced the department not to comply in concluding the investigation and disciplinary cases within the prescribed 60 days. Whereafter the MPSA would exercise his discretion to accede or not to, depending on the reasons provided by the respective EA.

4.2.9 Consideration of transfers to alleviate the problem of payment of salaries to employees who are not contributing to service delivery during the period of precautionary suspension

According to the Disciplinary Code and Procedures in the Public Service as contained in the PSCBC Resolution as well as Chapter 7 of the SMS Handbook, the employer has an option of transferring employees as a substitute for placing them on precautionary suspension. Through this study, it has been established that most of the sampled departments preferred to place employees on precautionary suspension more often, for lengthy periods in excess of the prescribed 60 days. As this has proven to be prejudicial to other employees who have to carry extra duties on behalf of the suspended employee as well as the salary payments for such employees who are not at work, it is imperative that transfers must be considered by the employer as an alternative to precautionary suspensions. The PSC recommends that departments must always first consider transferring employees instead of placing them on precautionary suspensions. In the event where departments find transfers to be impractical, then the reasons for not considering transfers as an alternative of placing an employee on precautionary suspension must be expressly stated in writing by the relevant delegated authority and be reviewed on each occasion when the precautionary suspensions are reviewed by the departments.
4.3 CONCLUSION

Throughout this report, one factor remains salient and that is the training of all employees on basic disciplinary measures and actions. It is trusted that through this report, the PSC has highlighted the need for departments to maintain accurate records of all employees on precautionary suspensions. Prompt investigations and finalisation of cases are called for. The longer the postponement of cases, the greater the financial and service delivery impact on the Public Service. Delays lead to witnesses disappearing and documents vanishing. All role players must seriously consider alternatives before placing employees on precautionary suspension. The Departments need to aim at ensuring strict adherence to timeframes and work towards minimising costs relating to employees who are on precautionary suspensions.
REFERENCES

5. Republic of South Africa. (DPSA) Public Service Regulations (PSC) [as published in Government Notice no. R382 of May 2010 with effect from 17 May 2010]
9. POPCRU obo Masemola & Others v Minister of Correctional Services (2010) 31 ILJ 412 (LC)
13. Rudi Kuhn: Online Labour Law Assistance Newsletter
15. United Kingdom-Disciplinary Procedure: Down District Council
16. Lothian and Boarders Police Dept (LBP) in Scotland: www.lbp.police.uk
17. United Kingdom Part 1 of the Constitutional Reform and Governance Act 2010
18. United Kingdom Civil Service (Management Functions) Act 1992
20. United Kingdom The Civil Service Management Code
21. United Kingdom Code of Practice 1: Disciplinary and Grievance Procedure
22. United Kingdom Civil Service Code http://www.civilservice.gov.uk/iam/codes/cscode
23. United Kingdom Employment Appeal Tribunal (Appeal No. UKEAT/0274/04/CK)
24. United Kingdom Four Seasons Healthcare Limited Disciplinary Procedure
ANNEXURE 1
PUBLIC SERVICE COMMISSION QUESTIONNAIRE ON THE MANAGEMENT OF PRECAUTIONARY SUSPENSIONS IN THE PUBLIC SERVICE

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<thead>
<tr>
<th>NAME OF DEPARTMENT</th>
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<td></td>
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<tr>
<td>NAME OF OFFICIAL INTERVIEWED</td>
<td></td>
</tr>
<tr>
<td>JOB TITLE OF OFFICIAL</td>
<td></td>
</tr>
</tbody>
</table>

1. Please indicate whether your department has a Departmental Policy on precautionary suspensions:-
   - YES
   - NO

1.2 If your answer to the above question is yes, please provide us with such copy.

1.3 If your answer to question 1 is yes, please indicate how you ensure that employees are informed of the policy-

1.4 If your answer to the above question is “no”, please provide a motivation for not having it-

2. What role does your Labour Relations Office/component play with regard to precautionary suspension of officials?

   - Strictly advisory capacity
   - makes the decision to suspend the official on precaution
   - other: (specify)

3. Who initiates the intention to suspend an official?

   - Labour Relations officials
   - supervisor of official
   - other: (specify)

4. Please indicate who considers the representations made by officials who will be suspended or transferred-

   - Labour Relations officials
   - supervisor of official
   - other: (specify)
5. Who approves the suspension of an official?

- Labour Relations officials
- Supervisor of official
- Other (specify)

6. What factors are taken into consideration when representations are considered?

7. What procedure is followed when considering representations?

8. Who and at which level is the Delegated Authority for dealing with disciplinary matters?

9. How many officials were placed on precautionary suspension in your Department during the following periods?

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<tr>
<td>01 April 2008 to 31 March 2009</td>
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10. Kindly provide specific dimensions to the information provided above as follows:

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   | 01 April 2009 – 31 March 2010 |
   | 01 April 2009 – 31 March 2010 |

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<tr>
<td>FEMALE</td>
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11. Were all of the officials indicated in question 10 above subjected to a disciplinary hearing?

12. Of the number of officials who were suspended on precaution, how many were found guilty?

**Level 1-8**

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### SMS

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<td>SANCTIONS IMPOSED</td>
<td>SANCTIONS IMPOSED</td>
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</tr>
</tbody>
</table>

13. What were the charges against officials who were suspended on precaution?

![Charges](image)

14. What is the average time lapse from the date of suspension to the date when the investigation of the misconduct commences?

![Time Lapse](image)
15. What is the average time lapse from the date of suspension to the date when officers are charged with misconduct?

- [ ] 1 month or less
- [ ] 2 months
- [ ] 3 months
- [ ] Other (please specify)

16. What control measures do you utilize to monitor the timelines of officials on precautionary suspensions?

__________________________________________________________________________

17. In terms of the Disciplinary Code, the transfer of an employee to another component/section, may be considered as an alternative to suspension. Please indicate whether or not this alternative is being utilised by your department.

[ ] YES  [ ] NO

18. If yes, provide details:

__________________________________________________________________________

19. How often were the precautionary suspensions of officials reviewed?

- [ ] 1 month or less
- [ ] 2 months
- [ ] 3 months
- [ ] Other (please specify)

20. How often were the transfers of officials as an alternative to precautionary suspensions revised?

- [ ] 1 month or less
- [ ] 2 months
- [ ] 3 months
- [ ] Other (please specify)

21. How many cases of suspended officials were extended as a result of a postponement of a disciplinary hearing?

__________________________________________________________________________

22. How many times, on average, was each disciplinary hearing postponed where precautionary suspension or transfer was in place?

__________________________________________________________________________
23. If the disciplinary hearing was postponed, please indicate reasons for postponement:

24. Please indicate the financial loss the Department has suffered due to officials being on precautionary suspensions:

25. Please provide records in this respect.

26. What are the challenges on management of precautionary suspensions in your department?

27. How do you suggest that these challenges should be addressed to make management of precautionary suspensions more effective?

28. Any general comments or input to make with regards to management of precautionary suspensions?

29. Does your Department have a record system that enables you to extract information required for the completion of this questionnaire?

   YES  NO

30. Please indicate how the information has been extracted in order to complete this questionnaire.

   Thank you for your time.
## ANNEXURE 2
### DATA ON EMPLOYEES’ POPULATION IN SAMPLED DEPARTMENTS FOR THE PERIODS UNDER REVIEW

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<tr>
<th>DEPARTMENT</th>
<th>POPULATION ON GENDER AND RACE</th>
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<tbody>
<tr>
<td>Department of Transport, KwaZulu-Natal</td>
<td>1305 African females and 2127 African males</td>
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<tr>
<td></td>
<td>182 Indian females and 211 Indian males</td>
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<tr>
<td></td>
<td>56 Coloured females and 54 Coloured males</td>
</tr>
<tr>
<td></td>
<td>175 White females and 186 White males</td>
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<tr>
<td>Department of Education, KwaZulu-Natal</td>
<td>59731 African females and 30724 African males</td>
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<td></td>
<td>6604 Indian females and 3369 Indian males</td>
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<td></td>
<td>857 Coloured females and 358 Coloured males</td>
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<td></td>
<td>3019 White females and 822 White males</td>
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<tr>
<td>Department of Public Works, Roads and Transport,</td>
<td>1992 African females and 3126 African males</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>1 Indian female and 3 Indian males</td>
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<tr>
<td></td>
<td>6 Coloured females and 8 Coloured males</td>
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<tr>
<td></td>
<td>46 White females and 177 White males</td>
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<tr>
<td>Department of Education, Mpumalanga</td>
<td>25347 African females and 14472 African males</td>
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<td></td>
<td>114 Indian females and 108 Indian males</td>
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<td>93 Coloured females and 44 Coloured males</td>
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<tr>
<td></td>
<td>2282 White females and 689 White males</td>
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<tr>
<td>Department of Transport, Eastern Cape</td>
<td>680 African females and 845 African males</td>
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<td></td>
<td>3 Indian females and 3 Indian males</td>
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<td>36 Coloured females and 97 Coloured males</td>
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<td>28 White females and 40 White males</td>
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<td>Department of Public Works, Eastern Cape</td>
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<td></td>
<td>2 Indian females and 5 Indian males</td>
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<td>14 Coloured females and 74 Coloured males</td>
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<td>30 White females and 91 White males</td>
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<td>Department of Education, Eastern Cape</td>
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<td></td>
<td>235 Indian females and 199 Indian males</td>
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<td>3030 White females and 1061 White males</td>
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<tr>
<td>Department of Home Affairs</td>
<td>5313 African females and 3725 African males</td>
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<td>40 Indian females and 38 Indian males</td>
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<td>343 Coloured females and 220 Coloured males</td>
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<td>609 White females and 212 White males</td>
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<td>Department of Public Works</td>
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<td>32 Indian females and 50 Indian males</td>
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<tr>
<td>Eastern Cape</td>
<td>91 Alexandra Road, King William’s Town, 5601</td>
<td>(043) 643-4704</td>
<td>(043) 642-1371</td>
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<tr>
<td>Free State</td>
<td>62 Fedsure Building, 3rd Floor, St Andrew Street, Bloemfontein, 9301</td>
<td>(051) 448-8696</td>
<td>(051) 448-4135</td>
</tr>
<tr>
<td>Gauteng</td>
<td>Ten Sixty-Six Building, 16th Floor, 35 Pritchard Street, Johannesburg, 2001</td>
<td>(011) 833-5721</td>
<td>(011) 834-1200</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>iDUBE Building, Ground Floor, 249 Burger Street, Pietermaritzburg, 3201</td>
<td>(033) 345-9998</td>
<td>(033) 345-8505</td>
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<tr>
<td>Mpumalanga</td>
<td>19 Russel Street, Nelspruit, 1200</td>
<td>(013) 755-4070</td>
<td>(013) 752-5814</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>Woolworths Building, 1st Floor, cnr Chapel &amp; Lennox Streets, Kimberley, 8301</td>
<td>(053) 832-6222</td>
<td>(053) 832-6225</td>
</tr>
<tr>
<td>Limpopo</td>
<td>Kirk Patrick Building, 40 Schoeman Street, Polokwane, 0699</td>
<td>(015) 291-4783</td>
<td>(015) 291-4683</td>
</tr>
<tr>
<td>North West</td>
<td>Mmbabatho Post Office Building, Ground Floor, University Drive, Mmbabatho, 2735</td>
<td>(018) 384-1000</td>
<td>(018) 384-1012</td>
</tr>
<tr>
<td>Western Cape</td>
<td>Sanlam Golden Acre Building, 21st Floor, Adderley Street, Cape Town, 8001</td>
<td>(021) 421-3980</td>
<td>(021) 421-4060</td>
</tr>
<tr>
<td>Parliamentary Office</td>
<td>Sanlam Golden Acre Building, 21st Floor, Adderley Street, Cape Town, 8001</td>
<td>(021) 418-4940</td>
<td>(021) 418-1362</td>
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