Guide on Governance Practice for Executive Authorities and Heads of Department

Public Service Commission
March 2019
Vision
A champion of Public Service excellence in democratic governance in South Africa.

Mission
To promote the constitutionally enshrined democratic values and principles throughout the Public Service by-

- investigation, monitoring, evaluating the organisation and administration, and personnel practices;
- proposing measures to ensure the effective and efficient performance;
- issuing directions with regards to personnel procedures relating to the recruitment, transfers, promotions and dismissals
- advising on personnel practices; and
- reporting on its activities.
Foreword

The Public Service Commission (PSC) is mandated by the South African Constitution, 1996, to promote a high standard of professional ethics as well as to investigate, monitor and evaluate public administration practices in the Public Service. To deliver on its constitutional mandate, the PSC is required to advise Executive Authorities (EAs) and Heads of Departments (HoDs) on sound public administration practices that are necessary to enhance governance in the Public Service. As such the PSC has been instrumental in the development of guidelines, protocols and reports that find application across all spheres of the Public Service.

Informed by its body of work on public administration practices, the PSC has decided to produce this Guide on Governance Practice for EAs and HoDs. The Guide deals with governance and management topics that are essential for incumbent and new EAs and HoDs to familiarise themselves with.

Based on the body of work done by the PSC, specific emphasis is placed on, amongst others, the importance of institutionalising the Constitutional Values and Principles in the policies and programmes of government, clarification of the roles and responsibilities of EAs and HoDs, managing ethics and labour relations in the Public Service as well as promoting responsiveness to citizens and communities.

Since executive powers regarding organisational and human resources management rest with EAs whereas financial management powers rest with HoDs, the PSC would like to encourage EAs and HoDs to familiarise themselves with the contents of this Guide which seeks to strengthen and improve governance, accountability and the performance of the Public Service.

It is important to note that this Guide covers work emanating from the PSC’s mandate and further provides reference to other critical sources of information from other departments. However, it does not replace, but supplements Guides and Manuals issued by The Presidency, the Department of Public Service and Administration, the Department of Planning, Monitoring and Evaluation and National Treasury.

The PSC is of the view that if used appropriately, the Guide will contribute towards improved performance as well as effective management and governance in the Public Service.

PUBLIC SERVICE COMMISSION
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CHAPTER 1: INTRODUCTION

1. Background

This Guide serves as an induction and orientation reference material for EAs and HoDs across the Public Service. The development of this guide does not serve to replace or contradict any existing policy frameworks or prescripts but to rather supplement and provide for simplified processes and procedures to introduce new EAs and HoDs to key elements of Governance in their departments emanating from research and development work conducted by the Public Service Commission (PSC). Similar to orientation, this induction guide provides an opportunity for political and administrative heads in the Public Service to acquaint themselves with some of the core competencies which are generic in the execution of their duties. It provides a wider understanding of their role in ensuring that Good Governance practices are applied within their departments whilst at the same time addressing the need for sound and conducive relationships between EAs and HoDs.

Accordingly, this Guide should be read in conjunction with the relevant Acts, Regulations and existing policies and directives applicable in the Public Service. Whenever there is a need for clarification on any part of the guide, the PSC or relevant authorities such as the Department of Public Service and Administration (DPSA) and National Treasury (NT), as custodians of specific policy frameworks may be contacted in this regard.

2. Purpose of the guide

The need to develop the Guide is informed by findings from monitoring and research studies by the PSC, as part of its role to investigate public administration in the Public Service and provide oversight reports to Parliament and the legislatures. The studies revealed that in some instances HoDs are recruited from sectors outside government. These HoDs have limited or no knowledge of the functioning of the Public Service and its legislative and regulatory frameworks. On the other hand, the termination of contracts of some HoDs by their EAs has also created disruptions in the operations and functionality of some departments. Furthermore there are frequent changes at Executive level with new EAs being introduced to an environment which they may not be thoroughly familiar with. It is trusted that if used appropriately, the Guide will contribute towards improved performance as well as effective management and governance in the Public Service.
3. **Structure of the Guide**

The Guide is divided into eleven chapters, namely:

a) Introduction
b) Applications of the Constitutional Values and Principles
c) Role clarification at the executive interface
d) Appointment of staff in the private offices of Executive Authorities
e) Managing recruitment and selection
f) Guidelines on the performance management system for DGs and HoDs
g) Managing ethics in the Public Service
h) The role of EAs in labour relations
i) Leadership changes: Ensuring continuity
j) Responsiveness to citizens and communities
k) Relevant oversight reports and instruments
CHAPTER 2: APPLICATION OF THE CONSTITUTIONAL VALUES AND PRINCIPLES

2.1 Introduction

The Constitution of the Republic of South Africa, Act 108 of 1996 (Constitution) contains a specific chapter that governs public administration, namely Chapter 10. All executive authorities and senior public administrators have a duty to apply the principles in section 195 of Chapter 10 with regards to –

• the design of public administration institutions, policies, systems, structures and processes;
• the manner in which policies and processes are implemented;
• all administrative decisions; and
• the way they treat citizens and staff.

The public administration principles are applied within the framework of the Constitution and the fundamental values contained in it.

2.2 The founding constitutional values

The preamble and section 7(1) of the Constitution outlines the fundamental values on which the government should build a transformed Public Service. These values include human dignity, the achievement of equality and the advancement of human rights and freedoms, non-racialism and non-sexism, supremacy of the Constitution and the rule of law, democracy, social justice and equity and respect. How do these relate to the duties of government officials? If we talk about human dignity, it means that every public servant should take care that they show morality and humanity towards both fellow public servants, stakeholders and the citizens they serve. The Constitutional Court recognised the importance of “Ubuntu” in restoring human dignity of all and as a contributing factor in rebuilding a transformed and just country.¹

This should happen against the background of acknowledging and promoting the freedoms listed in the Bill of Rights. Without these freedoms, human dignity will be little more than an abstract concept.

To ensure social justice and equity, public servants need to be mindful of those previously disadvantaged by apartheid in South Africa while also ensuring unbiasedness at the same time. This is also about fairer distribution of resources, ensuring social inclusion and ensuring equal access to public services.

Upholding the value of respect will promote social cohesion and nation building. Public servants are required to respect citizens as human beings and should put them first.

¹In AZAPO vs TRC, 1996 4 671 (CC).
Human behaviour that is intolerant of one another and which leads to people not being treated with dignity, hampers South Africa’s hard earned democracy. For public servants, this is a fundamental value in their relationship towards fellow public servants and the citizenry. It also forms the basis of good governance and the creation of a healthy, stable society.

The constitutional values outlined above, provide a foundation on which to build a values-driven Public Service.

It is important to note that it would be futile to develop complex governance systems and processes when the foundational values underpinning it have not taken root. Therefore, in order to uphold the principles enshrined in section 195(1) of the Constitution, one has to take a deeper look at the aspirations and transformative nature of the Constitution. The fundamental values enshrined in the Constitution are the guide to reach that aspiration. The values articulated in the Constitution provide an objective, normative (value) system to which all South Africans must adhere and by which all South Africans must live. Above all, the Constitutional values and principles indicate the type of public administration that South Africans aspire to have. Furthermore, it begins to define, beyond meritocracy, the nature of a South African public servant who will not only embrace the values and principles, but execute his/her daily duties accordingly.

2.3 The principles governing public administration

The principles governing public administration are the following:

a) A high standard of professional ethics must be promoted and maintained.
b) Efficient, economic and effective use of resources must be promoted.
c) Public administration must be development oriented.
d) Services must be provided impartially, fairly, equitably and without bias.
e) People’s needs must be responded to and the public must be encouraged to participate in policy making.
f) Public administration must be accountable.
g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
h) Good human resource management and career development practices, to maximize human potential, must be cultivated.
i) Public administration must be broadly representative of the South African people with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation.

The nine principles governing public administration are outlined in section 195(1) of the Constitution.
2.4 The legislative framework

Day to day public administration is governed by law. The Constitution provides in section 195(3) that “National Legislation must ensure the promotion of the values and principles listed in subsection (1).” Section 1(c) of the Constitution further states that the South African state is founded on the rule of law.

When the legislative framework was created, the lawmakers were guided by the constitutional values and principles. So, the first step in complying with the values and principles is to comply with the prescripts contained in the legislative framework.

The legislative framework includes, amongst others, the Public Service Act of 1994 (Proclamation 103 of 1994 (PSA), the Public Finance Management Act, 1999 (Act 1 of 1999) (PFMA), and Treasury Regulations, the Promotion of Access to Information Act, 2000 (Act 2 of 2000), (PAIA), the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) (PAJA), the Prevention and Combatting of Corrupt Activities Act, 2004 (Act 12 of 2004) (PRECCA) and many other laws and subordinate prescripts.

The Minister for Public Service and Administration (MPSA) also has a very specific role in determining norms and standards for public administration. Section 16 of the Public Administration Management Act, 2014 (Act 11 of 2014), stipulates that the MPSA may prescribe minimum norms and standards regarding eight functional areas, including

a) the promotion of values and principles referred to in section 195 (1) of the Constitution;
b) capacity development and training;
c) information and communication technologies in the public administration;
d) integrity, ethics and discipline;
e) the disclosure of financial interests;
f) measures to improve the effectiveness and efficiency of institutions;
g) disclosure of information relating to pending disciplinary action and concluded disciplinary proceedings where the employee was found guilty; and
h) any other matter necessary to give effect to the administration or implementation of this Act.

Cognisant of the above, Executive Authorities (EAs) and public servants are expected to execute their duties within the bounds of the Constitution and the law. As such, public servants can never say they were instructed and EAs can never say they were advised as an excuse for ill practice. However, the manner in which laws and prescripts are applied should always be governed by the Constitutional values and principles themselves.
2.5 The role of the Public Service Commission

The PSC has a very specific role in promoting the constitutional values and principles. The PSC is mandated in terms of Section 196(4)(a), (c) and (e) of the Constitution, (amongst others) to –

- promote the values and principles set out in section 195 throughout the Public Service;
- to propose measures to ensure effective and efficient performance within the public service; and
- provide an evaluation of the extent to which the values and principles set out in section 195 are complied with.

The PSC has therefore established a programme of promoting and evaluating the CVPs.

2.6 PSC Programme of promoting the CVPs and evaluating the performance of
the public service in respect thereof

The following objectives have been set for the promotion part of the programme:

- To promote the internalisation of values and principles in the daily activities of public servants with the intention of changing behaviours and attitudes.
- To build a cohort of public servants that embrace the founding values and the public administration related values and principles.
- To promote good governance in the Public Service.
- To promote the values and principles in order to establish a common and shared understanding and the PSC’s expectations prior to conducting evaluations.

The following objectives have been set for the evaluations:

- To evaluate whether the intention of the public administration values and principles is achieved at an outcome level.
- To determine how institutional processes can be changed to make sure that the Public Service is values driven rather than (only) by law and regulations.
- To ensure contextual application of the values and principles.
- To identify systemic public administration issues, which are currently hampering the development of the Public Service, rather than a list of deficiencies.
- To make recommendations, issue directions and provide advice as provided for in the PSC’s mandate.
2.7 Expectations from EAs and HoDs

As part of the promotion and evaluation process, the PSC is available to present and to engage with EAs and their HoDS as well as other SMS members in their respective departments on a continuous basis in line with the CVP promotion and evaluation methodology.

By the same token, EAs and HoDs, together with their all employees in their departments are expected to apply the values and principles in the context of their departments and should further promote the CVPs in all institutions linked to their portfolios.
CHAPTER 3: ROLE CLARIFICATION AT THE EXECUTIVE INTERFACE

3.1 Introduction

The executive interface and role clarification between EAs and HoDs is a complex and dynamic terrain which attracts a lot of scrutiny from various stakeholders. The concept of ‘executive interface’ used in this Guide refers to the terrain of interaction between EAs and HoDs. These include Deputy President, Ministers, Deputy Ministers, Premiers, Members of Executive Councils (MECs) and Directors-General/HoDs. Whilst the executive interface may involve other role-players such as special advisors, the focus of this Guide is limited to those role-players mentioned above.

The roles and responsibilities of executives are stipulated in the Constitution, the PSA, the PFMA and various other pieces of legislation that empower Ministers with sector specific responsibilities. Accordingly, these legislative frameworks form a basis for the symbiotic relationship that exists between political and administrative leadership in the Public Service. What makes these two leadership caps distinct is the fact that the former set the broad development agenda whilst the latter implements measures of achievement in the form of policy instruments and programmes. Of utmost importance is the creation of synergy in the relationship between these role players to ensure a seamless transition from political manifestos and programmes of action to actual implementation and benefit of the citizenry.

3.2 Ministry

Ministry is comprised of the Minister, Deputy Minister and Administrative Officials (as per the guidelines in chapter 8 of the Ministerial Handbook, 2007). In addition, Executive Authorities are allowed to appoint Special Advisors in line with the applicable prescripts.

3.3 Definitions

The following definitions are in terms of the PSA:

‘Executive Authority’ in relation to-

a) The Presidency or a national government component within the President’s portfolio, means the President;

b) A national department or national government component within a Cabinet portfolio, means the Minister responsible for such portfolio;

c) The Office of the Commission, means the Chairperson of the Commission;
d) The Office of a Premier or a provincial government component within a Premier’s portfolio, means the Premier of that province; and

e) A provincial department or a provincial government component within an Executive Council portfolio, means the member of the Executive Council responsible for such portfolio.

‘Minister’ means the Minister for the Public Service and Administration in terms of the PSA.

3.4. Appointment of Deputy President, Ministers, Deputy Ministers, Members of Executive Councils in terms of the Constitution

Section 91 (2) of the Constitution provides that the President appoints the Deputy President, Ministers and Deputy Ministers and assigns their powers and functions, and may dismiss them. A similar provision is established for Premiers at the provincial level in sections 132 (2) of the Constitution which states that the Premier of a province appoints the members of the Executive Council, assigns their powers and functions, and may dismiss them.

Section 93 (1) of the Constitution provides that the President may appoint – (a) any number of Deputy Ministers from among the members of the National Assembly; and (b) no more than two Deputy Ministers from outside the Assembly, to assist the members of the Cabinet, and may dismiss them. Section 93 (2) provides that Deputy Ministers appointed in terms of subsection (1) (b) are accountable to Parliament for the exercise of their powers and the performance of their functions.

3.5. Roles and responsibilities of EAs in terms of the Constitution

Section 92 of the Constitution provides for accountability and responsibilities of Deputy President and Ministers. In terms of section 92 (1) the Deputy President and Ministers are responsible for the powers and functions of the executive assigned to them by the President. Section 92 (2) provides for Members of the Cabinet to be accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions. According to section 92 (3), Members of the Cabinet must – (a) act in accordance with the Constitution; and (b) provide Parliament with full and regular reports concerning matters under their control.
Section 133 of the Constitution provides for accountability and responsibilities of the members of the Executive Council. Section 133 (1) states that the members of the Executive Council of the province are responsible for the functions of the executive assigned to them by the Premier. In terms of Section 133 (2), Members of the Executive Council of a province are accountable collectively and individually to the legislature for the exercise of their powers and the performance of their functions. In terms of section 133 (3), Members of the Executive Council of a province must – (a) act in accordance with the Constitution and, if a provincial constitution has been passed for the province, also that constitution; and (b) provide the legislature with full and regular reports concerning matters under their control.

3.6 Responsibilities of Deputy Ministers

It is important to note that the Constitution does not make provision that specifically defines the responsibilities of Deputy Ministers. When they are appointed, it is said they will assist the members of the Cabinet (i.e. Ministers). It is therefore important that Ministers record in writing the roles and responsibilities allocated to Deputy Ministers and communicate these to the Deputy Ministers and the HoDs. This will avoid confusion regarding reporting lines and accountability.

Furthermore, the Constitution does not provide details on the powers and functions of Ministers and Members of Provincial Executive Councils or any other official within the executive interface.

3.7 Powers ascribed to EAs and HoDs in terms of the PSA and PFMA

The enabling legislation that define the powers and functions of EAs and HoDs are the PSA and the PFMA. Note should be taken that certain EAs have powers and functions in terms of other legislation dealing with their sectors, for example, Education, Correctional Services, the South African Police Service and the National Defence Force. The focus of the Guide is, however, on the legislation that covers the broadest spectrum of the Public Service. The PSA and the PFMA and subordinate legislation (regulations) are provided as follows in terms of the powers and functions of EAs and HoDs:
3.8 EAs responsibilities in terms of human resource management:

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| PSA²   | Section 3 (7), the EA has all those powers and duties necessary for -
|        | a) the internal organisation of the department concerned, including its organisational structure and establishment, the transfer of functions within that department, HR Planning, the creation and abolition of posts and the provision for the employment of persons additional to the fixed establishment; and
|        | b) the recruitment, appointment, performance management, transfer and dismissal and other career incidents of employees of that department, including any other matter which relates to such employees in their individual capacities, and such powers and duties shall be exercised or performed by the executive authority in accordance with this Act. |

Section 3A – Functions of Premiers
The Premier of a province may, in the province concerned –

a) subject to section 7 (5) to (7) –
   (i) establish or abolish any provincial department, designate such department and the head thereof or amend any such designation;
   (ii) after consultation with the Minister and the Minister of Finance establish or abolish any provincial government component or establish an existing body as a provincial government component, designate such component and the head thereof and designate the Office of the Premier or a provincial department as its principal provincial department or amend any such designation; and

b) make determinations regarding the allocation of any function to, or the abolition of any function of, any department or government component in the province concerned or the transfer of any function from such department or component to another department or component in the province or from such office, department or component to anybody established by or under any law of the provincial legislature or from any such body to such office, department or component. |

Public Service Regulations (PSR), 2016¹ | The Public Service Regulations as subordinate legislation make necessary or appropriate provisions in relation to a range of matters (full spectrum of Human Resource Management including Organisational Design, Recruitment and Selection, Performance Management, Conditions of Service and the Senior Management Service) for the purposes of giving effect to the provisions of the PSA. The PSR, 2016 shall therefore be read in conjunction with the PSA. |

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¹ Republic of South Africa. Department of Public Service and Administration. Public Service Act.
² Republic of South Africa. Department of Public Service and Administration. Public Service Regulations, 2016, issued in terms of section 41 of the Public Service Act.
3.9 HoD responsibilities in terms of financial management

36. Accounting officers.-

(1) Every department and every constitutional institution must have an accounting officer.
(2) Subject to subsection (3)—
(a) the HoD must be the accounting officer for the department; and
(3) The relevant treasury may, in exceptional circumstances, approve or instruct in writing that a person other than the person mentioned in subsection (2) be the accounting officer for—
(a) a department or a constitutional institution; or
(4) The relevant treasury may at any time withdraw in writing an approval or instruction in terms of subsection (3).
(5) The employment contract of an accounting officer for a department, trading entity or constitutional institution must be in writing and, where possible, include performance standards. The provisions of sections 38 to 42, as may be appropriate, are regarded as forming part of each such contract.

37. Acting accounting officers.- When an accounting officer is absent or otherwise unable to perform the functions of accounting officer, or during a vacancy, the functions of accounting officer must be performed by the official acting in the place of that accounting officer.

Part 2: Responsibilities of Accounting Officers
38. General responsibilities of accounting officers.-

(1) The accounting officer for a department, trading entity or constitutional institution—
(a) must ensure that that department, trading entity or constitutional institution has and maintains—
(i) effective, efficient and transparent systems of financial and risk management and internal control;
(ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77;
(iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
(iv) a system for properly evaluating all major capital projects prior to a final decision on the project.

Role of HoDs as Accounting Officers in terms of the PFMA.
- Financial and risk management and internal control
- Internal audit under the control and direction of an audit committee
- Procurement and provisioning
- Evaluating all major capital projects prior to a final decision on the project
- Collect all money due to the department.

(b) is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution;

(c) must take effective and appropriate steps to—

(i) collect all money due to the department, trading entity or constitutional institution;
(ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and
(iii) manage available working capital efficiently and economically;

(d) is responsible for the management, including the safe-guarding and the maintenance of the assets, and for the management of the liabilities, of the department, trading entity or constitutional institution;

(e) must comply with any tax, levy, duty, pension and audit commitments as may be required by legislation;

(f) must settle all contractual obligations and pay all money owing, including intergovernmental claims, within the prescribed or agreed period;

(g) on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board;

(h) must take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution who—

(i) contravenes or fails to comply with a provision of this Act;
(ii) commits an act which undermines the financial management and internal control system of the department, trading entity or constitutional institution; or
(iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure;

(i) when transferring funds in terms of the annual Division of Revenue Act, must ensure that the provisions of that Act are complied with;

(j) before transferring any funds (other than grants in terms of the annual Division of Revenue Act or to a constitutional institution) to an entity within or outside government, must obtain a written assurance from the entity that that entity implements effective, efficient and transparent financial management and internal control systems, or, if such written assurance is not or cannot be given, render the transfer of the funds subject to conditions and remedial measures requiring

- prevent unauthorised, irregular and fruitless and wasteful expenditure
- manage available working capital
- safe-guarding and the maintenance of the assets, and the management of the liabilities of the department
- comply with any tax, levy, duty, pension and audit commitments
- settle all contractual obligations and pay all money owing
- report unauthorised, irregular or fruitless and wasteful expenditure
- appropriate disciplinary steps against any official in the service of the department for financial misconduct
- take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the accounting officer’s responsibilities are considered
- must comply, and ensure compliance by the department with the provisions of the Act
- ensure that expenditure of is in accordance with the vote and the main divisions within the vote
- take steps to prevent unauthorised expenditure and over-expenditure
the entity to establish and implement effective, efficient and transparent financial management and internal control systems;

(k) must enforce compliance with any prescribed conditions if the department, trading entity or constitutional institution gives financial assistance to any entity or person;

(l) must take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the accounting officer’s responsibilities are considered, and when necessary, bring those considerations to the attention of the responsible executive authority;

(m) must promptly consult and seek the prior written consent of the National Treasury on any new entity which the department or constitutional institution intends to establish or in the establishment of which it took the initiative; and

(n) must comply, and ensure compliance by the department, trading entity or constitutional institution, with the provisions of this Act.

(2) An accounting officer may not commit a department, trading entity or constitutional institution to any liability for which money has not been appropriated.

### 39. Accounting officers’ responsibilities relating to budgetary control.

(1) The accounting officer for a department is responsible for ensuring that—

(a) expenditure of that department is in accordance with the vote of the department and the main divisions within the vote; and

(b) effective and appropriate steps are taken to prevent unauthorised expenditure.

(2) An accounting officer, for the purposes of subsection (1), must—

(a) take effective and appropriate steps to prevent any overspending of the vote of the department or a main division within the vote;

(b) report to the executive authority and the relevant treasury any impending—

(i) under collection of revenue due;

(ii) shortfalls in budgeted revenue; and

(iii) overspending of the department’s vote or a main division within the vote; and

(c) comply with any remedial measures imposed by the relevant treasury in terms of this Act to prevent overspending of the vote or a main division within the vote.

**Note:** The Act further deals in detail with reporting responsibilities of HoDs as Accounting Officers
3.10. Deviations

Regulation 4 of the PSR, 2016 states that The Minister may – (a) under justifiable circumstances, authorise a deviation from any regulation; and (b) if necessary, authorise a deviation contemplated in paragraph (a) with retrospective effect for purposes of ensuring equality. Therefore EAs and HoDs must ensure that authorisation is sought from the Minister for Public Service and Administration for any deviation from the PSR.

3.11 The importance of delegations

The new public administration model, gradually introduced from 1994 to 1999, devolved powers to EAs in terms of human resource management and organisational administration. Furthermore, HoDs are bestowed powers in terms of financial management with a view to fast-track decision-making and expedite service delivery transformation. Legislation such as the PSA and the PFMA assign specific powers to EAs and HoDs which they may in turn delegate further to appropriate levels within departments.

The objectives of delegations in the Public Service can be summarised as follows:

- To reduce the excessive burden on superiors i.e., the executive and managers functioning at different levels;
- To provide opportunities of growth and self-development to junior managers;
- To create a team of experienced and matured managers for the Public Service; and
- To improve individual as well as overall efficiency of the Public Service by allowing decision making as close as possible to the point of service delivery.

The application of delegations as an instrument to fast-track and improve service delivery can be found in organisations both within the public and private sectors. Organisational modelling theory has pointed to the benefits of “flatter” structures where decision making authority is not over-centralised but empowers managers, supervisors and even operational employees to take decisions within a framework of accountability to allow innovative and improved service delivery.

Studies by the PSC have illustrated that there is hesitancy to delegate authority and this causes major delays in executing key administrative functions such as the filling of posts, etc.
The relevant legislative frameworks make the following provisions for delegations:

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<td>PSA*</td>
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"(2) (a) Subject to subsection (3)(b), the Premier of a province may –

(i) delegate to the Head of the Office of a Premier in the province any power conferred on the Premier by this Act; or

(ii) authorise that head to perform any duty imposed on the Premier by this Act.

(b) The head of the Office of the Premier may –

(i) delegate to any employee in that Office any power delegated to him or her in terms of paragraph (a); or

(ii) authorise that employee to perform any duty he or she is authorised to perform in terms of paragraph (a).

(3) The executive authority referred to in section 12 (1) may, in the case of –

(a) the President, delegate to the Deputy President or a Minister any power conferred on the President by section 12; or

(b) the Premier of a province, authorise a Member of the relevant Executive Council to perform any duty imposed on the Premier by section 12.

(4) Subject to subsection (3), an executive authority may –

(a) delegate to the head of a department any power conferred on the executive authority by this Act; or

(b) authorise that head to perform any duty imposed on the executive authority by this Act.

(5) The head of a department or any other functionary may –

(a) delegate to any employee of the department any power –

(i) conferred on that head by this Act; or

(ii) delegated to that head in terms of subsection (4); or

(b) authorise that employee to perform any duty –

(i) imposed on that head by this Act; or

(ii) that that head is authorised to perform in terms of subsection (4).

(6) Any person to whom a power has been delegated or who has been authorised to perform a duty under this section shall exercise that power or perform that duty subject to the conditions the person who made the delegation or granted the authorisation considers appropriate.

(7) Any delegation of a power or authorisation to perform a duty in terms of this section –

(a) shall be in writing;

(b) does not prevent the person who made the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and

(c) may at any time be withdrawn in writing by that person."


EAs may delegate any powers conferred on them in terms of the PSA to the HoDs and other functionaries in the departments.

Conditions may be attached to the delegations of powers which must be complied with.

Any delegation of a power does not preclude the person who made the delegation from exercising that power.
Register of all delegations made shall be kept.

HoDs as Accounting Officers may delegate any of the powers entrusted to them in terms of the PFMA to an official in the department and between EAs and HoDs is essential for good governance.

Delegations Frameworks developed by the DPSA and National Treasury to optimise service delivery and operational efficiency in departments.

In order to assist EAs and HoDs to develop delegations that will contribute to improving effectiveness and service delivery, the DPSA and National Treasury have developed Delegations Frameworks for both human resource and financial management. EAs and HoDs are encouraged to comply with these frameworks bearing in mind the unique organisational design and circumstances prevailing in their departments.

In 2013 the Cabinet approved minimum levels of delegations by EAs to enable HoDs to approve the appointment of employees at salary levels 13 and 14, in addition to salary levels below SMS.

PSR, 2016

Regulation 8 (1) states that a head of a department shall keep a register of all delegations made in terms of section 42A of the Act in the format directed by the Minister.

(2) An executive authority shall keep copies of all documents relating to the correction of an act or omission in terms of section 5 (7) of the Act.

PFMA

44. Assignment of powers and duties by accounting officers.—

(1) The accounting officer for a department, trading entity or constitutional institution may—

(a) in writing delegate any of the powers entrusted or delegated to the accounting officer in terms of this Act, to an official in that department, trading entity or constitutional institution; or

(b) instruct any official in that department, trading entity or constitutional institution to perform any of the duties assigned to the accounting officer in terms of this Act.

(2) A delegation or instruction to an official in terms of subsection (1)—

(a) is subject to any limitations and conditions prescribed in terms of this Act or as the relevant treasury may impose;

(b) is subject to any limitations and conditions the accounting officer may impose;

(c) may either be to a specific individual or to the holder of a specific post in the relevant department, trading entity or constitutional institution; and

(d) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

(3) The accounting officer may confirm, vary or revoke any decision taken by an official as a result of a delegation or instruction in terms of subsection (1), subject to any rights that may have become vested as a consequence of the decision.

In order to assist EAs and HoDs to develop delegations that will contribute to improving effectiveness and service delivery, the DPSA and National Treasury have developed Delegations Frameworks for both human resource and financial management. EAs and HoDs are encouraged to comply with these frameworks bearing in mind the unique organisational design and circumstances prevailing in their departments.

In 2013 the Cabinet approved minimum levels of delegations by EAs to enable HoDs to approve the appointment of employees at salary levels 13 and 14, in addition to salary levels below SMS.

1Republic of South Africa. Department of Public Service and Administration. Public Service Regulations.
3.12. Managing of relations at the executive interface

EAs and HoDs have to work together in a very complex and often unstable environment to ensure that the mandate of the department is executed in an efficient and effective manner. Key to their success is the building and maintenance of sound relationships built on trust and mutual respect.

The PSC has conducted various studies that directly and indirectly have a bearing on the status of relationships at the executive interface. Findings emanating from these studies clearly illustrate that where such relationships are not sound the effectiveness of the relevant department suffers and consequently service delivery is negatively affected. Possible solutions point to a need to review the legislative frameworks applicable and changing the employment practices of HoDs. However, within the current environment relationships can be managed in an effective manner as outlined in the sections below.

3.13. Establishing and maintaining governance arrangements

An EA and HoD should at least once a month meet formally to discuss key strategic issues impacting on the functioning of and ability to deliver by the department. During such meetings obstacles hampering delivery should be identified and solutions agreed upon.

Executive Committee (EXCO) meetings should be held on a quarterly basis involving the EA and the top two tiers (HoD and Deputy Directors-General) of the management echelon in the department. During these meetings progress on the agreed workplans should be discussed and executive decisions must be taken on interventions that are required to address deficiencies. The corporate management status of the department (financial and human resource management matters) should be discussed as well to promote and to ensure efficient, economic and effective use of resources.

The delegations issued by the EA and HoD should be reviewed in a closed session between the two parties on an annual basis based on experience relating to its impact on service delivery.

An effective management information system must be developed and maintained to generate monthly alerts for the EA and HoD on key issues affecting the functioning of departments.

The performance agreement of the HoD must be signed and agreed to, if necessary with the assistance of a mediator, within three months from the HoD assuming duty. In addition, if a new EA is appointed the existing performance agreement must be reconsidered but not fundamentally altered as it relates to a strategic plan that has already been adopted, budgeted for and is being executed.
3.14. **Maintaining sound communication**

A high premium must be placed on formal and informal communication as a basis for establishing a cooperative and mutually supportive work environment. Through such honest and transparent communication, trust is built which is key to building sound relationships and good governance.

3.15. **Conflict resolution**

The SMS Handbook makes provision for HoDs to submit grievances to the PSC on an act or omission that negatively affects their employment relationship with EAs. In addition, the performance agreements of HoDs make provision for agreement on a mediator in the case of disputes. Therefore, the submission of grievances to the PSC should be regarded as a last resort in this regard. Mediation can be extended beyond the performance management context. The role of this mediator should be applied in instances where the relationship is experiencing tension or has broken down.

3.16 **EAs responsibilities in terms of financial management**

The financial responsibilities of EAs are set out in chapter 7 of the PFMA. An EA must perform the following financial responsibilities:

(a) Statutory functions of an EA must be performed within the limits of the funds authorised for the relevant vote.

(b) Consider reports submitted to an EA in respect of the projection of expected expenditure and revenue collection, explanation of variances and steps that are taken to ensure projected expenditure and revenue remain within the budget, under collection or shortfalls in budgeted revenue and any overspending of the departments vote.

(c) Any directive by an EA to the accounting officer of a department having financial implications for the department must be in writing.

The EA responsible for a department or a public entity must table in the relevant legislature the:

(a) The annual report, financial statements and audit report of the department and public entity in the EAs portfolio.

(b) Findings of a disciplinary board and any sanctions imposed on an accounting officer or accounting authority in respect of financial misconduct.

Within the portfolio of most EAs there are public entities which are listed in the schedules of the PFMA. An EA is responsible for exercising ownership control powers and ensuring that public entities comply with the PFMA and the financial policies of the EA. An EA is therefore responsible for approving the:
(a) Appointment or removal of board members and chief executive officers in accordance with the enabling documents of public entities.

(b) Annual budget of non-business public entities in the portfolio of the EA.

(c) Annually conclude a shareholder's compact with associated major public entities and government business enterprises.

(d) Assess quarterly reports for the effective performance monitoring, evaluation and corrective action of entities.

Other general financial responsibilities of EAs are:

(a) Concurs with the appointment of audit committee members.

(b) Approves the department's strategic plan for the forthcoming MTEF period and annual budget.

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Appoint audit committee members and approve department's strategic plan and annual budget.
CHAPTER 4: APPOINTMENT OF STAFF IN THE PRIVATE OFFICES OF EXECUTIVE AUTHORITIES

4.1 Introduction

In order to effectively manage the recruitment, selection and appointment practices in the Public Service, departments ought to comply with the relevant legislative and regulatory framework that guides the process. This chapter serves as a guide of the legislative and regulatory framework relating to the recruitment, selection and appointment practices on the appointment of ministerial staff in the national and provincial departments. In this context, “department” includes the office of the EAs since the legislation does not separate a “department” from the “office” of the EA.

4.2 Legislative and Regulatory Framework

The appointment process of staff in the private offices of EAs is regulated by the PSA, the Ministerial Handbook, 2007 and the Senior Management Handbook, read in conjunction with the PSR, 2016. Furthermore, in making any appointments regard must be had to the CVPs enshrined in section 195 of the Constitution.

4.3 PSA

The PSA is the key legislation that provides for the organisation and administration of the Public Service and regulates the conditions of employment, terms of office, discipline, retirement and discharge of members of the Public Service, and matters connected therewith. In respect of the appointment of ministerial staff in either national or provincial departments, the Executive Authority should be particularly mindful of the following provisions:

<table>
<thead>
<tr>
<th>Provision</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 8A</td>
<td>Mechanisms for obtaining the services of persons in the Public Service</td>
</tr>
<tr>
<td>Section 9</td>
<td>Powers of the executing authority in terms of appointments, promotions and transfers in the Public Service.</td>
</tr>
<tr>
<td>Section 10</td>
<td>Qualifications for appointment</td>
</tr>
<tr>
<td>Section 11</td>
<td>Appointments and filling of posts</td>
</tr>
<tr>
<td>Section 12 A</td>
<td>Appointment of persons on the grounds of policy considerations</td>
</tr>
<tr>
<td>Section 14</td>
<td>Transfers within the Public Service</td>
</tr>
</tbody>
</table>

Recruitment, selection and appointment processes in the Public Service are guided by legislation and regulations.
4.3.1 Section “8A and section 9 of the PSA

Section 8A provides for the mechanisms for obtaining services of persons as follows:

(a) appointments in terms of section 9, including appointments of heads of department in terms of section 12;
(b) appointments in terms of section 12A on grounds of policy considerations; or
(c) deployments in the form of
   (i) transfers in terms of section 14, including transfers of heads of department in terms of section 12(3);
   (ii) secondments in terms of section 15; and
   (iii) assignments in terms of section 32.

Section 9 relates to the powers of an executing authority in respect of appointments and provides that an “executive authority may appoint any person in his or her department in accordance with this Act and in such a manner and on such conditions as may be prescribed.”

4.3.2 Transfer and secondment of public servants to the Office of the EA

Section 8A of the PSA makes provision for the filling of posts through transfers in terms of section 14 and secondments in terms of section 15. The conditions and circumstances under which employees may be transferred within the department or transferred to another department are also outlined in section 14 of the PSA. This means that posts in the Office of an EA can be filled through transferring employees who are appointed permanently or on contract to vacant funded posts of a department.

Section 15 of the PSA makes provision for posts in the offices of EAs to be filled through the secondment of employees who are appointed permanently or on contract. In the event that an employee is seconded to a vacant funded post, the post that is temporarily vacated can be filled through a contract appointment. However, if the employee is seconded to a unit that does not have a vacant funded post, the temporary vacant post cannot be filled in any way. According to the Ministerial Handbook, the advantage of secondment is that employees could return to their original components on the approved establishment without any financial burden to the department.
4.3.3 Implications of section 8A and section 9

(1) Executive Authorities as Political Heads of Departments have been given administrative powers to appoint any person in their departments as long as their actions are in accordance with the PSA.

(2) Since the offices of Executive Authorities (EAs) are part of departments, and employees in EAs’ offices are appointed in terms of the PSA, they are not excluded from any provisions in this Act.

(3) Employees who are appointed in terms of section 9 in the office of the EA are administrative employees who can be appointed permanently or temporarily.

(4) Special Advisors are appointed in terms of section 12A in the office of the EA, therefore, they are regarded as employees in terms of PSA.

4.3.4 Section 10 and section 11

Any appointment made in respect of the section 9 of the PSA must fulfil the qualifications for appointment as set out in section 10 which provides as follows:

(1) No person shall be appointed permanently, whether on probation or not, to any post on the establishment in a department unless he or she-

   (a) is a South African citizen or permanent resident; and

   (b) is a fit and proper person.

Section 11 and in particular section 11 (2) (b) of the PSA qualifies “fit and proper person” and provides as follows:

(1) In the making of appointments and the filling of posts in the public service due regard shall be had to equality and the other democratic values and principles enshrined in the Constitution.

(2) the making of any appointment in terms of section 9 in the public service-

   (a) all persons who applied and qualify for the appointment concerned shall be considered; and

   (b) the evaluation of persons shall be based on training, skills, competence, knowledge and the need to redress, in accordance with the Employment Equity Act, 1998 (Act 55 of 1998), the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender and disability.
4.4 The Ministerial Handbook and Section 12A

The Ministerial Handbook, and in particular Chapter 8 thereof, provides guidance on the private office staff complement of the relevant EAs as well as other arrangements. Accordingly, the Handbook provides that the private office staff complement in the offices of Ministers/Premiers should be 10 posts at the most whereas for Deputy Ministers and MECs, such posts are limited to six. An additional post may be provided for Ministers whose portfolios relate to the activities of more than one executive institution/department. However, the structure of the Office of the EA is subject to change as part of the review of the Ministerial Handbook.

Section 12A of the PSA makes provision for the appointment of Special Advisors to the Executive Authority and they are appointed on the grounds of policy considerations. Section 12A specifically provides that:

(1) Subject to this section, such Executive Authorities as the Cabinet may determine may appoint one or more persons under a contract, whether in a full-time or part-time capacity-
   a) to advise the Executive Authority on the exercise or performance of the Executive Authority’s powers and duties;
   b) to advise the Executive Authority on the development of policy that will promote the relevant department’s objectives; or
   c) to perform such other tasks as may be appropriate in respect of the exercise or performance of the Executive Authority’s powers and duties.

(2) The maximum number of persons that may be appointed by an Executive Authority under this section and the upper limits of the remuneration and other conditions of service of such persons shall be determined by the Cabinet in the national sphere of government.

(3) The special contract contemplated in subsection (1) shall include any term and condition agreed upon between the relevant Executive Authority and the person concerned, including:
   a) The contractual period, which period shall not exceed the term of office of the Executive Authority;
   b) The particular duties for which the person concerned is appointed; and
   c) The remuneration and other conditions of service of the person concerned.

4.4.1 Implications of the Ministerial Handbook and Section 12A

From both the Ministerial Handbook and section 12A of the PSA, the following salient points are worth noting:

a) The private office staff complement in the offices of Ministers/Premiers should be 10 posts at the most.

b) The private office staff for Deputy Ministers and MECs should be six posts at the most.
c) An additional post may be provided for Ministers whose portfolios relate to the activities of more than one executive institution/department but that must be authorised by the Minister of Public Service and Administration.

d) Special Advisors provide advisory services to EAs as prescribed in section 12A (1) (a) to (c), however, they do not form part of the private office of an EA.

e) There is no relationship of authority between Special Advisors and heads of department, which means that any input the Special Advisor makes must be directed to the EA.

f) The appointment of Special Advisors in terms of section 12A is limited to two full-time equivalent positions for each Minister and Premier; unless the Cabinet or the relevant Provincial Executive Council approves a higher number of up to two additional full-time equivalents for each Minister and Premier because of work requirements.

g) Special Advisors are not part of the finite number of posts listed in the Ministerial Handbook. This means that sufficient funds must be available in terms of the medium-term expenditure framework of the relevant department in order to effect such appointments.

h) The appointment of Special Advisors is not applicable to all EAs as MECs are in terms of a decision of Cabinet excluded. This is qualified in terms of section 3 of the Dispensation for the Appointment and Remuneration of Persons (Special Advisers) Appointed to the Executive Authorities on the Ground of Policy Considerations in terms of Section 12A of the Public Service Act.

4.5 The Do’s and Don’ts on the appointment of Ministerial support staff

In the interest of upholding the values and principles of the Constitution, it is imperative that Executive Authorities as well as Accounting Officers, together with the staff who are in charge of the recruitment and selection of personnel, understand the implications of non-compliance with the legislative and regulatory frameworks.

Below is a table depicting the Do’s and Don’ts on the appointment of ministerial support staff, however it should be noted that the table is not exhaustive.

<table>
<thead>
<tr>
<th>Do’s</th>
<th>Don’ts</th>
</tr>
</thead>
<tbody>
<tr>
<td>The private staff complement in the offices of Ministers/ Premiers and Deputy Ministers/MEC’s is limited to 10 and 6 posts respectively.</td>
<td>The staff complement should not be exceeded.</td>
</tr>
<tr>
<td>An additional post may be provided for Ministers whose portfolios relate to the activities of more than one executive institution/department.</td>
<td>An additional post in a case of more than one Portfolio without consultation with the MPSA.</td>
</tr>
<tr>
<td><strong>• The appointment of Special Advisors in the office of each Minister and Premier is limited to two (2) full-time equivalent positions.</strong></td>
<td><strong>• One (1) or two (2) additional Special Advisors <strong>without</strong> the approval of the Cabinet or relevant Provincial Executive Council.</strong></td>
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<tr>
<td><strong>• Two (2) additional full-time equivalent positions after the Cabinet or relevant Provincial Executive Council has approved a higher number up to two (2) additional full-time positions due to work requirements.</strong></td>
<td><strong>• More than two (2) additional Special Advisors with or without approval. The Cabinet or relevant Provincial Executive Council do not have the power to approve more than 2 additional Special Advisors.</strong></td>
</tr>
</tbody>
</table>

**Special Advisers appointed for Ministers and Premiers may be utilised by Deputy Ministers and MECs for specific tasks by arrangement with the Minister or Premier concerned.**

**Employees who are appointed on special contracts should be linked to the term of office of the relevant executive authorities as prescribed in terms of Regulation 66 of the PSR.**

**Ministerial employees who are appointed on special contract shall not be absorbed in the staff establishment of departments after the expiry of their contracts or the expiry of the term of the relevant EA.**

**Ministerial staff can be appointed through transfers, secondments and assignments in terms of Section 14, 15 & 32 of the PSA.**

**Ministerial staff cannot be appointed through transfers, secondments and assignments if it is not in line with sections 14, 15 & 32 of the PSA.**

**Ministerial staff can be appointed as full-time public servants, provided that the job evaluation system is utilised and that there are sufficient funds available on the approved budget of the relevant department for the creation of post(s).**

**Ministerial staff cannot be appointed as full-time public servants without the job evaluation being conducted and sufficient funds being identified.**

**Regulation 66 (2) of the PSR provides that appointments in posts in the office of an Executive Authority may be made without following advertisement processes, but the suitability of such candidates must still be assessed on the basis of the appointment criteria as per Regulation 67 (5) (b).**

**Appointments may not be made without assessing the suitability of the candidates on the basis of the appointment criteria per Regulation 67 (5) (b).**
CHAPTER 5: MANAGING RECRUITMENT AND SELECTION

5.1 Introduction

The Public Service is a labour intensive employer which is dependent on the quality, skills and performance of its employees to achieve institutional goals and objectives. The Constitution, as the supreme law of the country sets out the values and principles to ensure that the country moves away from the past injustices to an inclusive and values driven society. Its implementation is supported through various legislative and regulatory frameworks.

Chapter 10 of the Constitution provides, amongst others, for the values and principles governing public administration. One of these basic values is that “Public Administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation”. This principle is central to management of recruitment and selection process in the Public Service.

The provision of effective, efficient and sustainable service delivery is of paramount importance and thus the Recruitment and Selection process is key and fundamental as it is central to the state’s capacity to deliver on its mandate.

5.2 The legislative and regulatory frameworks

The recruitment and selection process is conducted in terms of the legislative and regulatory framework applicable to the South African Public Service as listed in the table in the next page. The legislative and regulatory framework is underpinned by the following principles:

- Objectivity;
- Fairness;
- Equity;
- Equality;
- Confidentiality;
- Professionalism, and
- Human dignity.
<table>
<thead>
<tr>
<th>SOURCE</th>
<th>PROVISION</th>
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<tbody>
<tr>
<td>Constitution</td>
<td>Chapter 10 of the Constitution requires good human resource management and career-development practices be cultivated with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation in the public administration.</td>
</tr>
<tr>
<td>PSA</td>
<td><strong>8A. Mechanisms for obtaining services of persons</strong>&lt;br&gt;Services of persons may be obtained in terms of this Act by means of—  &lt;br&gt;(a) appointments in terms of section 9, including appointments of heads of department in terms of section 12;  &lt;br&gt;(b) appointments in terms of section 12A on grounds of policy considerations; or  &lt;br&gt;(c) deployments in the form of—  &lt;br&gt;(i) transfers in terms of section 14, including transfers of heads of department in terms of section 12(3);  &lt;br&gt;(ii) secondments in terms of section 15; and  &lt;br&gt;(iii) assignments in terms of section 32.</td>
</tr>
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<td></td>
<td><strong>9. Appointments in Public Service</strong>&lt;br&gt;An executive authority may appoint any person in his or her department in accordance with this Act and in such manner and on such conditions as may be prescribed.</td>
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<td><strong>10. Qualifications for appointment</strong>&lt;br&gt;(1) No person shall be appointed permanently, whether on probation or not, to any post on the establishment in a department unless he or she—  &lt;br&gt;(a) is a South African citizen or permanent resident; and  &lt;br&gt;(b) is a fit and proper person.</td>
</tr>
<tr>
<td></td>
<td><strong>11. Appointments and filling of posts</strong>&lt;br&gt;(1) In the making of appointments and the filling of posts in the Public Service due regard shall be had to equality and the other democratic values and principles enshrined in the Constitution.  &lt;br&gt;(2) In the making of any appointment in terms of section 9 in the Public Service—  &lt;br&gt;(a) all persons who applied and qualify for the appointment concerned shall be considered; and  &lt;br&gt;(b) the evaluation of persons shall be based on training, skills, competence, knowledge and the need to redress, in accordance with the Employment Equity Act, 1998 (Act 55 of 1998), the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender and disability.</td>
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</table>
12A. Appointment of persons on grounds of policy considerations

(1) Subject to this section, such executive authorities as the Cabinet may determine may appoint one or more persons under a contract, whether in a full-time or part-time capacity-
   (a) to advise the executive authority on the exercise or performance of the executive authority’s powers and duties;
   (b) to advise the executive authority on the development of policy that will promote the relevant department’s objectives; or
   (c) to perform such other tasks as may be appropriate in respect of the exercise or performance of the executive authority’s powers and duties.

(2) The maximum number of persons that may be appointed by an executive authority under this section and the upper limits of the remuneration and other conditions of service of such persons shall be determined by the Cabinet in the national sphere of government.

(3) The special contract contemplated in subsection (1) shall include any term and condition agreed upon between the relevant executive authority and the person concerned, including –
   (a) The contractual period, which period shall not exceed the term of office of the executive authority;
   (b) The particular duties for which the person concerned is appointed; and
   (c) The remuneration and other conditions of service of the person concerned.

Section 14. Transfers within Public Service

(1) Subject to subsections (2), (3) and (4), any employee of a department may be transferred –
   (a) within the department, by its executive authority;
   (b) to another department by the executive authorities of the two relevant departments,

(2) Such transfer shall be made in such manner and on such conditions as may be prescribed.

(3) An employee may be transferred under subsection (1) only if –
   (a) The employee requests the transfer or consents to the transfer; or
   (b) In the absence of such request or consent, after due consideration of any representation by the employee, the transfer is in the public interest.
(4) Before employees may be transferred in terms of subsection (3) (b) as result of a determination regarding an allocation, abolition or transfer of a function, contemplated in section 3 (4)(b) or 3A(b), consultation shall take place in the applicable bargaining council established in terms of the Labour Relations Act for the public service as a whole or for a particular sector in the public service.

(5)(a) The transfer of an employee in terms of subsection (1) who is on probation shall remain subject to probation as prescribed.

(b) Any regulation so prescribed shall take due regard of the respective functions before and after the transfer to avoid detriment to the employee concerned.

(6) An employee who has been transferred to a post with –

(a) A lower salary than his or her salary before the transfer shall not upon such transfer suffer any reduction in salary, except if he or she requested the transfer or he or she consented to the reduction; or

(b) A higher salary than his or her salary before the transfer shall not by reason only of that transfer be entitled to the higher salary.

Section 15. Transfers and secondments from and to Public Service

(1) Any person who was employed by an organ of state immediately before he or she is appointed in terms of section 9 shall be deemed to be transferred to the public service in respect of such conditions of service and to such extent as the Minister may determine in terms of section 3 (5).

(2) If it is in the public interest and if the prescribed conditions (if any) have been complied with, the executive authority of a department may, with the approval of the employer concerned, approve the secondment of a person in the service of an organ of state, another government or any other body to the department –

(a) for a particular service or period not exceeding the prescribed period (if any); and

(b) on the prescribed conditions (if any) and such other conditions as agreed between the relevant functionary of the body concerned and the executive authority.

(3)(a) The executive authority of a department may second an employee of the department to another department, any other organ of state, another government or any other body –
(i) For a particular service or period not exceeding the prescribed period (if any); and  
(ii) On the prescribed conditions (if any) and such other conditions as agreed upon between the executive authority and the relevant functionary of the body concerned.

(b) The secondment of an employee of a department may occur only if -  
(i) The employee requests, or consents to, the secondment; or  
(ii) In the absence of such request or consent, after due considerations of any representations by the employee, the secondment is in the public interest.

(c) While on secondment, an employee remains subject to this Act and any other laws applicable to employees in the public service, except to the extent otherwise agreed upon, as provided for in paragraph (a) (ii).

<table>
<thead>
<tr>
<th>Employment Equity Act, 1998</th>
<th>Section 6. Prohibition of unfair discrimination</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground.</td>
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</tbody>
</table>
| (2) It is not unfair discrimination to –  
   (a) Take affirmative action measures consistent with the purpose of this Act; or  
   (b) Distinguish, exclude or prefer any person on the basis of an inherent requirement of a job. |

| Employment Equity Amendment Act, 2013 | Section 20 (2) (c) where underrepresentation of people from designated groups has been identified by the analysis, the numerical goals to achieve the equitable representation of suitably qualified people from designated groups within each occupational level in the workforce, the timetable within which this is to be achieved, and the strategies intended to achieve those goals. |
The Public Service Regulations (PSR) includes a number of key principles on which recruitment and selection must be based. Some of the principles have general application whilst others focus particularly on the senior management service (SMS). This also includes the principles of open competition and fair selection processes.

**Section 20 (3)** for purposes of this Act, a person may be suitably qualified for a job as a result of anyone of, or any combination of that person’s –

(a) Formal qualifications;
(b) Prior learning;
(c) Relevant experience; or
(d) Capacity to acquire, within a reasonable time, the ability to do the job.

(4) When determining whether a person is suitably qualified for a job, an employer must –

(a) Review all the factors listed in subsection (3); and
(b) Determine whether that person has the ability to do the job in terms of anyone of, or any combination of those factors.

(5) In making a determination under subsection (4), an employer may not unfairly discriminate against a person solely on the grounds of that person’s lack of relevant experience.

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**Determination of requirements for employment**

64 (1) An executive authority shall determine and record composite requirements for employment in any post on the basis of the main objectives, core functions and the inherent requirements of the job.

(2) An executive authority shall -

(a) Ensure that the requirements for employment do not unfairly discriminate against any person; and
(b) Comply with any statutory requirement for the appointment of employees.

(3) An executive authority shall not employ a foreign national, unless –

(a) In the case of permanent appointment, he or she is a permanent resident; or
(b) In the case of a temporary appointment, he or she is a permanent resident or he or she has been issued with an appropriate permit in terms of the Immigration Act, 2002 (Act No. 13 of 2002).
Advertising

65 (1) An executive authority shall ensure that vacant posts in the department are advertised, as efficiently and effectively as possible, to reach the entire pool of potential applicants, including designated groups.

(2) An advertisement for a post shall as a minimum specify the job title, salary scale, core functions, place of work, inherent requirements of the job, including any other requirements prescribed in these Regulations.

(3) A vacant post in the SMS shall be advertised nationwide.

(4) An executive authority shall advertise any other vacant post, as a minimum, within the department, but may also advertise such post—
   (a) in the public service;
   (b) locally; or
   (c) nationwide.

(5) When advertising outside the department, the department shall also advertise in the public service vacancy circular issued by the Department of Public Service and Administration.

(6) An advertisement for a post shall not unfairly discriminate against or prohibit any suitably qualified person or employee from applying.

(7) A funded vacant post shall be advertised within six months after becoming vacant and be filled within twelve months after becoming vacant.

(8) An advertisement contemplated in sub-regulation (4) may be utilised to create a pool of potential employees for a period of not more than 6 months from the date of advertisement to fill any other vacancy in the relevant department if—
   (a) the job title, core functions, inherent requirements of the job and the salary level of the other vacancy is the same as the post advertised; and
   (b) the selection process contemplated in regulation 67 has been complied with.

(9) With due regard to the criteria in regulation 67(5)(b) to (f), an executive authority may fill a vacant post without complying with sub-regulations (3) and (4) if—
   (a) the department can fill the post from the ranks of employees who have been declared in excess and are on a salary level linked to the grade of that post;
   (b) the department can appoint into the post an employee who was appointed under an affirmative action measure as contemplated in section 15 of the Employment Equity Act.

Chapter 2 of the SMS Handbook deals with Recruitment and Selection and provides a step by step guide on the processes that should be followed.
Filling of posts in Office of EAs and Deputy Ministers

66. (1) An executive authority may only fill vacancies in the office of an executive authority or a Deputy Minister by means of:

(a) an appointment in terms of section 9 of the Act for—
   (i) the term of office of the incumbent executive authority or Deputy Minister which will terminate at the end of the first month after the month in which the term of that executive authority or Deputy Minister terminates for any reason, or
   (ii) a period not exceeding three years;

(b) a transfer in terms of section 14 of the Act, provided that the employment status of the transferred employees as permanent or temporary, as the case may be, shall remain unaffected by the transfer.

(2) Subject to the appointment criteria in regulation 67(5)(b) to (d), an executive authority may fill a post in the office of the executive authority or a Deputy Minister in that executive authority’s portfolio, in terms of sub-regulation (1) without complying with regulations 65(1); (3) and (4).

(3) Sub-regulation (1) shall not be construed as preventing the secondment in terms of section 15(2) or (3) of the Act of a person or an employee or an assignment in terms of section 32 of the Act of an employee to perform the functions of a post in the office of an executive authority or a Deputy Minister.

Selection

67. (1) An executive authority shall appoint a selection committee to make a recommendation on the appointment to a post. The selection committee shall consist of at least three members who are employees of a grade equal to or higher than the grade of the post to be filled or suitable persons from outside the Public Service. However—

(a) the chairperson of the selection committee, who shall be an employee, shall be of a grade higher than the post to be filled; and

(b) in the event that the head of the component within which the vacant post is located, is graded lower than the vacant post, such a head may be a member of the selection committee.
(2) A selection committee constituted for the appointment of—
(a) the head of a national department or national government component, shall be chaired by the executive authority responsible for the portfolio in which the vacancy exists and include at least two other executive authorities of a national department and a national head of department;
(b) the head of the Presidency, shall be chaired by a Minister in the Presidency and include at least two other executive authorities of a national department and a national head of department;
(c) the head of the Office of the Commission, shall be chaired by the chairperson of the Commission and include at least the Minister and one other executive authority of a national department and the head of a national department;
(d) the head of the Office of the Premier, shall include at least three members of the Executive Council of the relevant province and the head of any national department and shall be chaired by a member of the Executive Council of the relevant province;
(e) the head of a provincial department or provincial government component, shall be chaired by the relevant member of the Executive Council and include at least two other members of the Executive Council of the relevant province and the head of the Office of the Premier of the province;
(f) a Deputy Director-General of a national department, shall be chaired by the executive authority responsible for the portfolio in which the vacancy exists and include at least two Deputy Ministers and the relevant head of department;
(g) a Deputy Director-General of the Office of the Commission, shall be chaired by the chairperson of the Commission and include at least two Deputy Ministers and the head of the Office of the Commission; and
(h) a Deputy Director-General of—
(i) the Office of the Premier, shall be chaired by a member of the Executive Council and include at least two other members of the Executive Council of the relevant province and the head of the Office of the Premier; and
(ii) a provincial department, shall be chaired by the relevant member of the Executive Council and include at least two other members of the Executive Council of the relevant province and the head of the relevant provincial department.
(3) A selection committee shall, where possible, include adequate representation of designated groups.

(4) Any suitably qualified employee may provide secretarial or advisory services during the selection process.

(5) The selection committee shall make a recommendation on the suitability of a candidate after considering only—
(a) information based on valid methods, criteria or instruments for selection that are free from any bias or discrimination;
(b) the inherent requirements of the post;
(c) the department’s employment equity plan as contemplated in regulation 27; and
(d) in respect of candidates applying for posts from salary level 9 and above—
   (i) the level of understanding of the relevant departmental mandates;
   (ii) the ability to identify problems and find innovative solutions; and
   (iii) the ability to work in a team.

(6) A selection committee shall record the reasons for its recommendation with reference to the criteria mentioned in sub-regulation (5).

(7) If the selection committee is unable to recommend a suitable person for appointment from those who applied in terms of sub-regulation (5), the executive authority may, after that selection process has been completed, approve the headhunting of one or more persons with the requisite competencies and subject such person or persons to the same selection process as those who applied.

(8) If an executive authority does not approve a recommendation of a selection committee, he or she shall record the reasons for his or her decision in writing.

(9) Before making a decision on an appointment or the filling of a post, an executive authority shall—
   (a) satisfy herself or himself that the candidate qualifies in all respects for the post and that his or her claims in his or her application for the post have been verified as directed by the Minister; and
   (b) record that verification in writing.
**Labour Relations Act, 1995**

### Unfair dismissal and unfair labour practice

#### 185. Right not to be unfairly dismissed or subjected to unfair labour practice

Every employee has the right not to be

(a) unfairly dismissed; and
(b) subjected to unfair labour practice.

#### 186. Meaning of dismissal and unfair labour practice

1. "Dismissal" means that-
   
   (a) an employer has terminated employment with or without notice;
   
   (b) an employee employed in terms of a fixed-term contract of employment reasonably expected the employer-
       (i) to renew a fixed-term contract of employment on the same or similar terms, (ii) to retain the employee in employment on an indefinite basis but otherwise on the same or similar terms as the fixed-term contract, but the employer offered to retain the employee on less favourable terms, or did not offer to retain the employee;
   
   (c) an employer refused to allow an employee to resume work after she
       (i) took maternity leave in terms of any law, collective agreement or her contract of employment or;
   
   (d) an employer who dismissed a number of employees for the same or similar reasons has offered to re-employ one or more of them but has refused to re-employ another; or;
   
   (e) an employee terminated employment with or without notice because the employer made continued employment intorable for the employee; or;
   
   (f) an employee terminated employment with or without notice because the new employer, after a transfer in terms of section 197 or section 197A provided the employee with conditions or circumstances at work that are substantially less favourable to the employee than those provided by the old employer;

2. "Unfair labour practice" means any unfair act or omission that arises between an employer and an employee involving -

   (a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee;
(b) unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;
(c) a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and
(d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), on account of the employee having made a protected disclosure defined in that Act.

The Handbook provides clear and concise terms, the conditions of employment and the roles of the SMS members. Chapter 2 of the Handbook deals with recruitment and selection and provides a step by step guide on the processes that should be followed. This chapter provides advice and must be read in conjunction with PSA, PSR, 2016, amended directive on compulsory capacity development, mandatory training days and minimum entry requirements for SMS, Executive Protocol: Principles and procedures for the employment of HODs and DDGs nationally, Directive on the Performance Management and Development System for members of the SMSs excluding HoDs, Directive on the performance managements and development systems for HoDs.

5.3 Identifying the need for recruitment

EAs are accorded the responsibility of assessing the required human resource (HR) capacity for their departments. The first step is to establish the “real” need for a position to be filled before commencing with recruitment. In the PSR of 2016 it is recognized that HR planning should precede any recruitment action in the Public Service. Among other things this includes forecasting the department’s HR needs, job profiling, job analysis, job description, job evaluation, job grading and budgeting for relevant posts. It is important to note that if the HR function has not been delegated to the departmental heads, HR specialists and line function managers together with the EA should all be involved in the process to verify the need for recruitment. The absorption or deployment of existing employees must be given first preference. However, if the vacancy cannot be filled through such means, the EA may proceed with the recruitment process.
5.4 Important steps to be considered when filling posts

In accordance with PSR, 2016 the filling of posts cannot commence until the following steps have been considered:

1. Compile a job profile
2. Conduct job analysis
3. Compile a job description
4. Conduct a job evaluation
5. Conduct interviews and apply selection criteria agreed upon including competency assessment for members of the SMS
6. Constitute a selection committee that develops and agree on selection criteria (aligned to the JD and advert)
7. Compile an advert and advertise the post
8. Motivate the need to fill the post
9. Recommend most suitable candidate for appointment to delegated authority
10. Complete pre-employment screening: Qualifications and security vetting
11. Inform successful and unsuccessful shortlisted candidates of outcome in writing
12. Successful candidate to accept offer in writing
CHAPTER 6: PERFORMANCE MANAGEMENT SYSTEM FOR DIRECTORS-GENERAL AND HEADS OF DEPARTMENT IN THE PUBLIC SERVICE

6.1 Introduction

6.1.1 Performance management is an integral part of ensuring effective oversight and accountability in the Public Service. It is important that the leadership of the various institutions of government is held accountable for the human and financial resources under their control. Where poor performance at an individual or organisational level has been identified, appropriate steps need to be immediately taken to ensure that the capacity of the government to deliver services is not hampered.

6.1.2 The PSC has previously managed the performance management system for HoDs in the Public Service. This was after a Cabinet decision to adopt a framework for the evaluation of HoDs in the 2000/01 financial year. In this role, the PSC issued annual guidelines to assist EAs and HoDs to comply with the various performance management prescripts in the process. The PSC further facilitated and chaired evaluation panels appointed to evaluate the performance of HoDs at the national and provincial levels of government. As an independent role player, the PSC’s involvement on the panels was to ensure the evaluation process that is fair, equitable and that the norms and standards are applied to all HoDs in terms of procedures. Finally, the PSC reported to Parliament and the Executive on progress achieved.

6.1.3 In 2012, Cabinet approved the transfer of the HoD Performance Management Development System (PMDS) function from the PSC to the Department of Planning, Monitoring and Evaluation (DPME). For this to happen the DPSA would issue a new policy framework (Directive) to enable the DPME to manage the process. Interim mechanisms were also put in place to allow EAs and HoDs to finalise outstanding evaluations until the new framework was applicable.

6.1.4 The Public Service Regulations, 2016, assign to the MPSA the power to issue Directives for categories of SMS members and requires that a single instrument must be used when assessing the performance of employees. The new framework would in effect therefore replace Chapter Four of the SMS Handbook which provided the basis for managing the performance of all senior managers in the Public Service, including DGs and HoDs. The PSC annual guidelines were also based on Chapter Four of the SMS Handbook.
6.2 Directive on the Performance Management System for HoDs

6.2.1 A new Directive on the Performance Management System for HoDs was published in January 2018 by the MPSA. This Directive became effective from 01 April 2018. According to the provisions of the Directive, the Presidency, with the assistance and coordination from the DPME, will be responsible for providing oversight and facilitating the evaluation of HoDs. The DPME may issue guidelines to facilitate the HoDs evaluation process and to assist role players with compliance in this regard.

6.2.2 The purpose of this new system is to integrate the management of individual with organisational performance. Therefore, the performance management systems for HoDs integrates individual with organisational performance. It is thus essentially designed to link the HOD’s performance agreement (PA) to the department’s strategic plan and government mandate and/or priorities.

6.2.3 The performance management system for HoDs is characterised by four overarching elements:
   (a) Employee Performance.
   (b) Key Government Focus Area (KGFA).
   (c) Organisational Performance based on the Annual Performance Plan (APP), as reported in the Annual Report.
   (d) Auditor General’s Audit Opinion and Findings.

6.2.4 The performance management process for HoDs is based on a signed performance agreement (PA) with the relevant EA. The PA should clarify the scope of performance and expectations by defining deliverables and expectations for the performance cycle. The detail of the performance should be guided by the four elements listed in the above paragraph which are explained in detail in the policy.

6.3 Time frame and activities

6.3.1 The process flow in the performance cycle of the HOD is outlined in the table below:

<table>
<thead>
<tr>
<th>Time Frames</th>
<th>New Cycle Activities</th>
<th>Previous Cycle activities to be completed</th>
<th>Person / Department responsible</th>
</tr>
</thead>
<tbody>
<tr>
<td>December to March</td>
<td>Planning and contracting for the next or new performance cycle.</td>
<td>N/A</td>
<td>HoD, EA.</td>
</tr>
<tr>
<td>30 April</td>
<td>Conclude, sign and submit/file copy of PA with DPME and PSC. The original is kept in the department.</td>
<td>DPME issues evaluation guidelines for the process of HoD assessment for the previous cycle.</td>
<td>EA and HoD Presidency via the DPME.</td>
</tr>
</tbody>
</table>
6.4 Performance assessments

6.4.1 An EA must conduct the compulsory mid-year review and annual assessment with the HoD. These must be in writing and the performance of the HoD must be scored using the HoD PMDS calculator. A signed copy must be attached to the documentation.

6.4.2 The mid-year assessment must be finalised and submitted to the DPME by 30 November of each financial year, and the annual performance assessment between the relevant EA and HoD must be finalised within nine (9) months after the end of a performance cycle.

6.4.3 Disagreements should not be used as a reason for not complying with the timeframes indicated. In instances where disagreements manifest as a result of the assessment score or if the EA fails to conclude and/or sign the performance assessment by 31 December, the HoD may forward the assessment form to the DPME and PSC. A cover letter should be attached to the assessment form indicating the reason for the non-signing or non-concluding of the HoD’s performance assessment by the relevant EA.
6.5 Evaluation panels

6.5.1 The Director-General (DG) in the Presidency and the nine DGs in the Offices of the Premier, in consultation with the relevant EAs, will appoint and chair evaluation panels of HoDs for national and provincial departments respectively.

6.5.2 For the evaluation of the DG in the Presidency and the DGs in the Offices of the Premier, the PSC will chair the evaluation panels.

6.5.3 DPME and Offices of the Premier will provide the Secretariat for all evaluation panels.

6.5.4 Once the evaluations are finalised the panels will provide all EAs with the outcome of their assessments. The outcome will come as a recommendation to the EA. The EA will take into account the recommendation of the panel in making the final decision on the HoD’s performance. The relevant EA is required to respond to the panel within 30 days, on his/her final decision.

6.5.5 If no response is received within 30 days, it will be regarded that the relevant EA conurs with the recommendation of the panel, which will then become the final result.

6.5.6 DMPE will issues guidelines to clarify all aspects regarding the appointment of panels and the evaluation process.

6.6 Managing disputes

6.6.1 Disputes on the signing of performance agreements will be dealt with in terms of Regulation 72(4) of the Public Service Regulations, 2016. In terms of this Regulation, the President or Premier shall, within one month after the expiry of the stipulated period appoint a person to consider the dispute, provided that the person so appointed, shall be an EA, a Deputy Minister or an employee who is a member of the SMS. The person appointed to consider the dispute within one month of his or her appointment and recommend a PA or an agreement of similar nature to be signed. The relevant employee and his or her supervisor shall sign the PA or an agreement of similar nature, as recommended within two weeks of receipt thereof, failing which the agreement shall be deemed to have been signed from the date of the recommendation.
6.6.2 In terms of disputes relating to all other matters of the PMDS for HoDs, the DG in the Presidency, the DG in the Office of the Premier and the Chair of the PSC must intervene.

6.6.3 If a party to a dispute is still unhappy after the intervention detailed above, the Grievance Procedure in Chapter 10 of the SMS Handbook must be followed.

6.7 Managing the outcomes of performance assessments

6.7.1 EAs may use the performance assessment and evaluation results to make decisions in a range of areas, such as:
- Confirmation/non-confirmation of appointment of the HoD;
- HoD developmental needs;
- Access to career development opportunities for the HoD;
- Initiation of incapacity procedures; and
- Rewarding and recognising performance.

6.7.2 Where poor performance has been identified the processes will be followed in conjunction with Chapter 7 of the SMS Handbook.

6.7.3 In the case of good performance, EAs shall base their decision to award incentives to HoDs on the Directive issued by the MPSA in terms of the Incentive Policy Framework.

6.7.4 HoDs who have not submitted documents for their assessment to the relevant EA, and/or failed to finalise or communicate to the Presidency, DPSA, or the Office of the Premier and the PSC, and where applicable, failed to timeously communicate challenges in finalising their assessment by 31 December, will forfeit performance incentives they may have been eligible for.
CHAPTER 7: MANAGING ETHICS IN THE PUBLIC SERVICE

7.1 Introduction

Chapter 10 of the Constitution, provides, amongst others, for the values and principles governing public administration. One of these basic values is that a high standard of professional ethics must be promoted and maintained in the Public Service. Observance of this basic value goes a long way towards eliminating and/or mitigating sources of corruption.

7.2 Ethics infrastructure

Ethics structure entails formal components and functions (such as the committee and office) that are established to manage ethics in departments. The ethics structure consists of the following components:

- Ethics champion: is a very senior official in the department who advocates and drives the ethics cause in the department;
- Ethics committee: is a structure set up by a department to provide strategic direction and oversight of ethics management in a department; and
- Ethics office: is a dedicated function designated to one or more officials to perform ethics functions on a daily basis.

In terms of Regulations 22 and 23 of the PSR 2016, both the EA and the HoD are responsible for creating and inculcating an ethical culture in a department. They assume final accountability to Parliament and therefore must set the ethical tone. Moreover, they are also bestowed with powers to further delegate the responsibility for the management of ethics to other structures and staff members within the department.

The strength of conviction that EAs and HoDs in respect of ethics should reflect the desired levels of leadership commitment in the effort to professionalise the Public Service. Such commitment is displayed when the leaders create structures and capacity within the organisation to actively manage ethics, by providing adequate resources and management support. In the absence of formal governance structures, ethics management can easily be side-lined and lose its importance.

7.3 The Financial Disclosure Framework

In terms of Regulation 18 of the PSR, 2016, every member of the SMS is required to disclose to his or her HoD, particulars of all their financial interests (e.g. shares, companies directorships and properties, vehicles) by no later than 30 April each year, in respect of the period 1 April of the previous year to 31 March of a current year. The HoD must, within the same period, make the same disclosures to their respective EAs.

In terms of Regulation 23 (1), an EA shall designate such number of ethics officers as may be appropriate for the department.

In terms of Regulation 23 (2), the HoD shall establish an ethics committee or designate an existing committee to provide an oversight on ethics management in the department.

All members of the Senior Management Service (SMS) are, in terms of Regulation 18 of the PSR, 2016, required to disclose to HoDs, particulars of all their registrable interests by no later than 30 April each year.
The HoDs and EAs, as the case may be, must submit copies of the disclosure forms on which the SMS members and HoDs, respectively have declared their financial interests, to the PSC, by no later than 31 May each year.

Any person who assumes duty as an SMS member (or a designated employee) after 1st April of each year is required to make such a disclosure within 30 days after assumption of duty in respect of the period of 12 months preceding his/her assumption of duty. HoDs and EAs are required to submit such forms to the PSC, within a period of 30 days after they have been so submitted.

Upon receipt of the financial disclosure forms, the PSC scrutinizes the disclosures to establish if there are cases of potential or actual conflicts of interest.

7.4 Who has access?

In order to ensure confidentiality of a submitted financial disclosure forms, the PSR, 2016 provides that only the following persons have access to such a form:

- The Minister for Public Service and Administration;
- An EA and the relevant designated Ethics Officers;
- An HoD to whom a form has been submitted;
- Commissioners of the PSC;
- The Director-General: OPSC; and
- Such other persons designated by an EA, HoD, the Chairperson of the PSC for purposes of record keeping and effective implementation of the Financial Disclosure Framework.

7.5 Scrutiny of the disclosure forms and identification of conflicts of interest

The PSC is required to keep a record of all disclosures and to scrutinize the information as disclosed by a designated official. If, after such scrutiny, the PSC is of the opinion that there is a conflict of interest or that a conflict of interest is likely to occur, it should refer the matter to the relevant EA. The EA must then consult with the employee concerned and take appropriate steps, including, but not limited to disciplinary action.

After the PSC has referred a case to an EA, the latter must report to the PSC within 30 days and state whether steps were taken and, if no steps were taken, provide the reasons therefore.

A designated official who fails to disclose his/her interests or wilfully provides incorrect or misleading details may be charged with misconduct.

7.6 Summary of the roles of the HoDs and EA

The role of the HoDs and EAs regarding the Financial Disclosure Framework could be summarised as follows:

- The HoD and the EA must facilitate the declaration of financial interests in their respective departments and make sure that this happens by no later than 30 April of each year, or in the case of SMS members who are appointed after 1st April in a year, within one month of assumption of duty.

The HoDs must, within the same period, make the same disclosures to their respective EAs, who must then submit copies of same to the PSC by no later than 31 May each year.

EAs must submit the disclosures to the PSC by 31 May each year.

Persons other than those mentioned in Regulation 20 of the PSR, 2016 may access a submitted financial disclosure forms only in terms of section 11 of the Promotion of Access to Information Act, 2000.

The PSC scrutinizes forms and identifies potential and actual conflicts of interest which are referred to the EA to take steps.

The role of the EAs is to manage the identified conflict of interest of SMS members.
In order for a public servant to legally perform ORW, permission has to be granted by the relevant EA prior to the commencement thereof. The EA may appoint designated officials for the purpose of record-keeping and effective implementation of the framework. The HoD and EA must submit copies of the disclosure forms of the SMS to the PSC on or before **31 May** of each year. The financial disclosure forms of SMS members who assume duty after 1 April in a year, must be submitted to the PSC within one month after the relevant SMS member has submitted it. Upon receipt of a report from the PSC, the EA must consider the recommendations made in the report and revert to the PSC within **30 days of receipt of the report**, with an indication of actions taken, emanating from the PSC’s findings and recommendations.

7.7 Performing other remunerative work

In South Africa the performance of other remunerative work (ORW) outside the Public Service is regulated by statute. In order for a public servant to legally perform ORW, permission has to be granted by the relevant EA prior to the commencement of such remunerated work. Previous studies by the PSC have revealed that departments are faced with serious challenges regarding the management of ORW. The most daunting challenge is that officials engage in ORW without first obtaining the necessary approval. One of the reasons advanced by some senior managers in the Public Service for engaging in ORW without the necessary approval is that they have disclosed such details in their financial disclosure forms which were submitted to their respective EAs. There would also be cases where officials apply for permission to engage in ORW, but receive no response from the EAs.

In view of the challenges highlighted above, the PSC deemed it prudent to develop some guidelines to assist EAs in taking decisions regarding applications for ORW.

7.8 Guiding principles

Chapter VII of the PSA provides for the obligations, rights and privileges of employees in the Public Service. In terms of section 28 of the PSA, public servants are expected to fulfil the obligations imposed upon them by the PSA or any other law, and shall have the rights and may be granted privileges which are prescribed by or under the PSA or any other law. Section 29 provides further that the PSA shall not be construed as abrogating or derogating from any existing, accruing or contingent right, liability or obligation of any person flowing from any other law.

Emanating from the provisions of sections 28 and 29 of the PSA, section 30 stipulates that:
Employees in the Public Service shall not perform remunerative work outside their employment in the relevant departments, except with the written permission of the EA of the relevant department.

In deciding whether to grant permission to perform ORW, the EA must take into account whether or not the outside work could reasonably be expected to interfere with or impede the effective or efficient performance of the relevant employee’s function in the department or constitute a contravention of the Code of Conduct for the Public Service.

The EA has 30 days from the date of receipt of the application within which to decide whether permission to engage in ORW is granted or not. If a decision is not taken within the stipulated 30-day period, it would be deemed that such permission has been granted.

7.9 The factors that EAs should consider when attending to an application for ORW

The factors that EAs should consider when attending to an application for ORW are as follows:

7.9.1 Employees in the Public Service shall not perform or engage themselves to perform remunerative work outside their employment in the Public Service, except with the written permission of the EA of the relevant department.

7.9.2 The provision which is contained in section 30(1) of the Act, does not constitute an absolute prohibition on public servants to perform ORW. It is however, mandatory for officials to seek approval from the relevant EA before engaging themselves in any remunerative work outside of their normal employment in the Public Service. Application to perform ORW must be made prior to the commencement of such work.

Officials who are involved in private business activities such as partnerships, companies, close corporations, sole proprietorships and state owned companies, must seek approval from the relevant EAs before undertaking ORW in those entities. The same applies to officials who are board members of companies and are remunerated for participating in the companies’ board meetings.

7.9.3 In deciding whether to grant permission to perform ORW, the EA must take into account whether or not the outside work could reasonably be expected to interfere with or impede the effective or efficient performance of the relevant employee’s function in the department or constitute a contravention of the Code of Conduct for the Public Service. This provision is contained in section 30(2) of the Act. It essentially calls for the EAs to apply only legal and fair administrative procedures when taking a decision to grant or decline the application to engage in ORW. The aim is to discourage arbitrary decision-making. To this end the EA takes into account the following factors that should influence his/her decision:
• The details of the activities that the employee will be involved in as a result of the ORW.
• Whether the ORW will be performed entirely outside the official working hours of the employee. This would ensure punctuality, undivided attention, time and energy in the execution of official duties. It would also serve as a guarantee that office equipment is not used to perform activities related to the ORW.
• Whether such activities will interfere with the employee’s duties in the relevant department, in terms of time and/or content. Should this be the case, the EA will be justified in declining the application.
• The likelihood of conflicts of interest between the official responsibilities of the employee and the activities performed as a result of ORW. This should justify the decision to decline the application for ORW.

7.10 The EA has 30 days from the date of receipt of the application within which to decide whether permission to engage in ORW is granted or not. If a decision is not taken within the stipulated 30-day period, it would be deemed that such permission has been granted.

It is imperative for the EA to take a decision within the stipulated 30-day period and to communicate it to the applicant. Section 30(3) of the PSA stipulates that failure to provide feedback will render the application to have been approved. In certain cases this could be detrimental to the effective administration of the department as the activities involved in the ORW may be in conflict with the official responsibilities of the employee.

The information provided by the official on the application form will assist the EA in determining if there will be potential or actual conflicts of interest.

7.11 Monitoring of ORW

It is advisable that the EAs and HoDs monitor the implementation of ORW and its impact on a six monthly basis.

7.12 The central supplier database

Before granting of approval for the ORW, the EAs should verify if the name of the company listed in the application form of the official is also listed on the central supplier database. Should this be the case, the EA should consider declining the application.

Declining application for ORW could also be justified where the entity involved trades or is likely to trade with the State.
### 7.13 Summary of the role of the EA

All employees in the Public Service must apply for ORW.

- Only legal and fair administrative criteria will be taken into account in the decision to grant or refuse permission to perform ORW.
- Permission to perform ORW must be applied for in advance and ORW must only be undertaken once approval has been obtained.
- Details of what the employee proposes to do must be provided on the prescribed application form.
- ORW should in no way interfere with the employee’s duties in the Public Service in terms of either time or content.
- The proposed work must in no way result in conflicts of interest between the official activities in the Public Service and the ORW.
- The decision of the EA must be taken and communicated to the applicant within 30-days of receipt of the application.
- EAs should monitor the implementation of ORW and its impact on a six monthly basis.
- Failure to take a decision within the stipulated time-frame will mean that the application to undertake ORW has been granted.
CHAPTER 8: THE ROLE OF EXECUTIVE AUTHORITIES IN LABOUR RELATIONS

8.1 Introduction

The Collins Dictionary refers to labour relations as the relationship between employers and employees in industry, and the political decisions and laws that affect it.

According to the International Labour Organization (ILO), decent work involves opportunities for work that are productive and deliver a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

In terms of section 23(1) of the Constitution, every worker has a right to fair labour practice. Section 3(1)(d) of the PSA, provides that the MPSA has the responsibility to establish norms and standards relating to labour relations in the Public Service. Whereas this is the case and their collective agreements, PSR and DPSA Circulars provide the framework for different labour relations matters in which the EAs and HoDs have the responsibility to ensure and to maintain sound labour relations within their departments.

The role of the EAs in maintaining sound labour relations is integral to the well-being of a department and its employees. Applicable legislation such as the PSA provides extensively for the role played by EAs in governing the mandate of a department. Chapter II of the PSA prescribes some of the functions that the EAs should perform in the administration of the Public Service. Although the MPSA is responsible for, amongst others, establishing norms and standards relating to the functions of the Public Service, integrity, ethics, conduct and anti-corruption, EAs have the responsibility to use the available framework to ensure a high standard of professional ethics within their departments, and to put measures in place to detect, prevent and combat corruption. This will include disciplining employees found to have been involved in corrupt activities or misconducted themselves. Section 3 (7)(b) provides that the EA “has all those powers and duties necessary for the recruitment, appointment, performance management, transfer, dismissal and other career incidents of employees…”

8.2 The role of EAs in discipline management

It should be noted at the outset that discipline management has been widely recognised as a corollary to achieve effective service delivery in society. Based on this recognition, the emphasis on discipline by the EA cannot be overlooked. The quality of service delivery and productivity within the Public Service would be highly compromised if departments fail to maintain discipline. If public servants are allowed to act or conduct themselves contrary to the prescripts regulating discipline, there would be disorder, chaos and ineffective service delivery.

An EA “has all those powers and duties necessary for the recruitment, appointment, performance management, transfer, dismissal and other career incidents of employees…”

The EA must ensure the overall maintenance of discipline within his/her department.

Discipline should be applied fairly and consistently to achieve the broader objectives of the department.

https://en.wikipedia.org/wiki/Decent_work
In order to avoid this unacceptable state of affairs, discipline should be maintained. This will also result, not only in effective service delivery but also in the promotion of good human relations within the workplace.

Discipline management forms an integral part of the functions to be performed by the EA. The EA cannot abdicate this responsibility. In other words, the EA must ensure the overall maintenance of discipline within his/her department. In order to ensure that this responsibility is carried out, provisions are outlined in the PSA (section 16 B); the Labour Relations Act, 1995, as amended (the LRA), the LRA Code of Good Practice in the Handling of Sexual Harassment Cases and the Disciplinary Code and Procedures for the Public Service, Resolution 1 of 2003 of the General Public Service Coordinating Bargaining Council, to ensure that discipline is maintained within the Public Service. These provisions allow the EA to delegate some functions, including but not limited to discipline management. They also prescribe the processes or procedures to be followed in managing discipline within the Public Service. The rationale is that discipline should be applied fairly and consistently to achieve the broader objectives of the departments. Unfair and inconsistent application of discipline would result in labour relations instability which would inadvertently lead to adverse consequences for the society.

The Code of Conduct (1997) which was introduced by government provides a framework for disciplined and accountable public servants. It outlines the principles relating to governance and ethical conduct of public servants. The inevitable consequence of non-adherence to these principles is indiscipline and/or misconduct, and this will call for corrective measures to be undertaken by management. As the political head of the department, the EA has a responsibility to create a conducive environment for the promotion and maintenance of a high standard of professional ethics. In terms of Resolution 2 of 1999 all employees in the Public Service must comply with the Code of Conduct.

The LRA also recognises the duty of the employer to maintain discipline in the workplace. It explains, amongst others, the Code of Good Practice which is of great assistance to employers when handling disciplinary matters. Furthermore, in ensuring that proper procedures are followed in the Public Service, the Disciplinary Code and Procedures (Resolution 1 of 2003) and SMS Handbook were promulgated. Adherence to the provisions of these prescripts would ensure that departments, in managing discipline, comply with the employees’ right to fair labour practices as enshrined in section 23 of the Constitution.

As stated above, the EA has the overall responsibility of maintaining discipline in the workplace. This responsibility includes the power to discharge employees in terms of section 17 of the PSA. In exercising the power to discharge an employee, the EA or a delegated official must observe the applicable provisions in the LRA and PSCBC resolutions. Although the EA does not actively play a role in the day to day management of discipline within a department, this responsibility can only be delegated but not be abdicated. The EA must provide effective leadership because good discipline is the result of effective leadership.
In terms of the DPSA Circulars of 16 January 2012 and 17 November 2014, respectively, HODs must ensure that proper training is provided to the officials responsible for managing discipline in the workplace. The training will be of value to the department because discipline will be managed and maintained in a proper and consistent manner. Without proper training on disciplinary procedures, departments will likely face problems regarding unsound labour relations. Inevitably these problems will adversely affect service delivery and productivity in the Public Service and ultimately the socio-economic development of the country will be compromised.

In summary and based on the above, and in order to improve sound relations and ensure a high standard of professional ethics, good human resource management and accountability, EAs are expected to:

• ensure that there are policies and procedures in place to manage and deal with discipline in a fair and consistent manner;
• ensure that employees, both directly and through trade union bargaining, are allowed to make inputs into policies and procedures;
• ensure that disciplinary cases are handled within the agreed/prescribed timeframes, following the correct procedure;
• immediately take appropriate disciplinary action against HoDs who do not comply with the provisions of the PSA, a regulation, directive or determination made under the PSA [(section 16A(1)(a)].
• immediately report to the MPSA the particulars of such non-compliance (section 16A(1) (b) of the PSA);
• as soon as possible report to the MPSA the particulars of the disciplinary steps taken (section 16A(1)(c) of the PSA);
• give effect to sanctions pronounced by the chairperson of a disciplinary hearing instituted against a head of a department (section 16B(1)(a) of the PSA); and
• ensure that a head of department captures disciplinary cases and other labour relations related cases (disciplinary cases, suspension and court cases) on PERSAL and reports same to the DPSA.

8.3 HoD role in discipline management

In order to promote sound labour relations and ensure a high standard of professional ethics, good human resource management and accountability, HoDs are expected to:
• ensure that there are policies and procedures in place to deal with disciplinary matters;
• immediately take appropriate disciplinary action against an employee of the department who does not comply with the provisions of the PSA, a regulation, directive or determination made under the PSA (section 16A(2)(a)); immediately report to the HoD of the DPSA the particulars of such non-compliance (section 16A(2)(b) of the PSA);
• immediately report to the Director-General of the Department of Public Service and Administration the particulars of such non-compliance;
• as soon as possible report to the HoD of the DPSA the particulars of the disciplinary steps taken (section 16A(2)(c) of the PSA);
• give effect to sanctions pronounced by the Chairperson of a disciplinary hearing instituted against an employee of the department (section 16B(1)(b) of the PSA);
• ensure that disciplinary matters are captured on the PERSAL system (in line with the the DPSA Circulars dated 16 January 2012 and 17 November 2014, respectively); and
• ensure that labour relations related cases are captured on the PERSAL system (the MPSA Ministerial Directive issued under Circular LR 2 of 2017 dated 26 October 2017).

EAs and HoDs must always comply with the Constitution, the LRA, BCEA and other labour relations related legislation to ensure a fair labour relationship with their employees. To assist in ensuring fairness and consistency, the DPSA has developed some guidelines relating to matters of discipline, e.g. the Labour Relations Sanctioning Guidelines for the Public Service and the Precautionary Suspensions Guide which were issued under the DPSA Circular of 04 December 2015. These can be accessed via the DPSA website.

8.4 The role of EAs in grievance management

As indicated above, section 3(7) of the PSA provides EAs with all the powers and duties necessary for, inter alia, the recruitment, appointment, performance management, transfer, dismissal and other career incidents of employees of that department, including any other matter which relates to such employees in their individual capacities. In the same way that an EA as an employer is empowered to discipline and dismiss employees for non-compliance with rules and regulations of the department, EAs must also put measures in place to enable employees to raise their grievances or dissatisfactions against acts or omissions by the employer which adversely affects them in the employment relationship. This brings the balance of scale which assists in promoting sound labour relations in departments.
The role of the EA in the consideration of grievances lodged by serving employees on salary levels 1-12 as well as SMS members, are provided for in section 35 of the PSA. The procedure for dealing with grievances of employees in the Public Service is outlined in the Rules for Dealing with Grievance of Employees in the Public Service, 2003, (applicable to employees on salary levels 1 to 12); the Rules for Dealing with the Grievances of Members of the SMS, including HoDs, in the Public Service, 2010. In cases where employees are not satisfied with decisions of EAs relating to their grievances, such matters can be referred to the PSC following the PSC Rules on Referral and Investigation of Grievances of Employees in the Public Service, 2016.

The EA plays an integral part in the resolution of grievances of employees. This role is emphasised in the fact that in terms of the PSA, the EA is the entry point of grievances as the PSA provides for an employee to lodge his/her grievance with the EA. The departmental procedures for investigating a grievance of an employee, includes the EA, who is ultimately responsible for deciding on the merits of a grievance. Even after the PSC has investigated the merits of grievances referred to it by an employee, the EA is responsible for taking a decision whether or not to implement the PSC’s recommendations. In a case where the EA decides not to implement the recommendation of the PSC, he/she should provide reasons for not implementing the said recommendations. This is in line with the Constitutional Court in the case of the Economic Freedom Fighters v The Speaker of the National Assembly and Others; the Democratic Alliance v The Speaker of the National Assembly and Others [2016] ZACC 11. See also Democratic Alliance v South African Broadcasting Corporation Limited and Others [2014] ZAWCHC 161; 2015(1) SA 551 WCC.

Since the EA is pivotal to the resolution of grievances, it is important that EAs are supported by experts within the department in order for the EA to make informed decisions on the merits of grievances. Provision is made in section 42A of the PSA, for the EA to delegate his powers and functions to the HoD. However, the provision for delegation does not prohibit the EA from deciding to revoke the delegation.

8.5 Dealing with arbitration awards and court orders

EAs and HoDs should note that in relation to labour relations matters that go to bargaining councils and the Commission for Conciliation, Mediation and Arbitration (CCMA) that-

- "An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued, unless it is an advisory arbitration award." - (section 143 (1) of the LRA);

- "If an arbitration award orders a party to pay a sum of money, the amount earns interest from the date of the award at the same rate as the rate prescribed from time to time in respect of a judgment debt in terms of section 2 of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), unless the award provides otherwise." – (section 143 (2)).
EAs and HoDs should, in order to avoid costs related to dealing with matters at bargaining councils and exorbitant litigation costs, as well as saving on time, etc., ensure that arbitration awards and court orders issued against the departments are implemented within the prescribed timeframes. In cases where the EA/HoD is of the view that the award or court order should not be implemented, he/she must ensure that appropriate steps to have such award or order reviewed or appealed are taken within prescribed timeframes.

EAs and HoDs should not unreasonably and unjustifiably refuse to have an arbitration award or court order issued against the department implemented, as this may have a negative impact on the financial and human resources of the department and may compromise service delivery. In this regard the following case law is brought to the attention of EAs and HoDs:

Jafta J, in Mjeni v Minister of Health and Welfare, Eastern Cape 2000, reiterated similar sentiments and went on to state that “a deliberate non-compliance or disobedience of a court order by the state through its officials amounts to a breach of [a] constitutional duty [imposed by section 165 of the Constitution]. Such conduct impacts negatively upon the dignity and effectiveness of the Courts.” Ebrahim J, in East London Local Transitional Council v MEC for Health EC and Others, agreeing with Jafta, stated that “public officials and even Ministers of State may be held in contempt of Court in matters such as the instant one.”

In Greeff v Consol Glass (Pty) Ltd (2013) 34 ILJ 2835 (LAC), the Labour Appeal Court (LAC) re-emphasized that in the event of a failure by the employer to comply with an order, the employee may hold the employer in contempt of court.

From the Lushaba vs MEC of Health Gauteng 2015 (3) SA 6161 (GJ) and the PFMA, EAs, HoDs and employees can be held “personally” liable through de bonis proppriis for costs for failure to discharge their duties.

Section 38 (1) of the PMFA also requires the Accounting Officer to take effective and appropriate disciplinary steps against any official who contravenes or fails to comply with a provision of the Act; commits an act which undermines the financial management and internal control system of the department, or makes or permits an unauthorized expenditure, irregular expenditure or fruitless and wasteful expenditure.

In dealing with labour relations matters EAs and HoDs should also note the following provisions of the PSA:

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East London Local Transitional Council v MEC for Health EC and Others [2001].
Section 5(7) (a) A functionary shall correct any action or omission purportedly made in terms of this Act by that functionary, if the action or omission was based on an error of fact or law or fraud and it is in the public interest to correct the action or omission.

(b) The relevant executive authority shall in the prescribed manner keep record of and report to the Minister any correction by a functionary of a department within the portfolio of that executive authority.

Section 3(8) (a) EAs have the responsibility to attend to matters which relates to or arises from the employment or the conditions of service of a person formerly employed in the public service whilst he or she was so employed in the department concerned. However, an EA can only perform such function if -

- he or she would at the relevant time been competent in terms of the PSA or any other law relevant law to perform any such act in respect of a serving employee;
- such act shall not be to the detriment of the person concerned;
- a period of three (3) years has not expired after the person had ceased to be the employee of the department; and
- in cases where a period of three (3) years had expired, the MPSA has, at the request of the EA and on good cause shown, extended the three years period.
The grievance procedure and timeframes are summarised in the diagram below.

Employee informs relevant supervisor/line manager in writing of dissatisfaction before completing the prescribed grievance form.

Within 90 days of becoming aware of official act or omission:
- Dissatisfaction of employee not resolved (or takes long to resolve). Employee completes grievance form and submits it to designated employee. Designated employee acknowledges receipt by signing grievance form and gives copy to the aggrieved employee.

Within 30 / 45 days of receipt of grievance:
- Designated employee consults with relevant employees/structures within the department in an attempt to resolve the grievance.
- Designated employee convenes grievance hearing meeting and compiles report with findings and recommendations.
- Designated employee appoints investigator to investigate the matter. Investigator investigates and compiles report with findings and recommendations.

Findings and recommendations submitted to the Director-General/delegated authority, who takes a decision on the matter.

Designated employee communicates outcome (attaching DG decision) to the aggrieved employee and completes grievance form, indicating whether matter resolved or not. Upon receipt of outcome the aggrieved employee completes the grievance form, indicating whether grievance is resolved or not and comment on the outcome received.

If grievance not resolved:
- Designated employee refers grievance to EA for decision.
- EA decision communicated to aggrieved employee.

If grievance resolved:
- Grievance file closed.
- Grievance not resolved.
- Employee refers to GPSSBC or CCMA within 10 days of receipt of EA decision.
CHAPTER 9: LEADERSHIP CHANGES – ENSURING CONTINUITY

9.1 Introduction

Cabinet reshuffles and the events following elections tend to result in changes at the executive level with the appointments of new Ministers and Deputy Ministers. It is therefore essential that members of the Executive are familiarised as soon as possible with their new portfolios to ensure a seamless transition.

Based on research conducted by the PSC, the turnover rate of HoDs has proven to be disruptive to operations and problematic in departments. A need was identified to develop strategies that will ensure a smooth transition between incoming and outgoing HoDs. One of those strategies is the effective management of the hand-over processes between incoming and outgoing HoDs. It is a process that should enable the new incumbent to understand critical components to the performance of the organisation, that is, the strategic objectives, processes, systems and the human capital of the institution.

9.2 The terrain of transition

The behaviour of EAs and HoDs affects how people feel at work (climate) and how they behave (culture), and hence affects productivity and delivery/results. An organisation’s culture and climate are a powerful determinant of productivity, delivery and success. Resonant/positive cultures produce results, dissonant cultures inhibit productivity.\(^7\)

9.3 Rationale for the effective management of hand over processes

The first few months of assumption of duty are to a larger extent crucial to determine the failure or success of a leader in an organisation and the Public Service is not exempted. It is a symbolic period in which any action taken could be used to measure effectiveness or job fit for the position in question and not so much of what has been accomplished from past experience. This makes the position of newly appointed EAs and HoDs vulnerable. The need therefore is to create an enabling environment for the newly appointed or deployed EA/HoD by availing all the necessary resources and tools.

All stakeholders have high expectations from the newly appointed EAs and HoDs. They are expected to establish communication protocols, set priorities and lay the groundwork for the future of both their departments and how these will contribute towards building a development orientated public administration.

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9.4 Handing over to newly appointed / redeployed Ministers

For a newly appointed EA the environment he/she enters may be totally foreign to him/her. Even an EA that has been deployed from another portfolio must first familiarise him/herself with the organisational culture and operational functions of the new department. In order to provide the necessary information and orientation to newly appointed EAs, departments must develop an orientation programme which should as a minimum provide for the following:

- An introductory meeting between the HoD and new EA should be held during which the existing strategic plan and progress thereof is discussed in detail. If the former EA is available this meeting should include him/her. All relevant documentation should be provided to the EA.

- A meeting with EXCO should be held as soon as possible after the inception meeting with the new EA, HoD and, if possible, outgoing Minister during which the EA is not only introduced to the team and the portfolios of the Senior Managers, but critical areas of non-performance, financial concerns and the filling of critical vacancies should be discussed. During the meeting all relevant progress reports and documentation should be provided to the new EA.

- A meeting involving the HoD, Head of Corporate Services, Chief Operating Officer (COO) and other persons deemed necessary should be held with the new EA for the purpose of familiarising the new EA with the administrative, financial and human resource management practices applicable in the department. The existing financial and human resource management delegations should receive prominence during this meeting and the EA should be informed of the rationale for specific delegations and how these contribute to the effective delivery of services by the department.

- The HoD should convene an information session during which the EA’s Cluster responsibilities are highlighted and explained. Areas of collaboration with other portfolios and departments must be explained, progress in this regard must be reported and the implications for the EA and the department must be clearly spelt out. The EA should also be provided with information on various national and international commitments and critical stakeholders that he/she should engage with as soon as possible.

- Finally, and if possible, the EA should be introduced to staff through various mechanisms such as staff meetings, email and internal newsletters.

9.5 Handing over to newly appointed HoDs

In the preparation of new HoDs assuming their duties, state institutions at all levels of government should facilitate this process to avoid any unintended consequences and close the gaps that could hamper the smooth transition of the process. In this instance the EA, through their Office and in collaboration with the outgoing HoD or Acting HoD and key senior managers in the department, such as the CFO, COO and the Branch heads must ensure that all information relevant to the induction and orientation of the new HoD is prepared in advance.

An induction guide must be developed and applied.

Introductory meeting between the HoD and new EA.

Meeting with EXCO to discuss portfolios of Senior Managers and also critical areas of non-performance, financial concerns and the filling of critical vacancies.

Familiarising the new EA with the administrative, financial and human resource management practices applicable in the department.

EAs to be informed of cluster, international and national responsibilities.

All information relevant to the induction and orientation of the new HoDs must be prepare in advance.
An introductory meeting should first be held between the EA and HoD involving the Deputy Minister if applicable. During this meeting the high level strategic objectives and policy objectives of the EA should be highlighted. This should be followed by a meeting that includes the EA with EXCO to familiarise the HoD with the key role players in managing the department and the details of the portfolios that they are responsible for.

A key meeting that should follow would be with the Head of Corporate Services and the CFO to provide information relating to financial and human resource management holistically and also to alert the HoD of emerging trends and issues that need urgent attention. Finally, a meeting with all staff of the department, if possible at once, or if not, through a series of meetings must be held to introduce the HoD to staff.

9.6 Ensuring structured hand-over

To ensure a structured hand-over process the following example can be applied and augmented in the development of a hand-over template or checklist by departments:

<table>
<thead>
<tr>
<th>ROLES AND RESPONSIBILITIES</th>
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<tbody>
<tr>
<td>Action</td>
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<tr>
<td>OPERATIONAL CONTINUITY</td>
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<tr>
<td>Brief history of the Organisation</td>
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<tr>
<td>Strategic Plan (latest document)</td>
</tr>
<tr>
<td>Work plan: Organisational Performance (key successes/failures)</td>
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<tr>
<td>Challenges/Issues of Concern</td>
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<td>Projects (complete and ongoing)</td>
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<tr>
<td>Routine Tasks/Events</td>
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<tr>
<td>Audit Reports (main queries)</td>
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<tr>
<td>Organogram</td>
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<tr>
<td>Lessons learnt</td>
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<td>-------------------------------------------------------------------------------</td>
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<tr>
<td>Insights about the organization/work</td>
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<tr>
<td>Team Competence</td>
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<tr>
<td>Training or Development Plans</td>
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<tr>
<td>Key Stakeholders</td>
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<tr>
<td>Management meetings</td>
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<tr>
<td>Delegation of Authority Framework</td>
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<tr>
<td>Policies (existing/pending approvals/drafts and non-existing)</td>
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<tr>
<td>Budget (actual/planned/shortfalls)</td>
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<tr>
<td>Organisational Environment</td>
</tr>
<tr>
<td>Critical Procedures and Controls</td>
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<tr>
<td>Maintaining Business Continuity</td>
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<tr>
<td>Significant Risks</td>
</tr>
<tr>
<td>Cultural Environment</td>
</tr>
<tr>
<td>Technology/Equipment</td>
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<tr>
<td>Location of critical information</td>
</tr>
<tr>
<td>Reference documents</td>
</tr>
<tr>
<td>Emails</td>
</tr>
<tr>
<td>Computer/Laptop/Printers/3G/Job specific applications</td>
</tr>
<tr>
<td>Furniture/Office Accessories</td>
</tr>
<tr>
<td>Access (card/remote controls/office keys)</td>
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</table>
CHAPTER 10: RESPONSIVENESS TO CITIZENS AND COMMUNITIES

10.1 Introduction

A key principle of public administration is that “People’s needs must be responded to, and the public must be encouraged to participate in policy-making.” [Section 195(1)(e) of the Constitution.]

The Public Service has a tendency to follow a mechanistic, rules-driven, compliance and regulatory approach to public administration, so much so that the ‘service’ part of service delivery lacks care and responsiveness. This is seen from the high rate of public protests on service delivery, major service delivery disasters that have led to Commissions of Enquiry with the government not being able to demonstrate adherence to the Constitutional values and principles, as well as the complaints and grievances received by the PSC. Both the citizens and many of the employees of the government are not happy about the public administration and Public Service. The disjuncture between institutional compliance/due diligence and citizen satisfaction is worrying. Notwithstanding participation projects to legitimise institutions, many communities remain faceless and without an adequate voice. Thus the discourse is developmental, but public administration is inflexible and archaic.

To reduce service delivery protests and to re-establish trust in the government, this approach to public administration will have to be changed. Both EAs and HoDs will have to play a key role in orienting public administration towards such change.

This chapter gives pointers to such re-orientation by pointing out what responsiveness and participation is not, what the relationship with service delivery protests is, and then giving a few practical guidelines on participation processes.

10.2 What it is not

10.2.1 Participation is not legitimising pre-decided policies. There should always be openness to consider the inputs of stakeholders and communities. (Participation in policy-making is not the same as informing people about policy and defending policy.)

10.2.2 Responsiveness is not just the programmatic response.

When asked about their responsiveness to needs, departments will normally give a programmatic response – for instance, government is responding to housing needs through a housing programme. Yet the programme rules may be so inflexible that the housing authorities cannot adequately respond to specific individual or community needs. From service delivery protests, it is clear that

People’s needs must be responded to, and the public must be encouraged to participate in policy-making.

Public administration is unresponsive and this leads to service delivery protests. The disjuncture even between institutional compliance/due diligence and citizen satisfaction is worrying.

Public participation is not the same as announcing what government is doing.

Pre-determined programmes do not provide much choice and consequently respond poorly to the needs of individual and community needs.
Programmes are designed and implemented in a top-down manner. Public servants are not empowered to be change agents and generally cannot work with communities.

Izimbizo became popular but they mean that government arrive in communities, speak to people and then disappear again.

communities do not regard government as responsive. Even though the housing waiting list is no longer a waiting list but simply a housing needs data base, people still perceive it as a waiting list. They therefore perceive the government as unresponsive if they have been on the ‘waiting list’ for years.

Many programmes of the government have been designed in a top-down manner with a standardised product with little choice, instead of responding to the specific circumstances of communities or individuals in a manner that takes the practical situation on the ground and the solutions that people themselves devise out of need or desperation into account.

Is it, for example, possible for local public servants to work with communities and use the capacities that exist in the community to develop their own housing solutions? The opportunity for this is extremely limited if housing is delivered through contractors through projects. Public servants are then not change agents but project managers within a tightly defined framework.

In contrast, the Chairperson of the National Planning Commission remarked as follows: “The approach of the plan revolves around citizens being active in development, a capable and developmental state able to intervene to correct our historical inequities, and strong leadership throughout society working together to solve our problems.”

This would require a change in the development paradigm applied in South Africa from what is called a “push model” to a “pull model”. The features of the push model are that the government supply services or development programmes, where the solutions are pre-determined and controlled by the government. The pull model is a rights and demand driven approach where communities are the partners of government and programme policies are applied flexibly so that communities can apply what works for them. Individuals and communities are encouraged to take control of their own development. The government plays a facilitation and empowering role. Participatory approaches to designing and implementing programmes are followed.

A practical example of the pull model would be for the government to provide a grant to communities for them to create a certain amount of jobs. The size of the grant can be based on the number of adult community members living below the poverty line. The communities themselves then decide what the features of their programme will be rather than officials in a government department.

10.2.3 Participation should not be reduced to an event like Izimbizo.

Chairperson National Planning Commission.
10.3 Service delivery protests

Participation is meaningless if basic services are not delivered efficiently. Basic services include sanitation, housing, water, electricity, access roads and storm water drainage. Deprivation for long periods kills patience and leads to protest. Protest can be avoided by consulting communities about their needs, informing communities of plans to provide services and the timing of such plans and keeping them abreast of progress. Protests can be avoided if public representatives and public servants are not absent from but are embedded in communities. However, the public servant can only be effective if he/she is empowered to respond to the needs of the community.

10.4 Some basic guidelines

10.4.1 Basic requirements for the public participation process:
A public participation process would meet the following requirements:
- The department has a policy or guideline on public participation.
- The level of participation is appropriate or ideal considering the type of service or context.
- Public participation includes a broad spectrum of public interests, especially vulnerable communities.
- Content of public participation covers policies, plans, and service delivery models implementation arrangements, quality and level of services.
- Processes are in place to deliberate on citizens’ inputs (whether to change policies/models).
- Evidence of the outcome of public participation efforts (number of policies, processes, systems changed as a result of the implementation of public participation mechanisms).
- Evidence that citizens were provided with feedback on the outcome of the public participation process.

10.4.2 Participation ladder:
Participation can take place in line with the following levels:

<table>
<thead>
<tr>
<th>Level</th>
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<tbody>
<tr>
<td>Only information is given to the public.</td>
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<tr>
<td>Information about the needs and concerns of the public is collected through research.</td>
</tr>
<tr>
<td>Inputs or objections to prepared proposals are solicited.</td>
</tr>
<tr>
<td>The public can propose their own solutions.</td>
</tr>
<tr>
<td>The public have a say in the final decision.</td>
</tr>
<tr>
<td>The public is an active partner in the programme.</td>
</tr>
<tr>
<td>Government is supporting independent local initiatives.</td>
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Departments should apply the level(s) that is appropriate or ideal considering the type of service or situation. For example, TB services, where the methods of diagnosis and treatment has been well-established over a century, would require a different level of participation (or even no participation) compared to a housing programme or establishing income generating projects in communities.
10.4.3 Various methods of obtaining input from the public:
Various methodologies may be employed for obtaining input from the public, including:
1) Research: Information about needs and policy issues may be obtained through research.
2) Household surveys (door-to-door surveys).
3) Executive Izimbizo.
4) Consultative conferences with stakeholders.
5) Assessment of needs by the public servant in the community, like social workers, policemen, teachers, community health workers and Community Development Workers. For example, social workers work with individuals, families and communities. They are the departments’ ears on the ground. The first step in the social work process is an assessment of the social need. As such, the social worker should be a wealth of information on social needs.
6) Engagements with communities on community development projects.

10.4.4 Public servants embedded in communities:
The last two methods of obtaining input from the public would require that public servants be embedded in communities. They should be change agents in their communities. This would, however, require that they be empowered to effectively respond to needs in the community. This in turn requires certainty at the community/locality level of what resources and budgets are available from all government agencies in the locality and some discretion and flexibility to implement programmes in a manner that suit the conditions in the local community.

10.5 Conclusion
All of the above require a change in the approach to public administration and constant reflection of what this constitutional principle means in practice. EAs and HoDs should be change agents themselves and provide leadership in this regard.
CHAPTER 11: RELEVANT OVERSIGHT REPORTS/INSTRUMENTS

11.1 Introduction

Institutions such as the PSC, the Auditor-General (AG), the Department of Planning Monitoring and Evaluation, the DPSA and National Treasury, emanating from the execution of their mandates, produce oversight reports that provide invaluable information for the improvement of management and administrative practices within departments. The web sites of these institutions should be continuously visited for updates on the latest reports published (www.psc.gov.za, www.agsa.co.za, www.dpme.gov.za, www.dpsa.gov.za and www.nationaltreasury.gov.za). These institutions also apply instruments that generate oversight information that can be accessed by EAs and HoDs.

11.2 Important reports / instruments of the PSC

11.2.1 Section 196(4)(e) report/ State of the Public Service report.

The PSC is required by section 196(4)(e) of the Constitution to report to Parliament on its activities and to provide an evaluation of the extent to which the values and principles in section 195 are complied with. The Section 196(4)(e) Report is therefore a key report of the PSC because it gives an overview of all the work of the PSC in a particular financial year and contains the State of the Public Service report as Part B.2. The report provides details on the content of work of the PSC, its findings, advice, proposals, recommendations as well as the influence and impact of its work.

Data supporting the writing of the Section 196(4)(e) report is mainly sourced from the work of the PSC, including research on professional ethics, leadership and management practices, investigations, data from the National Anti-Corruption Hotline, and institutional evaluation reports. Information is also sourced from official data such as PERSAL (personnel and payroll system of the Public Service), data held by the AG, the National Treasury, the DPSA and departments’ annual reports.

The annual State of the Public Service (SOPS) report reflects on, and analyses, key trends and issues affecting the public administration and the Public Service. The issues in the SOPS are informed by the body of work of the PSC in a particular year; as well as important work by other institutions. It diagnoses the causes of and/or the reasons why the Public Service does not achieve the excellence that it aspires to achieve. The SOPS is a single, integrated, evidence-based synthesis of the work of the PSC that draws on empirical data to offer a nuanced and sophisticated analysis of the state of the Public Service based on the values and principles governing the public administration as enshrined in Chapter 10 of the Constitution.
The PSC has designed an evidence and indicator-based Monitoring and Evaluation (M&E) tool to assess the governance and institutional performance of all government departments.

The report uses the nine principles in section 195 as a frame. Therefore, it makes pronouncements on whether the Public Service is ethical, responsive, accountable, etc. (See Chapter 2 for more detail on the evaluations the PSC undertakes to arrive at these pronouncements).

To ensure that the SOPS diagnoses the causes of and/or the reasons why the Public Service does not achieve the excellence that it aspires to, it needs to consistently evaluate and report on the progress of government departments in complying with the current legal prescripts and the nine principles.

### 11.3 Institutional Evaluations

The PSC annually undertakes evaluations of departments as institutions. The evaluations use the nine principles as the evaluation norm.

Extensive work has gone into the development of a theoretical framework, which provides the theory and understanding of section 195 of the Constitution. This framework defines each principle, sets out the scope and content and proposes a number of performance indicators for each principle. Based on the framework, an indicator based tool (also referred to as the institutional evaluation tool) was developed to conduct evaluations of Public Service departments against the CVPs. This tool moves away from mere compliance to measures of achievement of the principles at the outcome level.

The Institutional Evaluations provide the hard data that is the evidence for all conclusions drawn in the State of the Public Service report.

### 11.4 Evaluation of institutional features of departments

The Constitution provides in section 196(4)(b) that the PSC can monitor and evaluate the organization and administration of the public service. The PSC also undertakes projects to evaluate aspects of bureaucracy and public administration such as organisational structures, coordination mechanisms, accountability frameworks and service delivery models. This includes research into the characteristics of a public service that could underpin a Capable and Developmental State. The PSC’s report “Building a Capable, Career-Oriented and Professional Public Service to Underpin a Capable and Developmental State in South Africa” of 2015 is an important resource in this regard.

### 11.4.1 Other important oversight reports of the PSC

The PSC annually produces a variety of reports covering the broad spectrum of public administration. These reports are circulated to EAs and HoDs and should be made available to relevant functionaries in the department. Such reports can also be accessed on the PSC’s website [www.psc.gov.za](http://www.psc.gov.za). Recent reports include the following:
The PSC produces on an annual basis a variety of reports covering the broad spectrum of public administration.

• Evaluation of the Effectiveness of the Performance Management and Development System for the Public Service
• Evaluation of the Effectiveness of the Recruitment and Selection system of the Public Service.
• Investigation into Health Care Facilities in Kwazulu-Natal: A Special Focus on Professional Ethics
• Investigation into the Non-Implementation of Arbitration Awards and Labour Related Court orders by Departments and Implications on Labour Relations
• Recruitment, Retention, Career Pathing and Utilisation of Senior Management Service Members expertise and skills in the Public Service

11.5 Oversight Reports by DPSA, DPME, the Auditor-General and National Treasury

Reports by the DPSA that can be consulted for oversight information include:

• Guide for employment equity in the public service;
• Convention on combating bribery of foreign public officials in international business transactions and related documents;
• Batho Pele Service directory of public services;
• Third report on the implementation of South Africa’s APRM programme of action;
• Machinery of Government;
• A Performance Agreement to fast track service delivery 2010/14; and
• Presentation to parliament: An overview of South Africa’s progress in the implementation of the Millennium Development Goals (MDGs): The Governance and Administration Cluster Perspective.

The Department of Planning Monitoring and Evaluation annually publishes the results of its Management Performance Assessment Tool, which reflects on individual departmental performance.

The DPME also manages the outcomes based performance planning and reporting system of government. The system was introduced in 2009 to achieve more effective spending and performance through coordination across departments and spheres of government and to ensure strategic focus on a limited number of priority outcomes. Performance Agreements were introduced between the Ministers and the President for this purpose and delivery agreements linked to key outcomes were developed. Reports on progress can be accessed on http://www.dpme.gov.za/ and http://www.poa.gov.za.

The Department also implements the Frontline Service Delivery Monitoring Programme that has conducted unannounced visits to over 864 public service facilities in a bid to assist these facilities to improve the identified poor performing areas. The programme monitors the quality of service delivery by assessing the levels of compliance to service delivery standards.
The National Evaluation Policy Framework (NEPF, 2005) is one of three policy elements introduced in the Policy Framework for the Government-Wide Monitoring and Evaluation System. Also managed by the DPME, the Policy Framework provides the basis for a minimum system of evaluation across government. Its main purpose is to promote quality evaluations which can be used for learning to improve the effectiveness and impact of government, by reflecting on what is working and what is not working and revising interventions accordingly. Results are published annually and are available on the DPME website.

The Auditor-General’s reports on individual departments’ financial management are crucial instruments for EAs and HoDs to identify and address weaknesses in financial management. The Auditor General publishes the following:

- PFMA General Reports
- MFMA General Reports
- Performance Audit Reports
- Investigation Audit Reports

National Treasury publishes the following reports / guidelines that are designed to provide monitoring and oversight information as well as guidance:

- Treasury Guidelines
- Intergovernmental Fiscal Reviews
- Annual Reports of Consolidated Financial Statements
- Performance Information Handbook and Tool
- Provincial in-year publications
- Budget Support Manuals
- Debt Management Reports
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