



**REPORT TO THE NATIONAL ASSEMBLY IN  
TERMS OF SECTION 196(4)(e) OF THE  
CONSTITUTION, READ WITH SECTION  
196(6)**

**1 April 2019 to 31 March 2020**

**PUBLIC SERVICE COMMISSION**



## 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 -

- investigating, 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.

# **REPORT TO THE NATIONAL ASSEMBLY IN TERMS OF SECTION 196(4)(e) OF THE CONSTITUTION, READ WITH SECTION 196(6)**

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Custodian of Good Governance

## PREFACE

It gives me pleasure to submit this report to the National Assembly in compliance with section 196(4)(e) of the Constitution of the Republic of South Africa, Act 108 of 1996. Section 196(4)(e) requires the Public Service Commission (PSC) to report to the National Assembly in respect of –



its activities and the performance of its functions, including any finding it may make and directions and advice it may give; and



an evaluation of the extent to which the values and principles set out in section 195 are complied with.

This report provides a concise overview of the work conducted by the PSC during 2019/20 financial year. It also reflects on the impact of its work.

This report differs from an Annual Report that government institutions or constitutional bodies compile in terms of Section 40 of the Public Finance Management Act, 1999. An Annual Report focuses on performance against pre-determined objectives, the financial statements, the audit report and the human resource information. Section 196(4)(e) report provide details on the content of the work of the PSC, its findings, advice, proposals, recommendations as well as the influence and impact of its work.

**ADV RK SIZANI**  
**CHAIRPERSON**

## EXECUTIVE SUMMARY

### Implementation of the PSC's recommendations and advice

Section 196(4)(e) of the Constitution stipulates that the Public Service Commission (PSC) has a duty “to report in respect of its activities and the performance of its functions, including any finding it may make and directions and advice it may give; and to provide an evaluation of the extent to which the values and principles set out in Section 195 are complied with”.

The values and principles in section 195 represent the ideal public administration and public service. The work of the PSC must contribute towards progressively realising these values and principles in the public service.

Progress towards realising the values and principles have been painfully slow and in many cases there was a regression as can be seen from levels of corruption and a decline in service delivery. The public service has become increasingly rules- instead of values-driven. This does not mean that the public service can operate without rules but that the rules should be commensurate with the values and principles. A group of former DGs in their reflections on the state of the public service concluded in this regard that—

*“the public sector has lost the ability to be innovative, creative or take risks due to fear of overstepping procurement, human resources, and monitoring and evaluation regulations which have become more rigid and less adaptable in the aftermath of state capture.”*

However, the PSC has observed a new dynamism and some of its past recommendations are now coming to fruition, of which the following are prominent examples:

1. Progress towards the professionalisation of the public service
2. A realisation that measures to promote professional ethics should be applied much more innovatively and contextually
3. The introduction of the District Development Model
4. Developments regarding the political-administrative interface

#### 1. Progress towards the professionalisation of the public service

This aspect of administration relates to the principle: “Good human-resource management and career-development practices, to maximise human potential, must be cultivated.”

The PSC has already in a 2015 Discussion Document [Building a Capable, Career-Oriented and Professional Public Service to Underpin a Capable and Developmental State in South Africa] recommended the professionalisation of the public service and the introduction of a career system by—

- reviewing the current occupational classification system and (centrally) prescribing specific appointment and career progression requirements for different occupations and grades;
- introducing entry and promotion exams; and
- specifying all occupations in the Public Service regarding—

- job content;
- entry requirements;
- promotion requirements;
- continued professional development requirements; and
- testing or certifying that a member of the occupation can do the specified list of tasks of the scope of work.

Progress towards the professionalisation of the public service has been painfully slow. However, these recommendations are now, to some extent, taken forward by a Professionalisation Framework that the National School of Government is currently consulting with stakeholders. [National School of Government. A National Implementation Framework towards the Professionalisation of the Public Service. 8 December 2020.] The PSC will continue to engage with the National School of Government and the Minister for Public Service and Administration to advise them on the practical implementation of the Framework, as soon as it is approved.

## **2. A realisation that measures to promote professional ethics should be applied much more innovatively and contextually**

The constitutional public administration principle that is relevant here is “A high standard of professional ethics must be promoted and maintained.”

The PSC found in its 2018/19 State of the Public Service report that the ethics framework is applied perfunctory (for the sake of compliance). Ethics is reduced to institutional issues like disclosure of conflict of interest, appointment of an ethics officer, Remunerated Work Outside your work in the Public Service (RWOPS), management of sexual harassment in the workplace, and anti-corruption strategies. Such issues are removed from the daily experience of citizens of how public servants conduct themselves in their interaction with them.

This issue has now been recognised in a draft policy document [NSG Professionalisation Framework 2020]. Par 15.1 of the document says—

“Professionalism and professional ethics within the Public Service cannot be promoted and institutionalised solely through a generic Code of Conduct because each profession and non-professionalised emerging occupation has its own peculiarities and each public sector institution has its unique ethical dilemmas. Therefore, every profession and department must have a foundational and effective system to observe, give feedback on, discuss ethical issues and promote professional behaviour. Interventions will have to become much more solution-driven to solve such dilemmas in the specific context of departments. Solutions will also have to address the particular steps that managers can take to establish a serving and caring culture that is appropriate to the differing contexts of each particular department.”

This is virtually a quote from PSC documents. “Every ... department must have a foundational and effective system to observe, give feedback on, discuss ethical issues and promote professional behaviour” is the PSC’s indicator in its monitoring and evaluation tool that it uses to evaluate compliance with the public administration principles.

Most departments do not comply with this indicator in any meaningful way. The PSC will in future develop solutions that better respond to ethical dilemmas in specific contexts.

### **3. The introduction of the District Development Model**

The public service has from many sources been accused of a silo mentality. Coordination is a key public administration process and relates to the constitutional public administration principles of effectiveness and that public administration should be development-oriented.

The PSC has already in 2015/16 proposed a collaboration approach that differs fundamentally from the approach of appointing coordinating structures or committees that was then, and still, mostly used, and trying to coordinate programmes from the center by introducing programmes such as the Comprehensive Rural Development Programme (CRDP). Such structures or committees and programmes create parallel reporting lines and duplicating bureaucracy that are not effective as coordination mechanisms. [PSC. 2015/16. Evaluation of the capacity of the South African public service to operate collaboratively: with focus on the Department of Rural Development and Land Reform's (DRDLR) Comprehensive Rural Development Programme (CRDP)].

The PSC has in a more recent study proposed a new coordination model to the department that envisages mitigating current top-down bureaucratic processes that are difficult to coordinate in favour of district level coordination, which implies more authority at the district level to coordinate and collaborate with key role players in the district. [PSC. 2020. Evaluation of coordination arrangements in the context of post settlement support of land reform projects.]

The District Development Model, currently being piloted in three districts, encompasses, perhaps inadvertently, many of the PSC's recommendations. Inadvertently because the PSC was not involved in the development of the details of the model. The PSC would strive to monitor this process closely to ensure that the District Development Model is implemented in a manner commensurate with the constitutional public administration values and principles and that the potential of the District Development Model is realised.

### **4. Developments regarding the political-administrative interface**

The political-administrative interface affects a few of the public administration principles, especially ethical conduct, effectiveness, responsiveness and accountability.

In its 2015 Discussion Document [Building a Capable, Career-Oriented and Professional Public Service to Underpin a Capable and Developmental State in South Africa] the PSC made the following recommendations to contribute towards stabilising the political-administrative interface:

- Amend section 3(7) of the Public Service Act to assign powers of appointment and other career incidents to the HoD, instead of the Executive Authority to align the Public Service Act with the Public Finance Management Act where powers are assigned to the accounting officer.



- The PSC supported the National Development Plan recommendation for the establishment of a Head of the Public Service and a hybrid approach to top appointments where the PSC will play a role in shortlisting and recommending candidates.
- The PSC suggested various interventions and solutions for managing the relationship between the HoD and the Executive Authority. (It cannot be managed by trying to separate the roles – both have a role in policy and implementation.)

Initially there seems to have been no commitment from government to establish a head of the public service. However, this is now one of the planned outputs of Priority 1 of the Medium Term Strategic Framework for 2020 to 2024.

The PSC continued to advise on, and in some cases mediated, relationships between HoDs and EAs.

Recently (29 September 2020) the PSC issued a circular on unlawful instructions. The circular was not intended to undermine EAs or create deadlocks between EAs and HoDs, but to protect both parties by emphasising the principle of legality. Both the EA's and HoD's administrative actions should adhere to the legal framework. At the core of the circular on unlawful instructions is the political-administrative interface. The political-administrative interface also needs soft skills – the relational dimension is as important as the law. Leadership and policy stability also ensure that trust and relationships can be built. The distinct roles of a DG/HoD and a Minister/ MEC should under normal circumstances not result in a deadlock: the administrator should find lawful means to execute the legitimate policies of the political executive. On issues of policy the minister should prevail.

In its support to the incoming 6<sup>th</sup> Administration (May 2019), the PSC issued a 'Guide on Governance Practice for Executive Authorities and Heads of Department'. In a series of engagements with HoDs and EAs the PSC tried to lay the groundwork for productive EA-HoD relationships.

The PSC will continue to monitor this important aspect of public administration.

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## **The activities of the PSC in the 2019/20 financial year**

This edition of the report covers the 2019/20 activities of the PSC. It therefore covers the pre-Covid period. The administrative innovation required by the need to rapidly and effectively respond to Covid and the lockdown measures will be reflected upon in the next report.

The PSC deals with a variety of public administration practices, from the administrative procedures for the maintenance of buildings and other infrastructure, to limited term contract appointments, to intervention in provincial administration in terms of section 100 of the Constitution (**Chapter 2 of the report**). The report gives an insight into the PSC's findings and recommendations on such matters.



The PSC's report on the section 100 intervention in the Limpopo highlights divergent views on the success of the intervention. Such interventions disrupt a current administration and is highly risky. So, the objectives of an intervention should be as specific as possible, the roles of incumbent authorities vis-à-vis the administrator should be very clear and the intervention team supporting the administrator should be highly skilled and experienced administrators.

The promotion of the Constitutional and Values and Principles (CVP) governing public administration remains a flagship project for the PSC and in 2019/20 the CVPs formed the basis of the work conducted.

The PSC continued to investigate the grievances of public servants referred to the PSC after internal departmental processes have failed (**Chapter 3 of the report**). The three dominant areas that led to grievances in the 2019/20 financial year were "unfair treatment", "performance management" and "salary problems". It is noteworthy that the same three areas also posed as grievances in the two previous financial years (2017/18 and 2018/19).

With the objective of improving sound labour relations and minimizing the prevalence of certain categories of grievance, the PSC had engagements with selected departments both at national and provincial level, to deal with labour relations issues that appeared to be prevalent in those departments. At the national level the following departments were engaged: Health, with regard to the high number of salary related grievances; and the Independent Police Investigative Directorate (IPID) and the South African Police Service (SAPS) on the subject of unfair treatment. Presentations on unfair treatment were also made to departments who attended the Public Service Coordinating Bargaining Council (PSCBC) conferences held in all provinces and at the national level, where to the PSC was invited in terms of a Memorandum of Understanding between the two institutions.

In an attempt to find a solution to grievances emanating from staff performance management, on 28 November 2019, the PSC hosted a roundtable, where UMALUSI, the institution responsible for quality assuring matric examinations, was invited to share with the PSC how they quality assure and moderate matric examination processes and outcomes, with the view to distilling lessons that could be applied to the Performance Management and Development system (PMDS). The Department of Public Service and Administration (DPSA), as the custodian of the PMDS Policy Framework was also invited, and so were the following departments that had a high number of PMDS-moderation cases referred to the PSC: Rural Development and Land Reform, Justice and Constitutional Development and the National Prosecuting Authority. The effectiveness of the PMDS if measured against its own objectives (eg, measuring performance objectively, improving performance and motivating staff) is highly doubtful and the PSC has over a number of years asserted that the system should be fundamentally reviewed. This is yet to happen.

The scope of PSC investigations into the application of public administration practices or adherence to applicable procedures (**Chapter 4**) is mostly very specific, mostly adherence to Supply Chain Management Procedures and Recruitment and Selection procedures. However, sometimes the scope of the investigation is wide, requiring the PSC to evaluate wide ranging administrative practices and the level of organisational development that materially affect the performance of departments. This also gives the PSC the opportunity to test whether the

prescribed administrative procedures are effective and comply with the principles governing public administration in section 195 of the Constitution. The values and principles governing public administration therefore infuses all the work of the PSC. The scope of the investigation into the Department of Small Business Development (DSBD) covered the following:

- i. Lack of a departmental structure/organogram approved by the Minister of Public Service and Administration (MPSA);
- ii. Low staff morale;
- iii. Career development;
- iv. Lack of capacity of certain components of the DSBD;
- v. Employee grievances that are not addressed; and
- vi. Lack of resources to fulfill the mandate of the DSBD.

In the year under review the PSC went to great lengths to engage with key role players that shape public administration **(Chapter 9)**. The role of the PSC is to influence the change of the organisation of the public service and the form and character of public administration practice to better comply with the values and principles governing public administration. It therefore needs to enter the current debates on these issues and influence the debate. Tables 19 and 20 lists all the engagements that the PSC had with committees of parliament and the provincial legislatures. Some of the highlights of these engagements were the following:

- PSC's support to the 6th Administration
- Monitoring the payment of invoices within 30 days
- Oversight at service delivery points
- Human Resource matters
- Promotion of Professional Ethics and Ethical Leadership in the Public Service
- Roundtable on the Land Restitution and Land Redistribution Programmes of the Department of Rural Development and Land Reform
- Roundtable with Organised Labour on advancing the Constitutional Values and Principles (CVPs)

## **PSC's support to the 6th Administration**

The public service and public administration is a heavily regulated environment and when new ministers and MECs and heads of department enter the public service they many times had not expected the complexity that they will be faced with. The PSC therefore conducted a number of induction sessions to, as far as possible, make this complexity a little bit more digestible.

The PSC developed a 'Guide on Governance Practice for Executive Authorities and Heads of Department'. The guide remains a critical source of reference for departments.

The objectives of the induction were as follows:

- To create awareness of the legislative framework underpinning the EAs' administrative role in the Public Service with specific emphasis on the management of organisational structures, human resources, finance and integrated reporting;

- To enhance the effectiveness and functionality of the Public Service by advocating for systematic implementation of the PSC's recommendations and support initiatives; and
- To profile the work of the PSC.

Some of the strategic issues raised during these engagements were the following:

- Political-administrative interface*: the need for an understanding of the relationship dynamics in the areas of appointments (including the termination of contract appointments), supervision, discipline, conflict resolution, performance contract signing and redeployment of HoDs across government (i.e. national and provincial) as well as delegations of authority. The need to clarify the role of EAs' staff (i.e. Heads of EAs' offices and Special Advisors) as it relates to and interface with the HoD and the department was also raised. In addition, the importance of considering the knowledge and capabilities of EAs for the portfolios they are appointed to was also alluded to.
- Single Public Service*: the need for integration of municipalities into the Public Service and the possibility of transferring employees from local government (municipality) to the Public Service in the absence of single Public Service enabling legislation.
- Labour relations matters in the Public Service*: the need to understand the legal obligation of implementation of arbitration awards and court orders by departments; and recourse available to affected employees when implementation is not taking place.
- The Integrated Service Delivery Model in provincial administrations*: the need for an understanding of the challenges pertaining to these models on the ground to ensure that service delivery is achieved (for example, Operation Masiphathisane in the Eastern Cape).

### **Monitoring the payment of invoices within 30 days**

In responding to the President's call for the timely payment of service providers, the PSC continued to vigorously monitor departments' compliance with the requirement that invoices should be paid within 30-days and also publish information on invoices not paid within 30 days in its quarterly bulletin called the Pulse of the Public Service.

The role that the PSC has adopted is to both monitor trends in the payment of invoices and report to the relevant authorities and to investigate and intervene on behalf of suppliers who have lodged complaints with the PSC.

### **Oversight at service delivery points (Chapter 8)**

Through its role in promoting the CVPs, which are closely linked to the Batho Pele principles, the PSC has a strong service delivery oversight mandate. The PSC continued with its work on service delivery inspections with a special focus on health facilities in the 2019/2020 period. The negative spotlight from health facilities prompted the PSC to conduct inspections in Eastern Cape and Gauteng. The inspections highlighted deficiencies such as aging infrastructure, overcrowding, and shortage of staff due to the high turnover.

In the year under review inspections were conducted at the following hospitals:

#### *Gauteng:*

Bheki Mlangeni hospital  
George Mkhari hospital  
Mamelodi hospital  
Thele Mokgoerane hospital  
Raheem Moosa  
Thembisa  
Charlotte Maxeke

#### *Eastern Cape:*

Cecilia Makiwane Psychiatric Unit  
Nerina House Nurses' Home at Frere Hospital

### **Human Resource matters**

The PSC has played an important role in contributing to the discourse on recruitment and selection in the public service. The non-adherence to regulations on recruitment and selection remains a challenge. The appointment of senior staff with no expertise nor experience poses a serious challenge in the public service. Appointment irregularities in the Public Service is an area of concern and the PSC in the past has issued a guideline on the recruitment and selection process. Subsequently, in view of the increase in the number of reported cases relating to alleged irregular appointments, the PSC has also issued a guide on how to correct irregular appointments.

### **Promotion of Professional Ethics and Integrity in the Public Service (Chapter 7)**

In promoting good governance and integrity in the Public Service, the PSC, in partnership with the United Nations in South Africa, the Thembekile Mandela Foundation and the Moral Regeneration Movement, held a seminar on Ethical Leadership under the theme "*Leading like Mandela: Dawn of the New Era of Ethical, Value-Based and Leadership*". This took place on the 19<sup>th</sup> of July 2019. The seminar focused on the following topical issues: the current state of leadership; desired state of ethical leadership; the context of ethical leadership as well as a programme of action for attaining ethical leadership.

The PSC in partnership with the South Africa-European Union Strategic Partnership's Dialogue Facility and University of South Africa (UNISA) hosted a Dialogue under the theme: **A Values-Driven Public Sector: Building State Capacity through Professional Ethics and Integrity**. The main objective of the Dialogue was to create a platform for stakeholders to engage on the critical challenges and opportunities related to strengthening ethics and integrity in public administration. Finally, the PSC in partnership with UNISA and the United Nations Office on Drugs and Crime jointly commemorated the International Anti-Corruption Day on Monday 9 December 2019 under the theme "**United Against Corruption: Building a Culture of Accountability for Sustainable Development**". The following topics were covered: Contextualising the extent of corruption; Taking concrete action against corruption: reflections and progress; and Active citizenry in building an accountable governance.

## **Roundtable on the Land Restitution and Land Redistribution Programmes of the Department of Rural and Land Reform**

In 2019/20 the “Final Report of the Presidential Advisory Panel on Land Reform and Agriculture” was released. The discussions prompted the PSC to organise and hold a roundtable on land reform related issues. The Roundtable was held with the Commission on Restitution of Land Rights, the Department of Rural Development and Land Reform and academics.

The purpose of the Roundtable was to understand the issues affecting the land reform programme. The roundtable teased out broad issues affecting the programme of land and the challenges experienced by the Department of Rural Development and Land Reform in the execution of its mandate.

The PSC’s interest in the matter is not in the first instance government’s land reform policy but how the organisation and administration of the public service (section 196(4)(b) of the Constitution) hinders or facilitates the effective implementation of policy. The Roundtable agreed that coordination with other role players in the land reform environment and the capacity of the Department are major administrative issues facing the Department.

## **Roundtable with Organised Labour on advancing the Constitutional Values and Principles (CVPs)**

The Public Service Commission (PSC) engaged Organised Labour on 19th February 2019 at its Pretoria office with 15 labour union representatives with the view to promote the Constitutional Values and Principles (CVPs). The purpose was to develop a shared understanding of their respective roles in building a capable and values-driven Public Service in support of democracy. Equally important, is labour’s commitment to upholding the values and principles of public administration enshrined in Section 195 of the Constitution and other laws, through adopting the Public Service Charter in 2013 in the Public Service Coordinating Bargaining Council (PSCBC).

Some of the issues raised during the engagement included a need to create a culture of high performance, career development, rewarding of good performance, human dignity, lack of resources that prohibits the delivery of efficient and effective delivery of services, and the safety of employees.

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## List of Acronyms

APP	Annual Performance Plan
CMS	Case Management System
CoC	Code of Conduct
CVPs	Constitutional Values and Principles
DPME	Department of Planning, Monitoring and Evaluation
DPSA	Department of Public Service and Administration
DPW	Department of Public Works
EAs	Executive Authorities
EE	Employment Equity
EXCO	Executive Committee
HoD	Head of Department
HR	Human Resources
HRM&D	Human Resource Management and Development
ISDs	Institutions Supporting Democracy
MMS	Middle Management Service
MoU	Memorandum of Understanding
NACH	National Anti-Corruption Hotline
NDP	National Development Plan
OCPOL	Oversight Committee on Premier's Office and Legislature
OTP	Office of the Premier
PMDS	Performance Management and Development System
PSR	Public Service Regulations
RWOPS	Remunerative Work outside the Public Service (Employee's Employment)
SASSA	South African Social Security Agency
SCOA	Standing Committee on Appropriations
SCOPA	Standing Committee on Public Accounts
SDIP	Service Delivery Improvement Plan
SMS	Senior Management Service
WSPs	Workplace Skills Plans

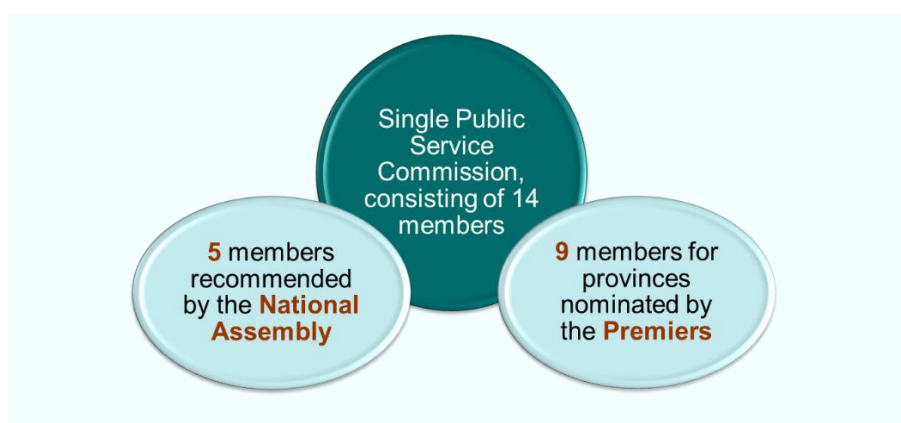
# CHAPTER 1: INTRODUCTION AND PURPOSE OF THE REPORT

The purpose of the Section 196(4)(e) report, read together with Section 196 (6) of the Constitution, is to report the work performed by the Public Service Commission (PSC).

This Edition of the report covers the work of the Public Service Commission (PSC) over the period 2019/20. This work includes grievances, complaints, the National Anti-Corruption Hotline, monitoring and evaluation, the financial disclosure submissions and engagements by commissioners.

The Public Service Commission (PSC) is an independent, impartial constitutional institution, which must exercise its powers and perform its functions without fear, favour or prejudice. The Constitution stipulates that there is a single Commission for the Republic of South Africa, consisting of 14 members appointed by the President. Five of the Commissioners are appointed on the recommendation of the National Assembly and nine are appointed from each of the nine provinces, after nomination by the Premier of the province on the recommendation of each Provincial Legislature.

The diagram below illustrates the single PSC for the Republic of South Africa:



The members of the Commission in the reporting period were:

Commissioners recommended by the National Assembly	Commissioners nominated by the Premier of each province	
1. Adv RK Sizani (Chairperson)	1. Eastern Cape	Ms LV Sizani (effective 1 August 2019)
2. Mr BM Mthembu (Deputy Chairperson)	2. Free State	Dr WH Boshoff
3. Ms SS Nkosi (until 24 April 2019)	3. Gauteng	Mr MH Seloane
4. Ms CP Nzimande	4. KwaZulu-Natal	Dr MP Sithole (Until 31 August 2019)
	5. Limpopo	Mr TG Mashamba
	6. Mpumalanga	Mr DS Mkhwanazi (Until 30 April 2019)
	7. Northern Cape	Ms MA Marais-Martin
5. Dr TB Luthuli	8. North West	Dr MS Leballo
	9. Western Cape	Mr LJ Goosen

Detailed information on the governance structure of the PSC is discussed later in the report. The PSC is supported by an Office, which operationalises and executes its mandate.

## CHAPTER 2: RESEARCH REPORTS

## 2.1 Introduction

The PSC's research reports, together with its evaluations of departments against the democratic values and principles governing public administration in section 195 of the Constitution (Part B.2 of this report), enable it to develop an evaluation of the state of the public service and the issues confronting it. These relate to the nuts and bolts of administration and may seem mundane. However, these mundane details ultimately determine the character and nature of the public service and its capabilities, responsiveness and accountability. Much of these details are also governed by law and regulation and accepted practice (the way we do things), and are therefore quite rigid. The recommendations flowing from these reports hopefully make some contribution towards shifting the character of the public service from mere compliance towards the constitutional ideal.

This section gives an overview of key findings and recommendations from the PSC's research in the period under review.

## 2.2 An assessment of the Western Cape Education Department's response to emergency repairs at schools

<b>Problem statement</b>	There have been a number of incidents in the news where a lack of routine maintenance or poor response to emergency requests has resulted in either injury or loss of life. In this light, the PSC Western Cape Provincial Office initiated a project to assess the Western Cape Education Department's (WCED) response to emergency repairs at schools.
<b>Objectives</b>	<ul style="list-style-type: none"><li>• Assess the experience and effectiveness of the system dealing with emergency repairs;</li><li>• Gain insight into the end-user experience of the system and the effectiveness of the response by the WCED as perceived by principals; and</li><li>• Where possible, make recommendations to improve the current system.</li></ul>
<b>Key findings</b>	<ul style="list-style-type: none"><li>• The WCED data set from September 2017 to September 2019 shows that there were 2344 requests for emergency repairs logged on the Central Education Management Information System (CEMIS) by 809 schools. Of those, <b>only 880</b> requests were evaluated, approved and closed.</li><li>• From the survey result it is evident that not all principals are familiar with the WCED's Standard Operating Procedures for Emergency Maintenance in Schools. The information gained from respondents show that 20 out of 58 principals were not familiar with the Standard Operating Procedure.</li><li>• There should be an objective set of criteria introduced to define what constitutes a pressing emergency. Such a distinction would separate routine maintenance requests from emergency repair requests.</li><li>• Almost half of the sampled principals indicated that some of the</li></ul>



	<p>emergency repairs requested were as a result of maintenance not being done in the first place. The lack of maintenance would mean that buildings are left to deteriorate to the point of it becoming safety hazards.</p> <ul style="list-style-type: none"> <li>• From the sample it was established that 81.8% of respondents were not contacted within two days of logging an emergency request. In fact, a proportion of 47.2% of sampled principals cited that no response was forthcoming by the tenth day after logging the request. The stated standard response time for a site inspection (where the emergency is assessed and the job specifications are identified), according to the Standard Operating Procedure for the two highest levels of emergency repair, is 12 and 72 hours respectively. This statistic is a concern and attests to a system that does not comply with its own standards.</li> <li>• The majority of approved requests (54.1%) result in the contractor starting the repair work within 2 months of approval, according to the sampled principals. This excludes 'making safe' when this is required. A third of approved requests are only implemented by the 4th month or thereafter according to the survey.</li> <li>• Principals indicated that they were conversant with the CEMIS system and the majority of them were satisfied that the system was an efficient and effective way of logging requests.</li> <li>• Most principals were satisfied with the level of communication once the repairs were approved. However, some principals raised the issue of not being alerted to when contractors are to be on site and were often surprised when the contractors arrived on site.</li> <li>• In terms of satisfaction with the quality of repairs done, the majority of principals stated that they were at least fairly satisfied. However, 31% of the principals were completely dissatisfied.</li> <li>• The information obtained during interviews with principals clearly suggest that communication and feedback is a major impediment to ensuring that schools and school communities are properly informed of the status of the request for repair work, the approval of repair work, and the delivery of the repair work.</li> <li>• The relationship amongst all role-players in the delivery of repair work is structured in a way that relegates the principal to an observer with no direct influence over the quality of the work being done by contractors. The contractual agreement is between the Department of Transport and Public Works (DTPW) and the contractor.</li> <li>• The principals interviewed indicated that they have the capacity and appetite to undertake emergency repairs themselves with the support of their School Governing Body (SGB).</li> </ul>
<b>Recommendations</b>	<ul style="list-style-type: none"> <li>• The definition of emergency repairs should be more detailed and specific criteria should be communicated to principals. Risk professionals should be engaged to produce a workable layman's assessment tool that allows for principals to objectively assess, as best they can, the emergency repair situation at their school.</li> </ul>

	<ul style="list-style-type: none"> <li>• There needs to be a specific and intentional role assigned to the principal during delivery of infrastructure. The WCED and DTPW should design a role for the principal (or his/her delegate) in infrastructure delivery, and that this role should be documented for all role-players to understand. This role should include the ability of the principal to oversee the repair work, to interact with the contractor, to raise issues of concern with the project manager, and very importantly, to be able to finally express levels of satisfaction with the repair work that has a material impact as to whether the contractor is paid or not paid.</li> <li>• For the sake of accountability, principals are to be informed of the repair specifications (details of work to be done and materials to be used) before work commences, as well as the full value of the repair contract.</li> <li>• This study proposes that a SGB-managed delivery model should be considered by the WCED and DTPW. The PSC proposes that the WCED, based on existing data in respect of the functionality of schools, the functionality of SGBs, the financial reports submitted to the WCED, and any other relevant data that speaks to the competence of the governance of a school be used in assessing the accreditation of an SGB for the specific purpose of infrastructure delivery.</li> <li>• The WCED must have a system that guarantees first contact with principals once an emergency repair has been logged, irrespective of the nature, extent and severity of the repair required. There must be evidence that an email was sent to the school or a telephone call was made to the school. This note must appear on the history of the case, as it reflects on CEMIS, and principals should be able to see this from their side as well.</li> <li>• The stipulated timeframe to undertake site inspections should be adhered to, but importantly should also be monitored for performance. The CEMIS incident report should clearly show whether a site inspection was done and should allow for a count of days in order to monitor performance. Similarly, the time taken to complete assessment reports should also be a performance measure and should be recorded on CEMIS.</li> <li>• The assessment reports should, as a standard procedure, be shared with principals once completed.</li> <li>• A feature that would enable principals to monitor the processing of their requests could be introduced to the CEMIS system.</li> </ul>
<b>Implementation of Recommendations</b>	<p>The WCED provided the PSC with a written response to the report. The recommendations were accepted and the department indicated how they will be implementing these, as well as the timeframes in which they would do so.</p>

## 2.3 Roundtable report on the extent and nature of contract appointments in the Public Service

<b>Problem statement</b>	<p>A PSC report published in 2019 on the extent and nature of contract appointments in the Public Service highlighted the fact that all government departments make use of contract appointments for various reasons and under different circumstances. Whilst many of the departments appeared to be acting within the applicable legal framework, challenges were identified and discussed in the report.</p> <p>Having published the report, the PSC deemed it necessary to engage with relevant stakeholders in order to deliberate on the findings and recommendations of the report. To this end, roundtable sessions were conducted around the country.</p>
<b>Objectives</b>	<p>The objectives of the roundtable sessions were to—</p> <ul style="list-style-type: none"> <li>• create awareness on the implications of the use of contract appointments;</li> <li>• present the findings and recommendations from the published report;</li> <li>• provide an opportunity to develop a common understanding of the various legislative frameworks related to contract appointments and appointing staff additional to the staff establishment; and</li> <li>• share experiences and agree on best practices for managing contract appointments in the Public Service.</li> </ul>
<b>Key points raised</b>	<ul style="list-style-type: none"> <li>• The DPSA supported the recommendations emerging from the study conducted by the PSC and further expressed concern over the practice of renewing contracts multiple times. The DPSA urged departments to undertake audits of contract appointments and vacancy rates in their respective departments in order to address challenges in a systematic manner and in line with prescripts.</li> <li>• A representative from the CCMA clarified the implications of section 185 of the Labour Relations Act (LRA), which guarantees every employee the right to not be unfairly dismissed and the right to not be subjected to unfair labour practice. The CCMA presenter indicated that the distinction between a Fixed-term Contract (FTC) and a permanent contract has a clear economic rationale in the sense that an employer may have discretionary funds for a period and when the period is reached the funds are depleted. By contrast, the creation of a permanent post would necessitate a more permanent source of funding. To avoid creating unreasonable expectations, when appointing someone on contract or renewing a contract, the employer should demonstrate justifiable reasons for fixing the term of the contract at the time when the contract is entered into in line with the LRA.</li> <li>• Inputs from the unions acknowledged that not everyone appointed on contract should be absorbed permanently, but the employer must</li> </ul>

	<p>show a willingness to negotiate on issues around contract appointments because contract workers deserve to be treated fairly.</p> <ul style="list-style-type: none"> <li>• There was general agreement that given the evolution of the labour market coupled with technological advancement, many job profiles are outdated and need to be revised and aligned to current practice. Therefore, HR units should continuously conduct competency and behavioral audits that will assist in identifying skills gaps that should be addressed through reskilling and other capacity development mechanisms. Without skills audits, the capacity challenges that give rise to contract appointments will remain.</li> </ul>
<b>Recommendations</b>	<p>The following recommendations were proposed and supported by roundtable participants:</p> <ul style="list-style-type: none"> <li>• Vacant funded posts should be filled within the prescribed timeframes to avoid the perception that FTC employees are given unfair advantage over other prospective candidates.</li> <li>• Departments should put measure in place to develop employees who are considered surplus to the staff establishment to avoid creating a dependency factor on contract employees and other external capacities.</li> <li>• The DPSA should develop a single policy to regulate contract employments and encourage departments to adhere to this policy, in addition to the relevant legislation and regulations.</li> <li>• The report should further be presented to the Governance and Administration (G&amp;A) cluster members, who will further present the report to their respective EAs.</li> <li>• The PSC as the “custodian of good governance” should hold non-complying departments to account.</li> </ul>
<b>Implementation of Recommendations</b>	<p>The PSC will continue to engage with the DPSA as part of monitoring implementation of the recommendations. In addition, the PSC will engage with the G&amp;A Cluster.</p>

## 2.4 Assessment of the impact of the section 100(1)(b) intervention in the Limpopo provincial government

During the 2019/20 financial year, the PSC finalized a report titled “*Assessment of the impact of the section 100(1)(b) intervention in the Limpopo provincial government*”.

<b>Purpose of the study</b>	<p>Through this project, the PSC sought to:</p> <ul style="list-style-type: none"> <li>• establish the impact Section 100(1)(b) had on governance (positive or negative);</li> <li>• establish how implementation of the intervention had affected the delivery of services to the people in the communities;</li> <li>• establish if there was an understanding of what section 100(1)(b) intervention meant in terms of service delivery to the people; and</li> </ul>
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	<ul style="list-style-type: none"> <li>develop and/or recommend a comprehensive set of interventions to address the identified challenges and to help them improve the implementation in the Province.</li> </ul>
<b>Summary of the key findings and recommendations</b>	
<b>Issue</b>	<b>Findings</b>
<b>Determining whether the national intervention, of placing the Limpopo provincial administration under section 100(1)(b), has yielded the intended results</b>	<ul style="list-style-type: none"> <li>All agreed that there were stories about departments that were not paying their service providers, overspending and bankrupting the Province. Overall, there was a general feeling that the criteria followed were very subjective and political in nature.</li> <li>At the core of the terms of reference was the intention to stabilise the finances of the province.</li> <li>From the interviews, it was established that the fiduciary responsibilities of the Executive was under the administrator's control who reported directly to the national government. It was indicated that there was no working relationship between the executive and the administrator. It was also indicated that the executive authorities played no role during the administration.</li> <li>Although senior management service (SMS) members were called to the meeting wherein the administrator was introduced, many did not know how to relate to the administrator. It was also not clear who was responsible because heads of departments were barred from approving any submissions.</li> <li>The majority of the respondents also indicated that they were not aware of any set standards to guide the work or, if there were any, such was not communicated. Others indicated that standards were in place and became clearer with time.</li> <li>The officials interviewed had concerns on the outcomes of the intervention. Key to their concerns was that they did not know whether the intervention was successful or not since the success measures were not communicated. Overall, they indicated that the provincial audit outcomes did not improve during and after the term of the intervention.</li> <li>The interviews revealed that the national intervention had a negative impact in various areas of the provincial administration, including service delivery (e.g. many unfinalised disciplinary cases, the textbook saga, etc.)</li> </ul>
<b>Understanding the governance of the five (5) Limpopo provincial departments' pre and post the intervention</b>	<ul style="list-style-type: none"> <li>The officials interviewed agreed that supply chain management was a serious concern in the Province. However, their concern was that the administrator took over everything in all departments, from financial management to</li> </ul>

	<p>human resource management. The HoDs were therefore left redundant.</p> <ul style="list-style-type: none"> <li>• The interviews revealed that the intervention did not assist with organisational capacity.</li> <li>• The officials stated that managerial capacity in the Province remained the same as before.</li> <li>• The officials interviewed indicated that the intervention did not assist much in the improvement of accountability. Labour issues remained unresolved in the. HoDs were suspended without valid reasons or without following procedure and most of them were redeployed to the Office of the Premier.</li> <li>• Despite many officials not having a clear understanding of the roles and responsibilities of the administrator, they agreed that transparency improved as a result of the intervention.</li> </ul>
<b>Strategies used for improving the five (5) Limpopo provincial departments' governance</b>	<ul style="list-style-type: none"> <li>• Although there was no consensus from the interviews conducted on the main focus areas of the intervention, overall, they indicated that the administrator took over control of all the affected departments, especially supply chain management.</li> <li>• Agencies used in the process include Public Administration Leadership and Management Academy (PALAMA), Public Protector of South Africa (PPSA) and Price Water House Coopers. PALAMA was utilised for training some of the officials and PPSA and Price Water House Coopers were utilised to conduct investigations.</li> </ul>
<b>Identified challenges to help improve the implementation of the intervention strategies in the province</b>	<ul style="list-style-type: none"> <li>• There were no regulations guiding the intervention, and no processes in place that were supposed to be followed during the administration period;</li> <li>• Roles were not clarified and reporting lines or functions were not clearly indicated. Not a single HoD received a letter from the Premier informing them that they are no longer accounting officers. Everyone was doing what they thought was right;</li> <li>• Suppliers were not paid;</li> <li>• Projects like infrastructure were stalled - both new and maintenance;</li> <li>• Files for misconduct cases were in the Eastern Cape (EC) Province; and</li> <li>• The administration affected the entire provincial administration, not just the five targeted departments.</li> <li>• There was a strong belief that whatever was planned to be achieved by the intervention was destroyed since half of the affected departments' management was suspended.</li> </ul>
<b>Recommendations</b>	<ul style="list-style-type: none"> <li>• In order to ensure that the executive implements programmes and plans in a way consistent with government prescripts, legislation and the dictates of the Constitution, the roles and responsibilities of Executive Authorities (EAs) and Accounting</li> </ul>

	<p>Officers (AOs) must be clearly understood. This will assist the oversight and accountability function;</p> <ul style="list-style-type: none"> <li>• There should be regular training of members of the Standing Committee on Public Accounts (SCOPA) to ensure that they are able to exercise oversight over the executive authority in accordance with the relevant prescripts;</li> <li>• In order to ensure a seamless process, national government should carry out a proper enquiry into the weaknesses in the affected administration to avoid elements of subjectivity which may trigger conflicts in the process. This report has showed contradictory views on what the reasons for the interventions were; and</li> <li>• National government should create a consolidated and comprehensive database of previous section 100(1)(b) interventions for lessons and information sharing of best practises. This will ensure that any future interventions are carried out in a seamless and efficient way.</li> </ul>
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## CHAPTER 3: MANAGEMENT OF GRIEVANCES

### 3.1 Introduction

The right to fair labour practice is enshrined in Section 23 of the Constitution, 1996 and it is further elaborated in the Labour Relations Act, 1995. However, the protection and promotion of sound labour relations is not an end in itself, it is a means to the realization of other fundamental human rights, as well as various individual and organizational strategic and operational objectives such as employee productivity and service delivery.

Consequently, the inability to maintain sound labour relations between the employer and employee has frequently contributed to poor productivity in the public service due to low staff morale, litigation and related costs, as well as time commitments of managers in attending to conflict management. Strained and adversarial relations undermine the NDP's call for a capable and developmental states and the need to make the public service an employer of choice that is characterised by, among others, a high standard of professionalism and developmental commitment.

Section 196(4)(f)(ii) of the *Constitution*, 1996, read with section 35(1) of the *Public Service Act*, 1994, mandates the PSC to investigate grievances of employees in the public service concerning official acts or omissions. Furthermore, HoDs are required to report to the PSC on a six-monthly basis on the resolution of grievances.

This chapter provides an overview of grievances reported by national and provincial departments as well as grievances handled by the PSC for the 2019/20 financial year. It further draws on previous reports for purposes of trend analysis. Key findings and recommendations and challenges experienced in this area are also highlighted.

### 3.2 Grievances reported by departments in terms of the Grievance Rules, 2003

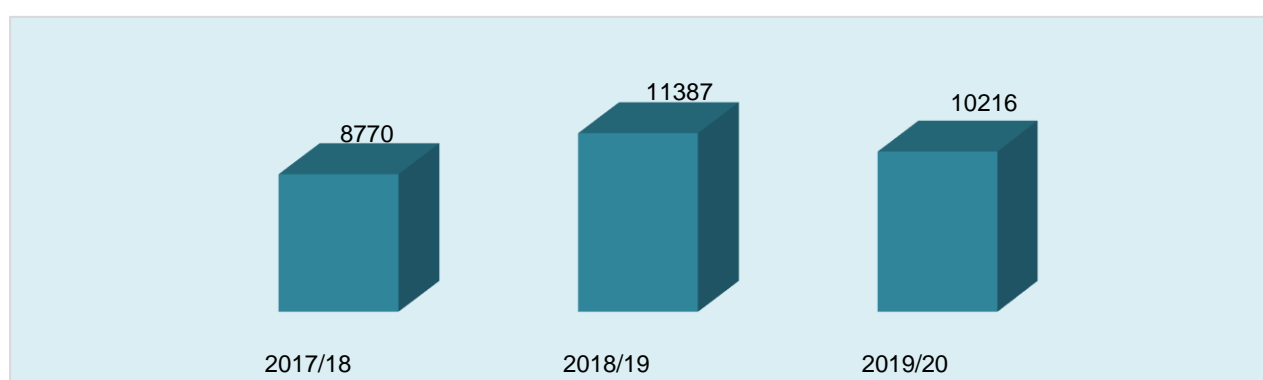
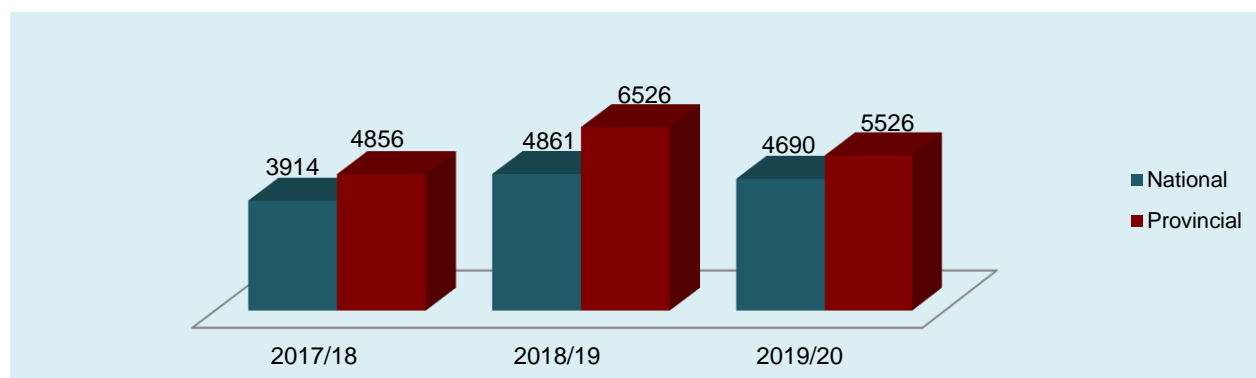


Figure 1: Total number of grievances reported by departments

As depicted in **Figure 1** above, national and provincial departments reported a total of **10216** grievances for the 2019/20 financial year, which reflects an increase of **16.5%** over the **8770** grievances reported for the 2017/18 financial year, but a slight decrease of **9%** from the **11387** cases reported during the 2018/2019 financial year.

**Figure 2** below provides a breakdown in respect of the total number of grievances reported by national and provincial departments for the financial years 2017/18 to 2019/20.



*Figure 2: Number of grievances reported by national and provincial departments*

As can be seen from the figure above, in comparison with the 2017/18 financial year, the number of grievances lodged at national departments in 2019/20 increased by **19.8%**. The reporting by provincial departments indicates an increase of **13.8%** for the 2019/20 financial year in comparison with the reporting for the 2017/18 financial year, but it represents a decrease of **15.3%** from the cases reported during the 2018/2019 period. The majority of grievances at provincial level (**52.6%**) emanate from the education and health departments, mainly because of the size of these departments. Due to the size of their staff establishment, the South African Police Service and Correctional Services also tend to have a high number of grievances reported at national level.

Of the 10216 cases reported during the 2019/20 financial year, 5885 (**57.6%**) were finalised, 46 (**0.5%**) were withdrawn by the aggrieved employees, 4 (**0.03%**) employees resigned/retired before their grievances could be finalised and the remaining 4281 (**41.9%**) were still under consideration as at end of March 2020.

**Table 1** below shows that between the 2017/18 and 2019/20 financial years, the overall finalization of cases by departments has improved marginally. However, the level of non-compliance with timeframes for finalisation of grievance cases by departments remains poor, as illustrated by an increase in non-compliance with timeframes from **33%** in 2017/18 to **45%** in 2018/19 and then **41%** in 2019/2020. The less than 60% in terms of finalization of cases, coupled non-compliance in terms of finalization of cases within timeframes can be attributed to multiple factors, including capacity challenges especially in large departments.

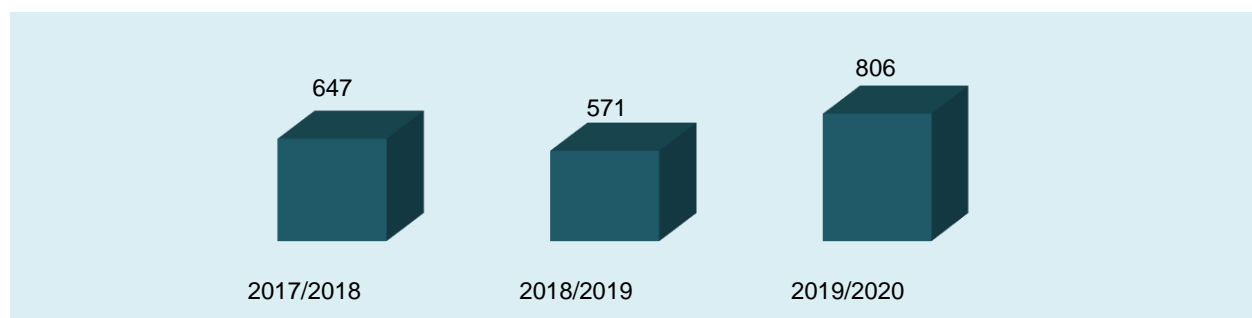
*Table 1: Compliance with timeframes for dealing with grievances by national and provincial departments*

Financial Year	2017/18	2018/19	2019/20
Grievances finalised within prescribed timeframe	3183 (67%)	3698 (54.9%)	3482 (59.1%)
Grievances finalised outside prescribed timeframe	1593 (33%)	3036 (45%)	2396 (41%)
No information provided on finalisation date	70	4	7
<b>Total number of grievances finalized</b>	<b>4846</b>	<b>6734</b>	<b>5885</b>

### 3.3 Grievances referred to the PSC

Of the 10216 grievances reported during 2019/20 financial year, 806 (7.9%) were referred to the PSC for consideration in terms of the grievance rules and the rest remained in the departments. Approximately 80% of the 806 cases were referred to the PSC by employees because departments failed to deal with them within the stipulated timeframes and there was no mutual agreement to extend the timeframes between the parties, even though the rules provide for such.

**Figure 3** below shows the total number of grievances referred to the PSC during the 2017/18 to 2019/20 financial years.



*Figure 3: Number of grievance cases lodged with the PSC over a three-year period*

The trend over the three-year period is as follows: A total of **647** grievances were handled by the PSC in 2017/18, which decreased by 76 (**12%**) in 2018/19, and in 2019/20 the total increased by 235 (**41%**) from the previous financial year.

An overview of the total number of cases handled by the PSC during the **2019/20** financial year is as indicated in **Table 2** below. It is important to note that cases that are referred to the PSC are categorized into two groups, that is, properly referred and not properly referred cases. Properly referred cases are cases that qualify to be investigated by the PSC because there was compliance with the Grievance Rules by the parties. Cases referred outside the provisions of the Grievance Rules or not properly referred cases are those cases that were not investigated by the PSC but were closed either due to the fact that the PSC does not have jurisdiction to consider them, or because there was non-compliance with the Grievance Rules. With respect to the latter, affected parties were advised accordingly on the steps to be taken and in some instances they were referred to relevant institutions and authorities that are mandated to deal with their matters.

As reflected in **Table 2** below, of the 806 cases referred to the PSC during the 2019/20 financial year, **557** were properly referred. The PSC concluded **381** cases, of which 56 (**15 %**) were found to be **substantiated**, while 86 (**22 %**) were **unsubstantiated**, 21 (**6 %**) were partially substantiated and 218 (**57%**) were closed after intervention by the PSC. The reasons for closure include internal resolution by departments, aggrieved employees withdrawing their grievances, or a settlement agreement being entered into between the department and the aggrieved.

Table 2: Overview of grievance cases referred to the PSC during 2019/20

Properly referred grievances		Cases referred outside the provisions of the Grievance Rules		Grand Total
Total grievances received	557	Total cases received	249	806
Pending grievances	176	Pending cases	20	196
Grievances concluded	381	Cases concluded	229	610
Substantiated	56 (15%)			
Unsubstantiated	86 (22%)			
Partially substantiated	21 (6%)			
Resolved and closed after PSC intervention	218 (57%)			

**Table 2** above also indicates that the majority of the cases are resolved through internal resolution, often after a preliminary investigation by the PSC and engagements with the parties. This clearly illustrates that engagement with all parties or mediation by a neutral party remains one of the most effective and efficient mechanisms of dealing with grievances because in addition to resolving conflict, the mediation/engagement process creates a platform to capacitate affected parties based on an existing case. As such the PSC will enhance the capacity of all investigators to resolve grievances through mediation, while complex matters that are not easy to resolve through mediation will be dealt with through the traditional investigation processes.

### 3.4 Key Findings

#### 3.4.1 Nature of grievances reported by departments in terms of Rule I.1

In 2019/20, the highest number of cases related to unfair treatment, followed by performance management and then salary problems. In 2018/19 the highest number related to performance management, followed by unfair treatment and then salary problems, whereas in 2017/18 the highest number of grievances related to salary problems, followed by unfair treatment and then performance assessment.

Unfair treatment refers broadly to unfair labour practice as defined in the Labour Relations Act of 1995 under Section 186(2)(a)(b)(c) and (d) as well as other forms of unfair treatment, which manifests in the form of, inter alia, victimisation, bullying, discrimination, intimidation, harassment and sexual harassment in the workplace, as well as cyberbullying.

Salary related grievances include grievances where departments deduct amounts from the salaries of employees, whether due to overpayments, unpaid leave or monies owed to the department (e.g. bursaries not honoured or use of telephone for private purpose).

Performance management grievances mostly related to reduction of performance assessment scores agreed to between supervisors and supervisees by moderation committees for reasons ranging between limited budget and lack of sufficient motivation for ratings.

**Figure 4** below provides a comparison in respect of the nature of grievances lodged by aggrieved employees for the past three financial years.

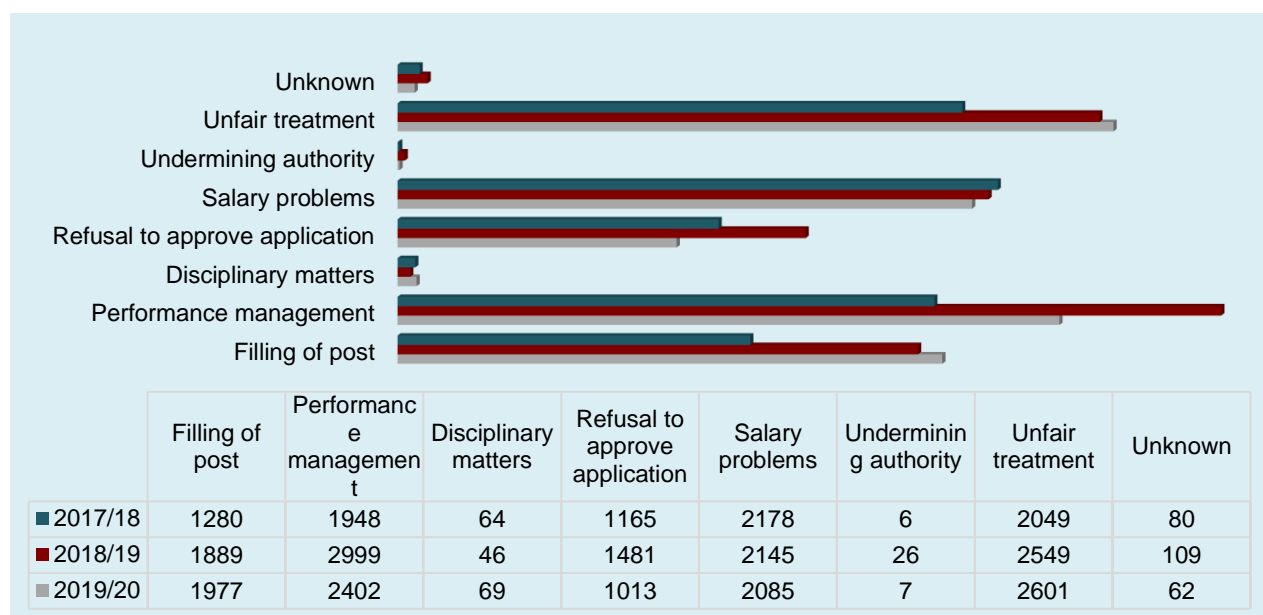


Figure 4: Nature of grievances reported by departments in terms of Rule 1.1

The nature of the cases reported by departments correspond with the nature of the cases that are referred to the PSC, as illustrated in **Figure 5** below.

### 3.4.2 Nature of grievances referred to the PSC

**Figure 5** below shows the nature of grievances handled by the PSC during the three year period of 2017/18 to 2019/20.

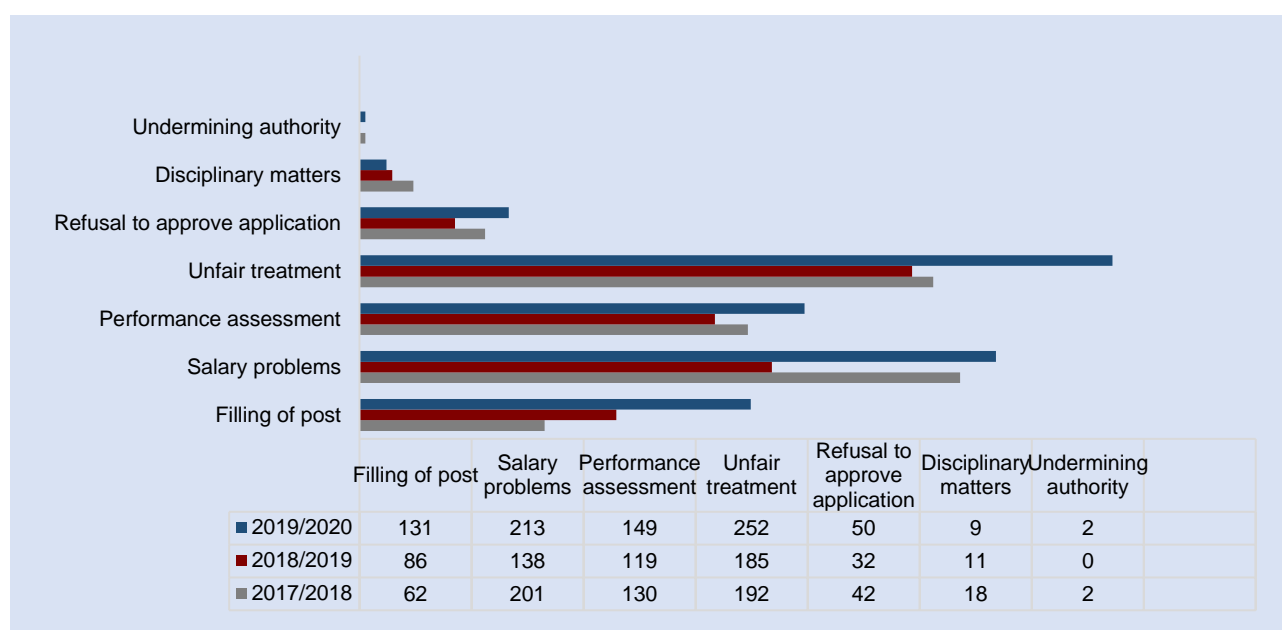


Figure 5: Nature of grievances handled the PSC

As already indicated earlier, in the **2019/20** financial year the PSC handled **806** cases. Out of a total of 806 grievances referred to the PSC during this financial year, most of them related to unfair treatment, which reflected the highest number standing at 252 (**31%**) grievances. Grievances relating to salary problems rated second at 213 (**26 %**), and grievances relating to performance assessment rated third at 149 (**18 %**). These three categories of grievances represent 614 (**76 %**) of all grievances received by the PSC in the 2019/20 financial year. The rest 192, (**24 %**) of the cases represent other categories such as filling of posts, refusal to approve applications, procedural unfairness and undermining authority.

#### **Grievances related to performance assessment**

In an attempt to find a solution to various performance management related problems, on 28 November 2019, the PSC hosted a roundtable, where UMALUSI, the institution responsible for quality assuring matric examinations, was invited to share with the PSC how they quality assure and moderate matric examination processes and outcomes, with the view to distilling lessons that could be applied in the Public Service. The Department of Public Service and Administration (DPSA) as the custodian of the PMDS Policy Framework was also invited, and so were the following departments that were identified due to their high number of PMDS-moderation cases referred to the PSC: Rural Development and Land Reform, Justice and Constitutional Development and the National Prosecuting Authority.

The presentation by UMALUSI highlighted the importance of a systematic quality assurance process, from planning through to the marking and moderation of scores. In particular, the presenter made it clear that the PMDS system is not comparable with the UMALUSI process because the latter process is driven by various levels/committees of subject matters experts who are drawn from all over the country to agree on the curriculum to be covered per subject, the question papers, model answers, detailed guidelines for teachers, markers and local moderators, in addition to the national moderation processes that can result in scores for some subjects in totality or in specific districts/provinces being reduced or increased by a statistically acceptable margin if anomalies/irregularities or (dis)advantaging factors are identified. In spite of the elaborate quality assurance and moderation process, once the results are released, the matric examination systems allows for individual students, if they believe they were wrongly disadvantaged, to request for remarking.

The DPSA presentation outlined in detail the PMDS framework, whilst emphasizing that the moderating committees have a right to ask for additional motivation if the scores allocated in the signed off performance assessment documents do not correspond with what is reported. On the basis of the submitted motivation, the moderating committee can recommend a reduction or increase, as long as the consultation processes are followed properly, and in a consistent manner. It was further indicated that it would be irresponsible for the moderating committee to ignore the poor performance of a unit, branch or department when moderating the performance of individual employees because there must be correspondence between the two, to avoid instances where employees get bonuses but their units or the entire department has performed poorly. The DPSA further stated that instances of assessing someone against a poorly crafted performance agreement, which may have been a mistake or deliberate on the part of the employee and supervisor, would open up the system to abuse and ridicule; hence both employees and supervisors must take responsibility in ensuring that the performance agreement is aligned to the organization's strategic and annual plans.



With the objective of improving sound labour relations and minimizing the prevalence of certain categories of grievance, the PSC also had engagements with selected individual departments both at national and provincial level, to deal with labour relations issues that appeared to be prevalent in those departments. At the national level the following departments were engaged: Health, with regard to the high number of salary related grievances; Independent Police Investigative Directorate (IPID) and the South African Police Service (SAPS) on the subject of unfair treatment. Presentations on unfair treatment were also made to departments who attended the Public Service Coordinating Bargaining Council (PSCBC) conferences held in all provinces and at the national level, where to the PSC was invited in terms of a Memorandum of Understanding between the two institutions.

The PSC has also issued two editions of the Grievance Management Communiqué, the first focusing on grade progression; and the second focusing on sexual harassment in the workplace.

### **3.5 Challenges related to grievances**

The PSC continues to receive grievances that are not compliant with the PSC Rules on Referral and Investigation of Grievances of Employees in the Public Service, 2016 (the PSC Rules on Grievances, 2016). In order to address this, the PSC held advocacy sessions with the following nine (9) departments at national level: the National Prosecuting Authority, Arts and Culture, Higher Education and Training, Government Communication and Information System, Small Business Development, Correctional Services, South African Police Service, and Public Enterprises. At provincial level the PSC Rules were presented at the PSCBC-organised conference, where different departments were present. The efficient management of grievances continues to be a challenge since departments generally fail to conclude grievances within the stipulated timeframe of 30 days (for salary levels 2-12) and 45 days (for SMS) of receipt.

The other challenge faced with the management of grievances is the delay in providing information requested to speedily deal with grievances referred to the PSC. The PSC intends to intensify the use of summons in the 2020/21 financial year, to compel heads of departments and employees to promptly provide information when so requested by the PSC. The PSC will also, as and when necessary, continue to engage with departments and stakeholders to share information that is necessary to fast track the resolution of grievances at departmental level.

## **CHAPTER 4: PUBLIC ADMINISTRATION INVESTIGATIONS**

## 4.1 Introduction

The PSC has a role in pointing out irregular administrative processes [section 196(4)(f)(iii) of the Constitution].

Most of the investigations relate to non-adherence to routine recruitment and selection and Supply Chain Management processes but sometimes extend to other critical administrative processes like organisational structuring, matching and placing of staff after restructuring, career development, staff morale and the capacity of departments. In this regard the PSC plays a key role in evaluating these processes against the constitutional public administration values and principles (CVPs).

A key question is how regulated processes affect the functioning of the public service, apart from leading to irregularity.

In the following sections we first give a statistical overview of the number of complaints received by the PSC and the nature of the complaints (section 4.2) and then highlight key investigations undertaken by the PSC that were broader in scope (section 4.3). These investigations were conducted by cross-functional investigating teams. The key findings, recommendations and impact of the relevant investigations are summarised in this section.

## 4.2 Complaints received by the PSC from the 2017/18 to the 2019/20 financial year

This section of the report gives an overview of complaints received by the PSC for the period 2017/18 to 2019/20. It also provides information on the types of complaints lodged for these financial years.

### 4.2.1 Number of complaints received

A total of 249, 188 and 220 complaints were received by the PSC during the 2017/18, 2018/19 and 2019/20 financial years, respectively – **Table 3** below.

*Table 3: Number of complaints lodged with the PSC per financial year at national, provincial and local level*

Institutions Affected	2017/18		2018/19		2019/20	
National	100	40.2%	48	25.5%	42	19.09%
Provincial	123	49.4%	136	72.3%	167	75.90%
Local Government	10	4%	2	1.1%	11	5%
Other	16	6.4%	2	1.1%	0	0%
<b>TOTAL</b>	<b>249</b>		<b>188</b>		<b>220</b>	

#### 4.2.2 Nature of complaints lodged with the PSC by National Departments

The nature of complaints lodged is reflected per financial year in **Table 4**.

Table 4: Nature of complaints lodged with the PSC per financial year at national level

Type of complaint	2017/18		2018/2019		2019/20	
Personnel Practices	35	36.1%	33	68.8%	27	64.28%
Public Administration Practices	62	63.9%	15	31.2%	15	35.71%
<b>TOTAL<sup>[1]</sup></b>	<b>97</b>		<b>48</b>		<b>42</b>	

The complaints are categorised into personnel practices and public administration practices. **Personnel practices** are those functions and activities such as recruitment, appointment, transfer and other career management activities. **Public administration practices** are those functions and activities executed by departments to provide effective and efficient services such as financial management, supply chain management, service delivery processes, and application of policies and procedures.

The higher number of complaints reported to the PSC in the category of public administration practices may be ascribed to its broader definition. The majority of complaints that are reported to the PSC relate to complaints about recruitment and selection and supply chain management complaints.

#### 4.2.3 Key Findings

Some of the key findings of the investigations conducted by the PSC are the following:

- Non-adherence to Supply Chain Management and related prescripts and National Treasury Instructions, which lead to irregularities in the following SCM phases:
  - i) Specification phase;
  - ii) Evaluation phase;
  - iii) Adjudication phase; and
  - iv) Appointment phase.
- Poor financial management and SCM controls
- A lax approach to the approval of deviations from normal procurement processes;
- Failure to pay service providers within the 30 day period;
- Overpayments made to service providers;
- Non-adherence to the Public Service Regulations and related prescripts, which lead to irregularities in the following phases of the recruitment and selection process:
  - i) Job Evaluation phase;
  - ii) Advertisement phase;
  - iii) Short-listing phase;

<sup>[1]</sup> Excluding complaints categorised as a grievance (i.e. a dissatisfaction regarding an official act or omission affecting the relevant employee personally) and handled as such.

- iv) Interviewing phase;
- v) Personnel suitability checks (vetting); and
- vi) Appointment phase.
- Non-adherence to prescripts that relate to record keeping.

#### **4.2.4 Key recommendations**

As a result of these investigations the PSC recommended:

- improvements in the adherence to supply chain management prescripts;
- improvements in the adherence to recruitment and selection prescripts;
- ongoing training in SCM and recruitment and selection processes; and
- that corrective action be taken against those who failed to adhere to the respective prescripts

### **4.3 Key investigations**

#### **4.3.1 Department of Small Business Development (DSBD)**

##### **a) Scope of the investigation**

A complaint was lodged with the PSC by the Honourable Mr Toby Chance, Member of Parliament (MP), and Democratic Alliance (DA) Shadow Minister of Small Business Development. The Honourable Chance indicated that a whistle-blower raised the following concerns in relation to the DSBD:

- vii. The DSBD still lacks a complete departmental structure/organogram that is approved by the Minister of Public Service and Administration (MPSA);
- viii. Low staff morale at the DSBD;
- ix. The career development of individuals transferred to the DSBD were not considered and ignored;
- x. Lack of capacity in components within the DSBD;
- xi. Employee grievances are not addressed by the Director-General (DG) of the DSBD; and
- xii. Lack of resources to fulfill the mandate of the DSBD.

##### **b) Key findings with regard to each of the concerns raised by the whistle-blower**

###### **i) The DSBD still lacks a complete departmental structure/organogram approved by the MPSA.**

- The Minister of Small Business Development (SBD) signed off the organizational structure on 26 September 2018. In a letter dated 21 February 2019 to the Minister of SBD, the MPSA indicated that the request from the Minister of SBD on the proposed structure was considered and that the MPSA took into account the forthcoming national elections and that the current administration is approaching the end of its term. The MPSA advised the

Minister of SBD that the changes to the organizational structure of the DSBD “*should be held in abeyance until the 6<sup>th</sup> Administration is in place given the anticipated changes expected to the Machinery of Government*”.

- **The PSC finds the following regarding compliance with PSR B.2/Part III/Chapter 1 at the DSBD in respect of the start-up organizational structure:**
  - On 24 April 2015, the Acting MPSA requested that a signed copy of the approved organizational structure be submitted to the Department of Public Service and Administration (DPSA) to update the database that will inform future consultation needs.
  - The Minister of SBD after obtaining the MPSA’s concurrence for the start-up organisational structure, did not approve the start-up organisational structure. **This is in contravention of PSR B.2/Part III/Chapter 1**, which requires an EA to determine the department’s organizational structure in terms of its core and support functions, after consultation with the MPSA.
  - The fact that the Minister of SBD did not approve the start-up organisational structure, is non-adherence to the MPSA’s request to the Minister of SBD to submit a signed copy of the approved structure to the DPSA to update the database, which would inform the Minister’s future consultation requests.
  - In terms of the requirements of PSR B.2/Part III/Chapter1, the organizational structure of the DSBD should have been based on the strategic plan of the DSBD. This was not the case, but the PSC takes cognizance that the MPSA approved a deviation from the requirement set out in PSR B.2/Part III/Chapter 1 read with PSR G/Part I/Chapter 1.
- **The PSC finds the following regarding the restructuring process at the DSBD**
  - The Minister of SBD obtained a determination from the MPSA for the transfer of functions and the concomitant staff and concurrence with the proposed organizational structure of the DSBD.
  - The Minister of SBD should not have re-designed the start-up organizational structure as new strategies and concomitant resourcing needs falls within the scope of the National Macro Organisation of the State (NMOS) process. The development of new revised structures should have been undertaken post the conclusion of the NMOS exercise. However, the PSC takes cognisance that this process was done in consultation with the Portfolio Committee of Small Business Development (PC), MPSA, DPSA, Department of Performance Monitoring and Evaluation (DPME) and National Treasury (NT).
- **The PSC finds the following regarding the restructuring of the DSBD after the NMOS exercise was finalized**
  - The Minister of SBD complied with PSR B.2/Part III/Chapter1 in that the Minister of SBD determined the DSBD organizational structure in terms

of its core and support functions, and consulted with the PC, the MPSA, DPME and NT.

- The Minister of SBD complied with PSR B.2/Part III/Chapter1 and the Directive issued in terms of section 3(3)(e) of the PSA, 1994, in that there was consultation with and concurrence by the MPSA on the revised organizational structure.

## **ii) Low staff morale**

- The DSBD has acknowledged that the low staff morale was as a result of the number of challenges that were experienced by the DSBD. However, the PSC is of the view that the DSBD has taken the initiative to address the low staff morale by holding Staff Assembly meetings with all staff, thereby taking the staff on board regarding the challenges experienced. Issues discussed at the staff assembly meetings included the start-up structure of the DSBD, the placement of employees in the start-up structure, appointment of the change agents and meetings with labour.
- Through the appointment of ICAS, staff has the option of taking up issues impacting on their morale with ICAS which offered face-to-face counselling.
- According to the Change Management Communication No. 11 dated 12 June 2017, at the “Staff Assembly” of 8 June 2017, the DG informed staff that various allegations in respect of DSBD staff were levelled by the PC following the PC’s Oversight visit to Mpumalanga.
- Following the report by the PC, the DG of the DSBD requested the Auditor-General to conduct a forensic investigation into the matter. At the time of finalizing the provisional report, the DSBD had not responded to the PSC’s request for an update on the forensic investigation conducted by the AG.

## **iii) The career development of individuals transferred to the DSBD were not considered and ignored**

- The DSBD considered all the relevant criteria when it placed employees in the start-up organizational structure, that is, inherent requirements of the job (competency, experience, qualifications and any other requirement that an employee needs in order to perform the job), continuity and effective functioning of the units, the capacity of the units and alternative placing people in units performing similar functions. Although no skills audit was conducted to assist the DSBD in the matching and placing of employees, competency and experience were taken into consideration. The PSC is of the view that competency and experience are inextricably linked to career development.
- There was also consultation with the employees and within the DBC regarding the placement of employees. Eventually all the employees were placed in the structure and no employees were declared to be in excess.
- Although the career development of employees was not considered as a criterion, the PSC is of the view that had this criterion been utilized by the DSBD, it could have resulted in employees having personal preferences for

placement, which could have impacted on the process. The PSC finds this allegation to be unsubstantiated.

**iv) Lack of capacity in components within DSBD**

- The capacity of the DSBD to fulfil its service delivery obligations is documented in the Business Case. The vacancy rate as at 31 December 2018 was 7,7% based on the existing structure. The issue of capacity will be alleviated should the 103 posts which the DSBD has deemed necessary in achieving its service delivery obligations be created on the post establishment. The need for 103 posts is indicative of the extent to which the DSBD has been under resourced in terms of capacity.
- Given the Government's concern about the Public Service Wage Bill, the funding for the creation and filling of additional posts may be a challenge. The non-filling of these posts may result in the DSBD not achieving its service delivery objectives. However, the PSC is also cognisant of the impending trimming of the size of the departments, as announced by the President of the Republic of South Africa in the President's 2018 and 2019 State of the Nation Address.

**v) Employee grievances are not addressed by the DG of the DSBD**

- According to information provided by the DSBD, grievances are attended to in line with PSCBC Resolution 14 of 2002.
- Information provided by the DSBD shows that the DSBD dealt with 23 employee grievances during the financial years 2015/2016, 2016/2017 and 2017/2018.
- The Rules for Dealing with Grievances Lodged by Employees of the Public Service, contained in Government Gazette 25209 of 25 July 2003, stipulates that *"An employee may lodge a grievance with an employee designated to facilitate the resolution of grievances in the department"*. In this instance, the DSBD's Policy on Grievance Procedure provides for the handling of grievances by the various levels such as the supervisor of the employee, the Chief Director, DDG, DG, executive authority and the PSC. The policy provides for the resolution of grievances within specified time frames at the various levels. With regard to the role of the DG of the DSBD in the handling of grievances, the DG has 5 working days to resolve grievances. In instances where the grievance is not resolved within the specified time frame or there is no mutual agreement between the relevant parties on any extension of time, the grievance may be referred to the next level.
- The allegation is general and lacks information of specific grievance/s, thus the PSC is not in a position to make an informed finding regarding the allegation that employee grievances are not addressed by the Director-General (DG) of the DSBD.



**vi) Lack of resources at the DSBD**

- In light of the ceiling placed on the CoE by NT as discussed in paragraph (iv) above, it is likely that no further funds will be provided to the DSBD in order to increase its human resource capacity.

**c) Key recommendations**

- **Restructuring the Department of Small Business development as part of the NMOS process**

The Minister of SBD, Ms K Ntshavheni, MP consults with the MPSA regarding any changes to the organizational structure of the DSBD, in order to give effect to the priorities of the sixth administration post the 2019 general elections.

- **Low staff morale**

The DSB needs to follow up on the outcome of the forensic investigation by the AG, and pursue the recommendations contained in the report, if any, to finality.

- **Lack of capacity in components within DSBD**

The DSB must consider the reprioritization of resources in view of the limited Compensation of Employees (CoE) budget.

**d) Impact of the investigation**

The Department has not yet responded to the PSC report and so it has been difficult to verify the impact of the recommendations that have been issued by the PSC.

#### **4.3.2 South African Police Service**

**a) Scope of the investigation**

The PSC received an anonymous complaint that alleged irregularities in the process followed by the Department in appointing a service provider for the provision of kitchen renovations at a training academy.

**b) Key findings**

The PSC made the following findings:

- The SAPS extended the validity period for the tender for the kitchen renovations, including replacement of equipment, testing and commissioning at the Tshwane Training Academy (Pretoria West) six (6) times, which extensively delayed the finalization of the respective tender process. Furthermore, the SAPS continued the tender process even though no approval for the extension of the validity period had been granted for the period 9 June 2018 to 9 July 2019. The PSC finds that after the lapsing of the extension of the validity period

on 9 June 2018 without awarding the tender, the tender process should have been stopped as it is deemed to be concluded, albeit unsuccessfully<sup>1</sup>. The PSC finds this to be **irregular**.

- The SAPS complied with paragraph 5.9.3.1.1 of the SCM Guide to Accounting Officers in that the SAPS provided the PSC with the terms of reference that specifies the required kitchen renovations, including replacement of equipment, testing and commissioning at the Tshwane Training Academy (Pretoria West).
- The SAPS complied with paragraph 3.4.1 of the National Treasury's Practice Note: No 8 of 2007/2008 in that the SAPS invited bidders for the tender to appoint a service provider for kitchen renovations.
- The SAPS complied with paragraph 16A6.2 of the Treasury Regulations as the SAPS provided the PSC with letters appointing the officials to the evaluation and adjudication committees that evaluated and adjudicated the tender.
- The SAPS complied with paragraph 8(2) of the Preferential Procurement Regulations, 2001 in that the bids received for kitchen renovations were evaluated in accordance with the 80/20 preference system.
- The SAPS complied with sections 4.2 and 4.3 of the National Treasury's SCM Instruction No.9 of 2017/2018<sup>2</sup> in that on **13 April 2018**, the successful service provider's tax compliance status was found to be tax non-compliant and thereafter, was given a period of seven (7) days to rectify its tax compliance status, which it failed to do.
- Upon failing to provide the SAPS with a compliant tax certificate within the requisite seven days, the PSC finds that the successful service provider should have been disqualified immediately and the tender process cancelled. The PSC finds the non-cancelling of the tender process at this stage to be **irregular**.
- Instead of cancelling the tender process, the BAC approved that the BEC notify all bidders who were within a range of 10% of previously identified errors, to correct their respective errors and that these errors be subsequently condoned and their BOQs be subsequently converted to be 'fair and reasonable'. This in contrast to the previous findings of the QS' report that had found that such errors deemed these bids to be 'unfair and unreasonable'. The PSC finds this to be **irregular**.
- On **10 September 2018**, which was approximately five (5) months after the successful service provider's bid had been disqualified, the BEC, seemingly, on the instruction of the BAC re-instated the successful service provider's bid into the tender process and re-evaluated its tax compliance status, which was now found to be tax compliant. The PSC finds the re-instatement of the successful service provider's bid into the tender process to be **irregular**.
- The successful service provider's bid was then re-evaluated with three other bidders and scored the highest points and awarded the contract for the kitchen renovations. In view of the above finding, the PSC finds the awarding of the tender to the successful service provider to be **irregular**.

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<sup>1</sup> Case Law: Telkom SA vs Merid Trading (Pty) Ltd and others; Bihati Solutions (Pty) Ltd and others [2011] JOL 26617 (GNP)

<sup>2</sup> National Treasury's instruction No 9 of 2017/18 which was signed off on 5 April 2018 is attached at **Tag AT**

- In view of the above finding, the PSC finds the allegation that the successful service provider's bid had been disqualified from the respective tender process to be **substantiated**.
- The publishing of the successful tenderer's bid on the SAPS website on **13 October 2018** was done subsequent to the finalization of the respective tender process. In this regard, the PSC finds the allegation that the SAPS website was updated to indicate that the successful service provider had been awarded the tender whilst the tender process was still being adjudicated to be **unsubstantiated**.
- The required market analysis was only conducted during the adjudication phase and not prior to the advertising of the tender. As a result, it is found that the SAPS failed to comply with paragraph 4.4 of Supply Chain Management Guide to Accounting Officers, which specifies that an assessment of the market for the required goods and services must be conducted at the initial phase of the procurement process.

#### **c) Key recommendations**

The PSC made the following recommendation:

- The SAPS should ensure that all the members of the BEC and BAC must undergo rigorous training in supply chain management processes. These training courses will enable members of the BEC to be resolute in the implementation of requisite prescripts of the PFMA and Treasury Instructions during procurement processes.

#### **d) Impact of the investigation**

The National Commissioner of the SAPS has responded to the PSC's report by indicating that he agreed with some of the findings issued by the PSC but challenged some the other findings. In this regard, the PSC's impact was to improve public administration practices, particularly in the application of supply chain management prescripts.

### **4.3.3 Water and Sanitation**

#### **a) Scope of the investigation**

The PSC received an anonymous complaint that alleged irregularities in the process followed by the Department in appointing a service provider for the supply of extension cords and multi plugs.

#### **b) Key findings**

The PSC made the following findings

- The Department complied with paragraph 3.3.1 of the National Treasury's Practice Note: No 8 of 2007/2008 in that the Department invited six quotations

for the supply and delivery of extension cords and multi plugs and six quotations were received.

- The Department complied with paragraph 8(2) of the Preferential Procurement Regulations, 2001 in that the six quotations that were received were evaluated in accordance with the 80/20 preference system.
- One of the bidders was subsequently recommended and approved to be appointed as the successful bidder.
- The Department failed to comply with the National Treasury Instruction No 9 of 2017/2018 as it did not ensure that the successful bidder's tax status was verified and found to be tax compliant.
- The Department complied with a circular issued by the Chief Financial Officer on 2 February 2018, which instructed that in order to curb the number of purchase orders created to avoid an over-expenditure, all requests for the creation of a purchase order must be approved in writing by a Chief Director in NRI or WTE.
- In relation to the allegation that there was no rotation of service providers, the PSC finds the following:
  - The responsibility for the rotation of service providers lies with the Department itself.
  - No provision is made in the SCM Policy of the Department for the rotation of service providers.
- In relation to the allegation that there was no segregation of duties for the process followed in evaluating quotation no: 7523 for the supply and delivery of cartridges, the PSC finds the following:
  - The request for the supply and delivery of cartridges originated from inventory management and was approved by the Acting Chief Director: Management Accounting.
  - A total of six (6) bids were received for the supply and delivery of cartridges.
  - All six bids were evaluated and adjudicated by a duly appointed evaluation committee.
  - The recommendation of the appointment of the successful service provider by the evaluation committee was approved the duly delegated official, namely, the Acting Deputy Director.

In this regard, the PSC finds the allegation that there were no segregation of duties in the process followed to appoint the successful service provider for the supply and delivery of cartridges to be **unsubstantiated**.

### **c) Key recommendations**

The PSC made the following recommendation:

- The Department must ensure that it complies with the National Treasury Instruction No 9 of 2017/2018 by verifying and confirming that the tax status of service providers is tax compliant on the date of appointment.
- The Department must also ensure that it revises its SCM policy to provide for the rotation of service providers that are bidding to render goods and services to the Department.

### **d) Impact of the investigation**

A response to the report issued by the PSC is still awaited. The PSC is therefore unable to gauge the impact of the recommendations issued by the PSC.

## **4.4 Conclusion**

Investigations bring the PSC into close contact with the nuts and bolts of public administration. Through its investigations, the PSC checks how the myriad of public administration policies, prescripts and procedures are implemented in practice. Though most of the recommendations following from an investigation are recommendations to comply with a prescript, compliance creates the administrative hygiene within which government programmes can be effectively delivered.

## **CHAPTER 5: MANAGEMENT OF THE NATIONAL ANTI-CORRUPTION HOTLINE**

## 5.1 Introduction

The NACH was established on 1 September 2004 through a Cabinet Decision of 14 August 2003<sup>3</sup>. Cabinet decided that a single Anti-Corruption Hotline for the Public Service should be established to replace all existing anti-corruption hotlines in departments and agencies and that the NACH should be housed at the PSC.

It was contracted to a third party to receive calls, generate reports and capture them in a database. The Hotline has since 2017 been moved in-house at the PSC. The contract with the service provider, at a cost of slightly in excess of R4 million annually, expired in December 2016 and the PSC then decided to move the hotline in-house in order to reduce costs and enhance data management security.

Section 8 (1) of the *Protected Disclosure Amendment Act no. 05 of 2017*<sup>4</sup>, provides that *employees or workers may report allegations of corruption and maladministration to the PSC*. The NACH is a confidential and anonymous service that allows citizens and staff to report incidents of wrongdoing. The anonymity of the NACH contributes to the Government's control environment by acting as a preventative measure by detecting unethical behavior. Each report submitted is given a tracking number and a password, so that the caller can follow the progress of the case and see what action has been taken.

The PSC evaluated the effectiveness of the NACH in 2019/20, especially now that it is managed in-house. The PSC conducts regular reviews, audits and assessment of the NACH and compiles a report to ensure maintenance of the NACH quality. The evaluation brings an added measure of confidence to the system and reassures the members of the public that their concerns will be effectively addressed.

The chapter addresses the following:

- Statistical analysis of NACH cases reported through the NACH from 01 April 2019 to 31 March 2020.
- Status of closure of cases by departments during the 2019/2020 financial year. Challenges in the management of the NACH and assessing capacity needs.
- Analysis of the Hotline operation of the 2017/18, 2018/2019 and 2019/2020 financial years
- Cumulative statistics of the operations of the hotline since inception in September 2004.

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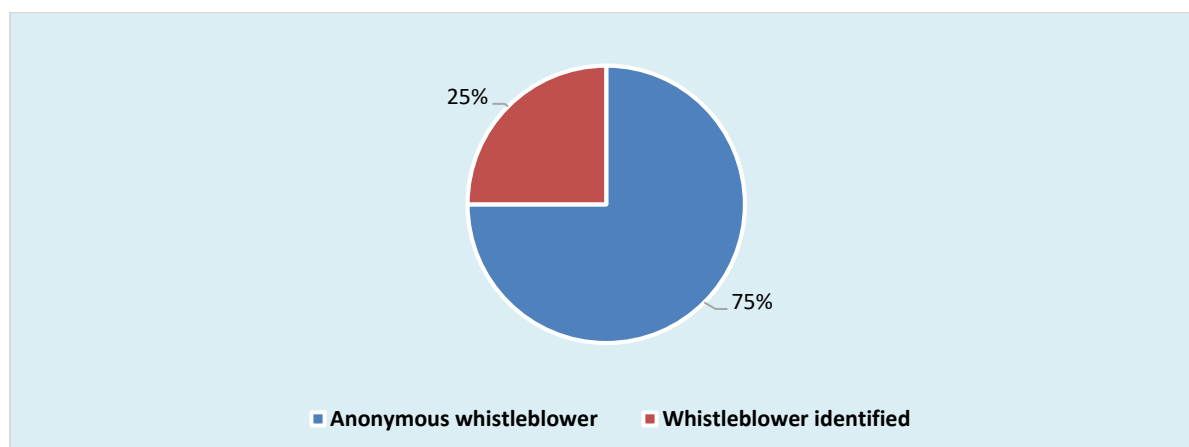
<sup>3</sup> Cabinet Memorandum no.45 of 14 August 2003

<sup>4</sup> Section 8 (1) of the Protected Disclosure Amendment Act no. 05 of 2017. South Africa has had the most far-reaching "state of the art" whistleblowing legislation that helps to deter and detect wrongdoing in the workplace, acting as an early warning mechanism to prevent impropriety and corruption within the public sector. Essentially the law harnesses a common interest between responsible individuals who raise concerns they may have in the workplace with accountable organisations and managers prepared to respond to the bona fide concerns of their employees.

## 5.2 Methods of reporting alleged corruption

Of the callers who have reported cases of alleged corruption through the hotline, 75% want to remain anonymous<sup>5</sup>, while 25% are whistle-blowers who provide their contact details as shown in **Figure 6**. The NACH receives cases of alleged corruption through various methods, including phone calls, fax, e-mail and walk in disclosures. The Business Ethics Survey of 2013 in South Africa<sup>6</sup> argued that the majority of employees with knowledge of wrongdoing in their organizations prefer to remain silent for fear of reprisal and victimization.

Figure 6: Comparison of the methods of reporting alleged corruption



People who choose to remain anonymous complicate the investigation of cases, especially if there is missing or disputed information. It is difficult to follow-up on anonymous complaints. However, this is understandable due to possible harassment of the whistle-blowers by those implicated in corruption. These findings echo Ernest and Young's 2006 research, which found that 39% of surveyed individuals would be more likely to report fraud if anonymity was guaranteed.

## 5.3 Awareness campaigns

The aim of the NACH is to create a central database for reporting and monitoring of cases of alleged corruption, while eliminating the duplication of investigations and resources.

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<sup>5</sup> All of the various analyses of hotline effectiveness indicated that hotlines are most effective in the detection of fraud. This finding reflects the findings in the ACFE Report to the Nations for 2010. It states that in organisations that had hotlines, 47% of frauds were detected by tips, while in organisations without hotlines, only 34% of cases were detected by tips. It states further that in 67% of these cases where there was an anonymous tip, that tip was reported through an organisation's fraud hotline and it concludes "this strongly suggests that hotlines are an effective way to encourage tips from employees who might otherwise not report misconduct".

<sup>6</sup> Business Ethics Survey of 2013, South Africa



The allegations reported are immediately brought to the attention of the relevant Law Enforcement Agency or department. On various occasions in the past, the perpetrators were caught “red-handed”. From September 2004 to March 2019, the NACH was given a stamp of approval by Parliament for its role in the netting of 3 655 officials, who were found guilty of misconduct, and recovery of R420 million for the public purse.

For the NACH to be effective, it is important that it is marketed through awareness campaigns. Departments publicize the NACH on public servants’ payslips, and at the bottom of government documents and envelopes to ensure that a culture of reporting wrongdoing prevails. The marketing campaigns assist in building confidence that government is willing to eradicate corruption in the public service. Moreover, the volume of calls is directly influenced by the scope of the awareness campaigns.

#### 5.4 Cases reported during the 2019/20 financial year

The PSC received a total of **1591** cases in the 2019/20 financial year. The breakdown of these cases is shown in **Table 5** below:

*Table 5: Cases reported through the NACH during 2019/2020 financial year and referred for investigation*

No.	Provinces	1 <sup>st</sup> Quarter			2 <sup>nd</sup> Quarter			3 <sup>rd</sup> Quarter			4 <sup>th</sup> Quarter			Total
		Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	
1	Eastern Cape	3	2	0	10	0	3	5	2	4	2	2	2	35
2	Free State	0	2	8	10	3	3	1	1	2	0	0	0	30
3	Gauteng	3	3	12	9	7	3	4	7	5	10	7	5	75
4	KZN	1	0	3	4	6	1	4	4	0	1	6	2	32
5	Limpopo	1	1	0	29	12	3	4	2	0	0	2	1	55
6	Mpumalanga	2	0	0	4	2	0	1	3	0	0	2	3	17
7	North West	1	2	1	7	7	5	2	0	0	2	3	2	32
8	Northern Cape	0	1	1	0	4	0	1	2	1	5	0	1	16
9	Western Cape	0	1	2	4	3	4	5	1	0	1	2	1	24
10	Public Entity	89	81	65	68	86	93	93	95	36	95	120	86	1007
11	National Depts	23	19	13	30	21	19	34	25	10	26	26	22	268
12	<b>Grand TOTAL</b>	<b>123</b>	<b>112</b>	<b>105</b>	<b>175</b>	<b>151</b>	<b>134</b>	<b>154</b>	<b>142</b>	<b>58</b>	<b>142</b>	<b>170</b>	<b>125</b>	<b>1591</b>

Of these, 1007 cases relate to SASSA. These cases primarily involved social grant fraud relating to disability and child support grants.

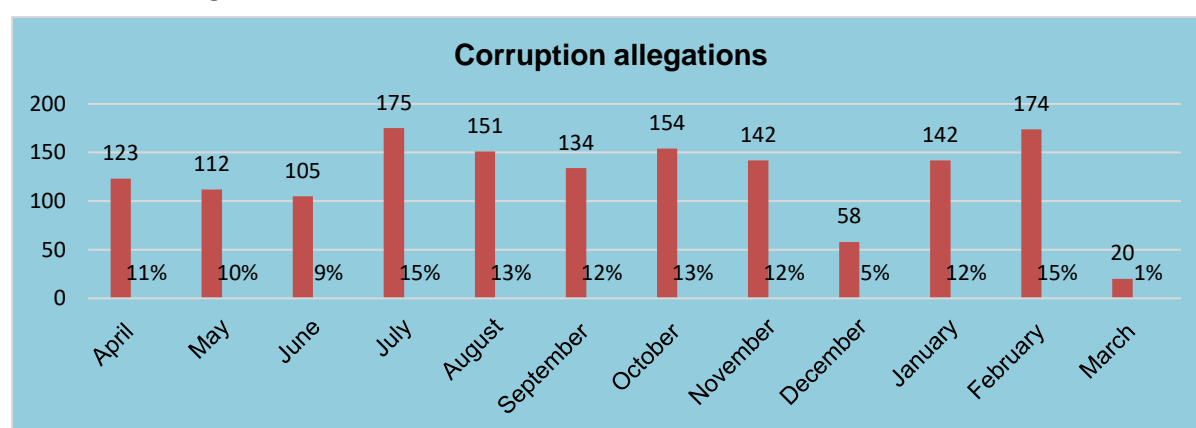
With regard to provinces, it has been noted that Gauteng Province had the highest number of cases (**75**), followed by Limpopo Province with **55** cases.

From the above table, national departments received **268** cases of alleged corruption. In this respect, Home Affairs received the highest number of cases (**44**) given the large number of employees in that Department. Twenty-two (**22**) cases were received in respect of the South African Police Service (SAPS). Having regard to the challenges encountered by members of the SAPS, it is presumed that cases relating to members of the SAPS are being reported to

the Independent Police Investigations Directorate. The Department of Correctional Services received twenty-one (**21**) cases, which mainly relates to the smuggling of drugs into the Correctional Centres. The Department of Water and Sanitation received nine (**9**) cases, which mostly relates to procurement irregularities and abuse of government resources.

**Figure 7** below illustrates the number of cases reported on monthly basis during the 2019/20 financial year. The largest proportion of cases was received in the month of July with **175 (15%)** cases. The NACH received **174 (15%)** cases in the month of February 2020 whilst in the month of October, **154 (13%)** cases were received. The number of cases decreased to **58 (5%)** in the month of December 2019. This is because the PSC closed early in the month of December.

*Figure 7: Cases reported through the NACH during the 2019/2020 financial year and referred for investigation*



## 5.5 Status of cases reported during the 2019/20 financial year

During the course of the 2019/20 financial year, **64** complaints of alleged corruption relating to national and provincial departments were presented to the Complaints and Grievance Panel (CGP) and were closed on the Case Management System (CMS) of the NACH as shown in **Table 6** below. In addition, the CGP also closed **93** complaints of alleged corruption which were cases reported during the previous financial years. The PSC also closed **1007** cases relating to a public entity during the 2019/2020 financial year. Public entities are only required to report on the conclusion of these cases on a regular basis. The reasons for not investigating the complaints beyond the initial assessment are a combination of the following:

- The complaints did not reasonably raise a suspicion of misconduct.
- The complainants were informed that another law enforcement agency or court was more appropriate to deal with the matter.
- The matter fell outside the mandate of the Public Service.
- Callers did not provide adequate information for investigation.

Table 6: Closure of NACH cases during the 2019/20 financial year

NATIONAL/ PROVINCE	CASES REFERRED	FEEDBACK RECEIVED	% FEEDBACK RECEIVED	CASES CLOSED	% CLOSED CASES	OUT- STANDING CASES
National	268	27	11%	27	11%	241
Eastern Cape	35	0	0	0	0	35
Free State	30	18	60%	18	60%	12
Gauteng	75	0	0	5	0	70
KwaZulu-Natal	32	0	0	2	0	30
Limpopo	55	20	37%	20	38%	35
Mpumalanga	17	0	0	3	0	14
North West	32	0	0	2	0	30
Northern Cape	16	0	0	1	0	15
Western Cape	24	18	0	1	0	23
Public Entities- SASSA	1007	916	99%	916	99%	91
<b>TOTAL</b>	<b>1591</b>	<b>999</b>	<b>68%</b>	<b>995</b>	<b>67%</b>	<b>596</b>

The PSC observed that departments are taking long to provide feedback to the PSC despite the fact that whistle-blowers are requesting feedback on progress made with investigations. The effectiveness of an investigation is influenced by whether it is concluded without unwarranted delays. If the delay is unreasonably long and cannot be explained, it is likely to cause prejudice to the complainant who reported the allegations in good faith.

Generally, many investigations are prolonged due to variety of factors like complexity and retrieval of supporting information. The PSC has expressed concern regarding the delays observed in finalising corruption cases. As a result, the PSC has requested all departments to complete investigations within a reasonable time to avoid the notion of “nothing will change,” which is associated with poor governance.

The PSC conducted a study on the time it takes for departments to finalize the investigation of corruption cases,<sup>7</sup> which revealed a lack of legislative provisions to conclude investigations within a specific time limit. The PSC recommended that:

- The Minister for the Public Service and Administration should issue a Directive on the time limit for the investigation of corruption cases by departments. Considering the varying complexities of allegations, the time limit should not be more than **six (6) months**, unless there are special circumstances for considering corruption cases beyond this time. In case of extensions, the Accounting Officer must ask the relevant Executive Authority to consider extending the time limit by a further **six (6) months**.

<sup>7</sup> The PSC conducted a study on the time it takes for departments to finalize investigation of corruption cases, 2019.

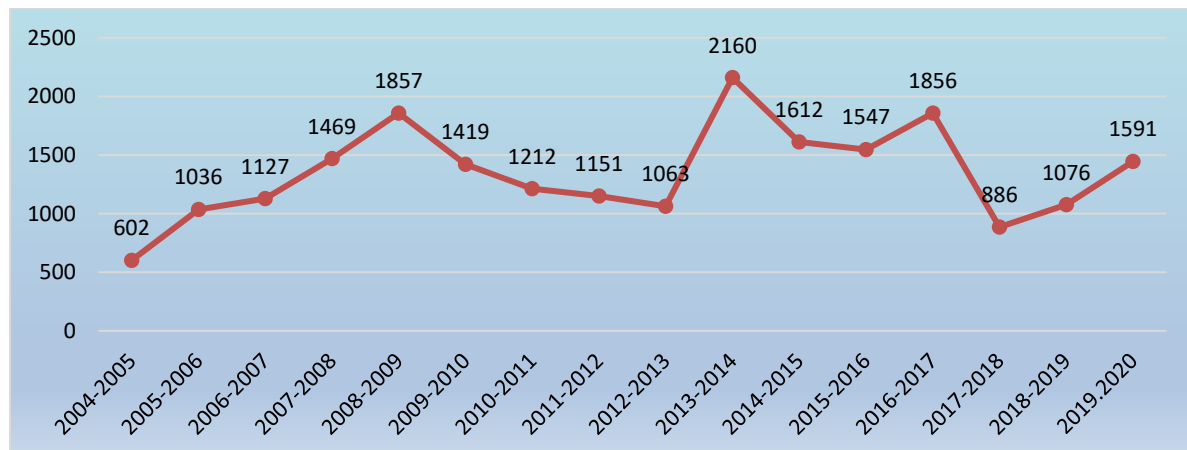
- The directive should place an obligation and duty to prevent anyone from interfering with the investigation of impropriety consistent with the provisions of the Prevention and Combating of Corrupt Activities Act. Interference should be broadly defined to include any act that deliberately seeks to obstruct an investigation. This should include, but not limited to, threatening investigators, not co-operating or withholding any information or document needed for the investigation or deliberately misleading the investigation. Obstructing an investigation should be made a punishable offence.

## 5.6 Trend in number of cases reported from 1 September 2004 (inception of the hotline) to March 2020

**Figure 8** shows a snapshot of the cases of alleged corruption reported from 1 September 2004 to March 2020.

The number of cases reported increased from 602 in 2004/05 to a high of **2160** in the 2013/14 financial year. The increase is likely the result of a massive marketing of the NACH during March 2013 as well as March 2014 through radio, television, newspapers, billboards, pamphlets, buses and taxis, at a cost of R5 million. The number of reported cases dropped from 2017, from 1856 to 886 cases. This was largely as a result of the fact that the NACH was operating 24/7 from 2004 to 31 March 2017 and was outsourced to a third party, but from the 1<sup>st</sup> April 2017, only for 8 hours, from 08h00 to 16h30, when the PSC moved the hotline in-house.. The number picked up again in the 2018/19 and 2019/20 financial years to **1076** and **1591** respectively.

*Figure 8: Cases of alleged corruption since the inception of the NACH in September 2004 to March 2020*



As indicated above, the rising and falling in the number could be caused by variety of factors:

- Whistle-blowers and members of the public who want to report corruption, fear for their safety and victimisation. Some people turn a blind eye to corruption for fear that acting on it will jeopardise their careers, or even their lives. It was reported by departments that whistle-blowers and investigators are sometimes intimidated by senior officials and Executive Authorities when reporting corrupt activities or investigating cases of alleged

corruption reported on the NACH<sup>8</sup>. Such conduct, where it exists, undermines efforts to handle issues of reported corruption in the respective departments. However, there are laws that protect whistle-blowers such as the Protected Disclosures Act. The Protected Disclosures Act of 2000, stipulates that “*no employee may be subjected to any occupational detriment by his or her employer on account, or partly on account, of having made a protected disclosure*”. The Act, however, does not provide for the protection of the identity of the whistle-blower, particularly in instances where the whistle-blower is the only available witness. However, the NACH allows people to report corruption anonymously.

- The limited hours of operation of the hotline from 2017 deters people from reporting cases after hours, which they may prefer if they do not want to be overheard.
- The NACH is a toll-free number but has cost implications when making a call from a cellphone. Therefore, this could likely prevent whistle-blowers to report corruption because they are asked a list of questions, all this while using their own airtime.

Considering the large volume of calls received over the years, it is imperative that departments deal with allegations proactively. On other hand, prevention must be built on the premise of credible deterrence, relying on accountability and enforcement mechanisms that send a message to potential wrongdoers of the potential consequences of their misconduct.

## 5.7 Cases reported through the NACH during the 2017/18, 2018/19 and 2019/20 financial years

**Table 7** below shows the comparative analysis over the three year period, namely 2017/18, 2018/19 and 2019/20 financial years. The NACH received a total of **66 986** incoming calls<sup>9</sup> during the 2017/2018 financial year out of which **882** case reports were generated and referred to the national and provincial departments as well as public entities for investigation. The bulk of these cases (**594**) were referred to SASSA for investigation.

In 2018/19, a total of **51 581** incoming calls were **received** out of which **1076** case reports were generated. The bulk of these cases (**734**) were referred to SASSA for investigation. SASSA acknowledged receipt of the 734 cases referred to them by the PSC and has indicated that these cases were screened through the social pension system (SOCPEN) to determine if the alleged perpetrators are indeed beneficiaries of the grants. Out of the 734 cases, twelve cases were classified as fraud and corruption whilst 722 cases were classified as ordinary complaints about social grants.

During the 2019/20 financial year, a total of **61 888** incoming calls were received out of which **1591** cases were generated. This number is high as compared to the 2017/18 and 2018/19 financial years. Of the 1591 cases, **1007** cases were relating to social grant fraud and all these cases were referred to SASSA for investigation. It needs to be mentioned that

<sup>8</sup> Third Biennial Report on Measuring the Effectiveness of the NACH, 2011

<sup>9</sup> **Incoming calls** are considered inbound calls in the call centre (they include answered calls, unanswered calls and drop calls. A **dropped-call** is a telephone call which, due to technical reasons, was cut off before the caller had finished the conversation and before the caller had hung up.

SASSA has continued to market the NACH consistently which helped the members of the public to report social grant fraud. All SASSA cases were investigated and are regarded as finalised.

In the 2019/2020 financial year, there was also an increase in the number of cases reported against provincial departments as indicated in **Table 7** below, e.g. in 2017/18 financial year the number of cases reported were **126**, in the 2018/19 financial year the number of cases increased to **144** whilst in the 2019/20 financial year the number of cases increased to **299**. As at 29 February 2020, the national departments recorded a total of **246** cases which reflects an increase compared to the same period in the preceding years.

*Table 7: Comparative analysis of complaints reported to the NACH in the 2017/18, 2018/19 and 2019/20 financial years*

ITEM	2017/2018	2018/2019	2019/2020 (as at 29 February 2020)
National Departments	162	198	268
Provincial Departments	126	144	316
Public Entities	594	734	1007
<b>TOTAL</b>	<b>882</b>	<b>1076</b>	<b>1591</b>

## 5.8 Cumulative statistics from 1 September 2004 to 31 March 2019

As at 29 February 2020 a total of **551 870** calls were recorded on the CMS of the NACH. These include dropped calls and those which were made for purposes of inquiries and seeking advice. A cumulative figure of **22 692** case reports were generated and referred to the departments and public bodies/entities for investigation. A breakdown of these cases is shown in **Table 8** below.

*Table 8: Statistics of cases reported through the NACH between 01 September 2004 and 31 March 2019*

NATIONAL/ PROVINCE	CASES REFERRED	FEEDBACK RECEIVED	% Feedback received	CASES CLOSED	% Cases closed	OUT-STANDING CASES
National	7822	6724	86%	6507	83%	1315
Eastern Cape	877	676	77%	672	77%	205
Free State	407	370	91%	370	91%	37
Gauteng	2165	1848	85%	1843	85%	322
KwaZulu-Natal	897	685	76%	676	75%	221
Limpopo	673	512	76%	511	76%	162
Mpumalanga	1208	1153	95%	1153	95%	55
North West	500	406	81%	402	80%	98
Northern Cape	156	126	81%	126	81%	30
Western Cape	712	705	99%	660	93%	52
Public Entities	7275	7245	100%	7241	100%	34
<b>TOTAL</b>	<b>22692</b>	<b>20450</b>	<b>90%</b>	<b>20161</b>	<b>89%</b>	<b>2531</b>

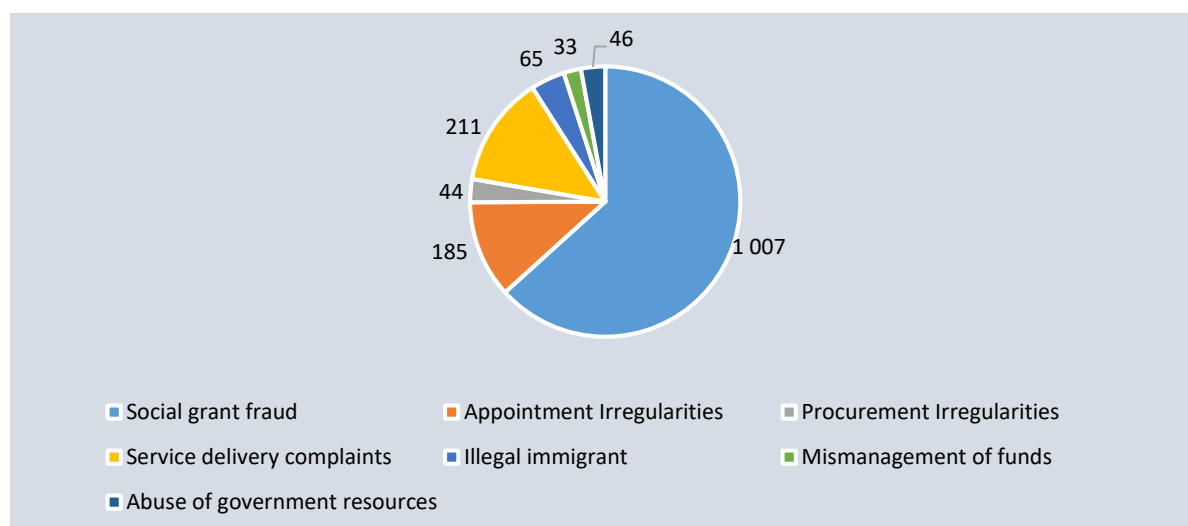
Feedback was received in respect of **20 450 (90%)** of these cases. The PSC has as at the 29 February 2020, managed to close **20 161 (89%)** of the cases upon receipt of satisfactory feedback on how the cases were dealt with. Currently, there are **2 531** outstanding cases which departments are still investigating.

## 5.9 Types of allegations of corruption

**Figure 9** below, shows the various types of cases that were reported through the NACH during the period 01 April 2019 to 29 February 2020. It is important to take note of the types of allegations received through the NACH in order for departments to manage specific high risk areas. It is important that such identified areas should also be covered in the department risk management plans.

The PSC has grouped the types of allegations reported into 7 main categories:

*Figure 9: Types of allegations of corruption*



Below is the analysis of the top four types of allegations reported through the NACH up to 29 February 2020.

### Social Grant Fraud

A total of **1 007 (63%)** complaints related to social grant fraud. Most of these cases involve pension, disability and child support grant fraud committed by members of the public as well as officials. Other cases related to the selling of fraudulent medical reports and birth certificates to members of the public to apply for social grants.

### Service Delivery Complaints

Service delivery related complaints account for **211 (11%)** of the matters reported via the NACH. The complaints reported vary from poor service delivery regarding communication, complaints against police officers and general complaints.



## Appointment Irregularities

These account for **185 (8%)** of matters reported through the NACH. The major factors that led to the alleged irregular appointment cases included, amongst others—

- non-compliance with departmental recruitment and selection policies and procedures;
- disregard for minimum requirements as specified in the advert when the selection committee conducted the short-listing exercise;
- poor record-keeping throughout the recruitment and selection process, including failure to register applications in the applicants' master list;
- no comments on why applicant were not short-listed;
- job evaluations not being conducted by departments before filling the post;
- non-compliance with selection processes when head hunting; and,
- and not certifying competency assessment outcomes before they were used by departments to make a decision.

Appointment irregularities in the Public Service is an area of concern and the PSC in the past has issued a guideline on the recruitment and selection process. Subsequently, in view of the increase in the number of reported cases relating to alleged irregular appointments, the PSC has also issued a guide on how to correct irregular appointments.

### 5.10 Conclusion

The NACH remains a vital tool which helps government departments to combat corruption in the Public Service. In terms of the country's vision for 2030 as contained in the National Development Plan, the NACH contributes towards "A South Africa in which an empowered citizenry have the confidence and knowledge to hold public and private officials to account and in which leaders hold themselves to high ethical standards and act with integrity. This South Africa has a resilient anti-corruption system in which anti-corruption agencies have the resources, credibility and powers to investigate corruption and their investigations are acted upon"<sup>10</sup>.

The PSC has noted a significant improvement on the reporting of cases of alleged corruption through the NACH in the 2019/2020 financial year by members of the public. The readiness by whistle-blowers to report allegations of corruption through the NACH could be attributed to the level of commitment by the PSC to improve the reporting mechanism and the message of zero tolerance to corruption.

It is evident that the NACH is not fully implemented by PSC with regard to operational in-house management due to financial constraints. Despite the PSC's intervention, there was no dedicated (ring-fenced) budget for the NACH. Failure to fully implement the recommended NACH operating hours undermines the credibility of the NACH as a tool for fighting corruption

In recent years, the Office has witnessed a growing global awareness of the need for effective measures to combat corruption. Reports of public opinion polls throughout the world indicate that

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<sup>10</sup> South Africa, National Development Plan, 11 November 2011, vision 2030



concern over government corruption ranks high in the public's mind and tolerance for corrupt behaviour is decreasing. For these reasons, it is important for the PSC to avail to the public a reporting mechanism which is accessible at all times whenever people want to report.

## **CHAPTER 6: MANAGEMENT OF THE FINANCIAL DISCLOSURE FRAMEWORK**

## 6.1 Introduction

As part of discharging its custodial oversight responsibilities, the PSC monitors the implementation of the Financial Disclosure Framework (the Framework) by members of the Senior Management Service (SMS members) throughout the Public Service.

The Framework was introduced in the South African Public Service in 1999 as a crucial stride to maintain the public's confidence in government structures. Currently, the Framework is incorporated in Chapter 2 of the Public Service Regulations, 2016 (PSRs), and requires that all SMS members in the Public Service must disclose all their registrable interests annually to their respective Heads of Department (HoDs), by no later than 30 April each year. HoDs must then submit their departments' financial disclosure forms in terms of Regulation 18(2) of the PSRs, 2016, to their respective Executive Authorities (EAs). The EA or HoD, as the case may be, are required to submit copies of the disclosure forms to the PSC by no later than 31 May of each year. Any person who assumes duty as an SMS member after 1 April in a year, is required to make such a disclosure within 30 days after assumption of duty, in respect of the period of twelve (12) months preceding his/her assumption of duty.

Regulation 21 of the PSR, 2016 enjoins the PSC to verify the interests disclosed by SMS members, with a view to identify cases of conflicts of interest. This process culminates in the drafting of reports to the respective EAs, advising them on appropriate actions to be taken regarding conflicts of interest that might be detected. In cases of potential conflicts of interests, the EAs are advised to monitor the involvement of the affected SMS members to ensure that the potential conflicts of interest do not end up as actual conflicts of interest. Upon finalization of the scrutiny reports to the relevant EAs, the PSC will compile a Report on the Overview of the Implementation of the Financial Disclosure Framework (Overview Report). The Overview Report is a consolidation of all the departmental reports that have been sent to the EAs. This report enables the PSC to promote ethical conduct, accountability and transparency in the Public Service by reporting on the—

- extent to which SMS members in the Public Service complied with the provisions of the Framework;
- findings emanating from the scrutiny of the financial disclosure forms received in respect of the 2018/2019 financial year, and identified cases of conflicts of interest;
- extent to which SMS members are engaged in Other Remunerative Work outside their normal employment;
- extent to which SMS members in the Departments received gifts and/or sponsorships during the period under review; and
- actions taken by the EAs with regard to identified cases of potential conflicts of interest and/or non-compliance by SMS members with the provisions of the Framework.

## 6.2 Submission Rate by Departments by the due date of 31 May 2019

An overview of the extent to which the various internal role players (SMS members, HoDs and EAs) at both national and provincial level complied with the requirements to submit the financial

disclosure forms by the respective due dates in respect of the 2018/19 financial year is given in **Table 9** below.

*Table 9: Overview of the extent of compliance with the requirement to submit financial disclosure forms as at 31 May 2019 in respect of the 2018/2019 financial year in respect of the 2018/2019 financial year*

Departments/ Provinces	No. of SMS members	Number of SMS members who disclosed their financial interests between 01 & 30 April 2019	Number of SMS members who disclosed their financial interests between 01 & 31 May 2019		Number of forms submitte d to the PSC as at the due date of 31 May 2019	Number of forms not submitted to the PSC as at the due date of 31 May 2019	Number of SMS members who did not disclose their financial interests	Percentage of forms received by the PSC as at the due date of 31 May 2019
			SMS members appointed after 1 April 2019	SMS members appointed before 1 April 2019				
National Departments	5797	5734	11	32	5600	134	63	97
Government Components	143	142	0	0	56	86	1	39
Eastern Cape	647	635	0	1	636	0	11	98
Free State	370	370	0	0	370	0	0	100
Gauteng	774	773	0	0	773	0	1	99.9
KwaZulu-Natal	601	599	0	0	599	0	2	99.7
Limpopo	490	489	0	0	489	0	1	99.8
Mpumalanga	308	307	0	0	307	0	1	99.7
Northern Cape	243	243	0	0	243	0	0	100
North West	356	356	0	0	356	0	0	100
Western Cape	406	405	0	0	405	0	1	99.8
<b>PROVINCIAL TOTAL</b>	<b>4195</b>	<b>4177</b>	<b>0</b>	<b>1</b>	<b>4178</b>	<b>0</b>	<b>17</b>	<b>97</b>
<b>GRAND TOTAL</b>	<b>10135</b>	<b>10053 (99%)</b>	<b>11</b>	<b>33</b>	<b>9834</b>	<b>220</b>	<b>81</b>	<b>97</b>

**Table 9** above shows that as at 31 May 2019 the Public Service had **a total of 10135** SMS members. This number includes SMS members in the national and provincial government departments as well as the national government components. The **Table** further shows that a total of **10053 (99%)** SMS members disclosed their financial interests internally as required by Regulation 18 (1) and (2) of the PSR, 2016. Despite this, only **9834** of the financial disclosure forms were submitted to the PSC by the due date of 31 May 2019. In essence, the PSC received only **97%** of the financial disclosure forms of the total number of SMS members in the Public Service as at 31 May 2019. There are **220** financial disclosure forms that were submitted internally in the departments, but the HoDs and EAs did not release them to the PSC. There are also **81** SMS members who did not disclose their financial interests at all. The majority of these SMS members (**63**) are from national departments. The Eastern Cape Province has the most number (**11**) of SMS members among provinces, who contravened Regulation 18 of the PSR, 2016 by not disclosing their financial interests.

### 6.3 State of compliance by Heads of Departments and Executive Authorities

In terms of Regulation 18 (2) of the PSR, 2016, all HoDs must disclose their financial interests to their EAs by no later than 30 April of each year. Regulation 18 (6) of the PSR, 2016 provides that EAs must submit copies of the forms on which the HoDs disclose their financial interests to the PSC by no later than 31 May of each year. The extent of non-compliance with the requirements of Regulation 18(2) and (6) is illustrated in **Table 10** below.

*Table 10: The extent of non-compliance by Heads of Department and EAs with the requirement to submit financial disclosure forms in respect of the 2018/19 financial year*

No.	Name of the department	Date submitted to EA by the HoD	Date submitted to the PSC by the EA
National Departments			
1.	Agriculture, Forestry and Fisheries	29 April 2019	Not submitted to PSC
2.	Communications	16 April 2019	Not submitted to PSC
3.	Defence	26 April 2019	Not submitted to PSC
4.	Energy	15 April 2019	Not submitted to PSC
5.	Health	18 April 2019	14 August 2019 (after due date)
6.	Military Veterans (Acting)	Financial interests not disclosed	
7.	National School of Government (Acting)	26 April 2019	Not submitted to PSC
8.	Public Enterprises	30 April 2019	04 June 2019 (after due date)
9.	Public Service and Administration	26 April 2019	Not submitted to PSC
10.	State Security Agency	Financial interests not disclosed [The PSC was informed that the financial interests are managed internally]	
National Government Components			
1.	Centre for Public Service and Innovation	23 April 2019	Not submitted to PSC
2.	Government Printing Works	11 May 2019	31 May 2019
3.	Government Technical Advisory Centre	29 April 2019	Not submitted to PSC
Provincial Departments			
1.	Eastern Cape:		
	• Economic Development, Environmental Affairs & Tourism	10 April 2019	10 July 2019 (after due date)
	• Health	11 May 2019	31 May 2019
	• Provincial Planning & Finance (former Provincial Treasury)	24 April 2019	Not submitted to PSC
	• Human Settlements	Vacant	
	• Roads & Public Works	Vacant	
	• Rural Development & Agrarian Reform	Vacant	
	• Safety & Liaison	Vacant	

No.	Name of the department	Date submitted to EA by the HoD	Date submitted to the PSC by the EA
2.	<b>Kwa-Zulu Natal</b>		
	• Agriculture, Environmental Affairs & Rural Development	29 April 2019	<b>13 June 2019 (after due date)</b>
	• Economic Development & Tourism	30 April 2019	<b>Not submitted to PSC</b>
3.	<b>Mpumalanga:</b> Education	<b>Financial interests not disclosed</b>	
4.	<b>North West:</b> Office of the Premier	<b>Vacant</b>	

**Table 10** above shows that that there are 10 national departments, three (3) national government components and six (6) departments in three provinces where there has been only partial compliance with the requirements of the Framework by HoDs.

#### **6.4 Findings emanating from the scrutiny of the financial disclosure forms**

The PSC scrutinised the forms of the SMS members in terms of Regulation 21(1) of the PSRs, 2016. In terms of this Regulation, the PSC must assess compliance with the requirement to disclose all financial interests and to establish whether the involvement of officials in any activities of the companies could lead to conflicts of interest. The scrutiny was conducted on **100%** of the financial disclosure forms of all SMS members in the national and provincial departments including government components. The forms of the SMS members who assumed duties as SMS members after the disclosure period were also scrutinised. The PSC also verified the financial interests of those SMS members whose financial disclosure forms were not received by the due date of 31 May 2019 and those that did not disclose their financial interests at all.

The scrutiny process focussed on the financial interests as specified in Regulation 19 of the PSRs, 2016 that were verifiable by the PSC, namely the following:

- i) The extent to which SMS members disclosed directorships in companies and other corporate entities recognised by law.
- ii) The engagement of SMS members in remunerated work outside an employee's employment in the Public Service (Other Remunerative Work).
- iii) The extent to which SMS members received gifts and sponsorships.
- iv) Disclosure of ownership of immovable property.
- v) Disclosure of ownership of motor vehicles.
- vi) Potential and actual conflicts of interest.

A comparative analysis was also conducted on these financial interests for the financial years 2016/2017 to 2018/2019 to determine the extent to which SMS members complied with the requirement to disclose all of their financial interests over the years.

### 6.4.1 Non-disclosure of directorships in companies

The scrutiny of the financial disclosure forms revealed that a total of **637** SMS members in both the National and Provincial Departments did not disclose their directorships in private and public companies. This is in contravention of Regulation 19 of the PSRs, 2016. The extent of non-disclosure of directorships in companies is shown in **Table 11** below.

*Table 11: The extent of non-disclosure of directorship in companies during the 2016/17 to 2018/19 financial years*

	Total number of SMS members with directorships in companies	Non-disclosure of directorships/ companies				Total number of SMS members who did not disclose directorships in companies in 2018/2019	Percentage of SMS members who did not disclose directorships in companies in 2018/19 financial year	Percentage of SMS members who did not disclose directorships in companies in 2017/18 financial year	Percentage of SMS members who did not disclose directorships in companies in 2016/17 financial year
		DGs/ HoDs	Deputy Directors-General	Chief Directors	Directors				
National Departments	<b>945</b>	4	27	78	291	400	42	43	43
Government Components	<b>30</b>	1	2	1	9	13	43	N/A	N/A
Eastern Cape	<b>144</b>	1	0	8	22	31	22	31	35
Free State	<b>45</b>	1	1	3	7	12	27	36	26
Gauteng	<b>162</b>	2	3	10	30	45	28	34	36
KwaZulu-Natal	<b>15</b>	0	0	3	12	15	100	23	6
Limpopo	<b>138</b>	1	1	8	33	43	31	39	17
Mpumalanga	<b>23</b>	1	0	1	9	11	48	20	80
Northern Cape	<b>48</b>	0	2	2	19	23	48	27	35
North West	<b>117</b>	0	2	8	33	43	37	37	38
Western Cape	<b>2</b>	0	0	0	1	1	50	7	62
<b>OVERALL TOTAL FOR PROVINCES</b>	<b>694</b>	<b>6</b>	<b>9</b>	<b>43</b>	<b>166</b>	<b>224</b>	<b>32</b>	<b>29</b>	<b>29</b>
<b>GRAND TOTAL</b>	<b>1669</b>	<b>11</b>	<b>38</b>	<b>122</b>	<b>466</b>	<b>637</b>	<b>38</b>	<b>37</b>	<b>37</b>

**Table 11** above shows that a total of **1669** SMS members in both the national and provincial departments have directorships in companies. National departments have **945** such SMS members and **694** are from provincial departments. From the total of **1669** SMS members with directorships in companies, **637 (38%)** did not disclose their directorships. The majority of SMS

members who did not disclose their directorships in companies (**400**) are from national departments and **224** from provincial departments.

From the total number of SMS members who did not disclose their directorship in companies, **11** are on the level of the HoD. The PSC notes with concerns that there are HoDs who do not comply with regulatory requirements. Such HoDs would find it difficult to inculcate a culture of ethics and implement anti-corruption and ethics functions as required in terms of Regulations 22 of the PSRs, 2016.

The PSC also assessed the non-disclosure of directorship by SMS members over a three-year period. This assessment revealed a decline in the number of SMS members with directorships in both national and provincial departments. This number has declined from **2303**, which was recorded in **2017/18** financial year, to **1669** recorded in the year under review. During the **2016/17** both national and provincial departments had a total of **1945** SMS members with directorships. The decline in the SMS members' involvement in companies could be attributed to the effective implementation of Regulation 13(c), which forbids government employees to conduct business with organs of state, or being directors in public or private companies that conduct business with organs of state.

#### **6.4.2 Findings relating to engagement in other remunerative work outside the employee's employment in the public service**

Section 30 of Act, read with the Directive on other Remunerative Work outside the Employee's Employment in the public service (ORW) forbids public servants to perform such work, except with the written permission of the relevant EA.

A comparative analysis was conducted on the extent of SMS members' engagement in ORW over the past three financial years. This include the 2016/17 and 2017/18 financial years. During the 2017/18 financial year **428** SMS members were engaged in ORW and earned an amount of **R60 794 045.34**. From this total number with only **142 (33%)** SMS members obtained written permission to engage in ORW. During the financial year preceding this (*i.e.* 2016/17 financial year) a total of **333** SMS members were engaged in ORW and earned in total an amount of **R29 413 385.41**. Only **119 (36%)** of these SMS members obtained permission to engage in ORW.

The extent to which SMS members were engaged in ORW during the 2018/19 financial year is reflected in **Table 12** below.



Table 12: Engagement of SMS members in Other Remunerative Work during the 2018/19 financial year

	No of SMS members who were engaged in ORW during 2018/19 financial year				Total number of SMS members engaged in ORW	Total number of ORW approvals provided	Percentage of ORW approvals provided	Income generated from ORW (R)
	DGs / HoDs	Deputy Directors-General	Chief Directors	Directors				
National Departments	0	14	56	156	226	115	51%	33 743 969
Government Components	0	0	0	5	5	3	60%	178 619
Eastern Cape	0	0	2	9	11	1	9%	904 005
Free State	0	1	0	9	10	8	80%	449 274
Gauteng	2	2	10	22	36	18	50%	3 336 982
Kwazulu-Natal	0	5	5	22	32	20	63%	1 862 955
Limpopo	1	1	2	16	20	0	0%	849 463
Mpumalanga	0	0	1	7	8	6	75%	552 080
Northern Cape	0	2	2	6	10	2	20%	140 500
North West	1	0	1	4	6	0	0%	295 200
Western Cape	2	2	8	24	36	36	100%	2 856 610
<b>OVERALL TOTAL FOR PROVINCES</b>	<b>6</b>	<b>13</b>	<b>31</b>	<b>119</b>	<b>169</b>	<b>91</b>	<b>54%</b>	<b>11 247 071</b>
<b>GRAND TOTAL</b>	<b>6</b>	<b>27</b>	<b>87</b>	<b>280</b>	<b>400</b>	<b>209</b>	<b>52%</b>	<b>45 169 660</b>

**Table 12** above shows that **400** SMS members in the Public Service were engaged in ORW, with only **52% (209)** of them having obtained prior permission to engage in ORW in terms of section 30 of the Act. The total amount of remuneration received by the SMS members through ORW was **R45 169 660**. The national departments accounted for **226** SMS members who earned in total, an amount of **R33 743 969** in remuneration through ORW. Only **115 (51%)** of these SMS members provided proof of approval to engage in ORW.

The provincial departments recorded **169** SMS members engaged in ORW and earned a total amount of **R11 247 071**. It is only in the Western Cape Province, where all SMS Members who engaged in ORW obtained prior approval to do so. The PSC commends the HoDs and EAs in the Western Cape Province for ensuring that SMS members in this Province comply with Section 30 of the Act.

The three-year analysis attest that some SMS members in both the national and provincial departments continue to breach the regulatory provisions of obtaining approval prior to engaging in ORW as provided in Section 30 of the Act. The PSC advised the EAs to take appropriate steps

in terms of section 31 of the Act, against SMS members who engaged in ORW without obtaining prior approval. Section 31 of the Act provides amongst others that, an employee who received any remuneration contrary to section 30 of the Act, must pay into revenue an amount equal to that of any such remuneration, allowance or reward. If such remuneration does not consist of money, the relevant HoD shall determine the value thereof and recover it from the employee. If the employee fails to pay into revenue the amount or value, the HoD shall recover it from him or her by way of legal proceedings and pay it into revenue.

Where the relevant permission was granted, EAs were advised to sensitize the SMS members not to perform ORW during official working hours; and not to use state equipment and/or resources for such work. The EAs were further advised to sensitize the SMS members of the provisions of Regulation 13(c) of the PSR, 2016, which forbids officials to conduct business with any organ of state and/or being a director of a public or private company conducting business with an organ of state.

### 6.4.3 Findings relating to receipt of gifts and/ or sponsorships from sources other than family members

Regulation 13(a) of the PSRs, 2016 provides that employees shall not receive, solicit or accept any gratification from any employee or any person in return for performing or not performing his or her official duties. Regulation 13(h) provides further that an employee shall not receive or accept any gift from any person in the course and scope of his or her employment, other than from a family member, to the cumulative value of **R350** per year, unless prior approval is obtained from the relevant EA.

A three-year review was conducted to establish the extent to which SMS members in both the national and provincial departments received gifts and the value thereof. The extent to which SMS members in the Department received gifts and sponsorships during the financial year under review is shown in **Table 13** below.

*Table 13: SMS members who received gifts and sponsorships from sources other than family members during the 2018/2019 financial year*

	Number of SMS members who received gifts and/or sponsorships during the 2018/19 financial year				Total number of SMS members who received gifts/ sponsorships in 2018/19	Total value of gifts/ sponsorships received by SMS members in 2018/19 financial year (R)	Total number of SMS members who received gifts/ sponsorships in 2017/18	Total value of gifts/ sponsorships received by SMS members in 2017/18 financial year (R)	Total number of SMS members who received gifts/ sponsorships in 2016/17	Total value of gifts/ sponsorships received by SMS members in 2016/17 financial year (R)
	DGs/ HODs	Deputy Directors-General	Chief Directors	Directors						
National Departments	15	47	99	206	367	5 447 635	326	1 412 319	311	5 103 874
Government Components	0	0	1	1	2	25762	N/A	N/A	N/A	N/A

Eastern Cape	0	2	1	5	8	445400	7	162 870	9	39 713
Free State	0	0	0	1	1	30000	3	6 200	2	55 953
Gauteng	1	5	9	20	35	643226	37	289 213	40	678 520
KwaZulu-Natal	2	2	6	10	20	534589	34	824 363	30	896 136
Limpopo	1	0	0	3	4	78705	6	98 000	11	534 300
Mpumalanga	0	0	0	2	2	2000	2	65 000	4	116 289
Northern Cape	1	0	0	5	6	18487	3	52 000	3	26 240
North West	0	0	0	0	0	0	5	157 630	3	22 231
Western Cape	8	10	17	29	64	1074264	70	174 582	68	192 300
<b>OVERALL TOTAL FOR PROVINCES</b>	<b>13</b>	<b>19</b>	<b>33</b>	<b>75</b>	<b>140</b>	<b>2 773 729</b>	<b>167</b>	<b>1 829 858</b>	<b>170</b>	<b>2 561 683</b>
<b>GRAND TOTAL</b>	<b>28</b>	<b>66</b>	<b>133</b>	<b>282</b>	<b>509</b>	<b>8 221 364</b>	<b>493</b>	<b>3 242 177</b>	<b>481</b>	<b>7 665 557</b>

**Table 13** above shows that a total of **509** SMS members in the national and provincial departments, as well as national government components, received gifts/ sponsorships during the period under review. The total value of gifts/sponsorships received by the SMS members during the 2018/2019 financial year amounted to **R8 221 364**. This amount seems to be more than double the one that was recorded in respect of the 2017/18 financial year (**R3 243 177**). The PSC has established that this is a result of some of the SMS members disclosing gifts/sponsorships that were given to the Departments and not necessarily for their individual benefit. The situation is slightly similar to that of the 2016/17 financial year, where a total amount of **R7665 557** was recorded as the value of gifts/sponsorships received.

Among the SMS members who received gifts, there are those whose gifts exceeded the stipulated threshold of **R350.00** per year in value. Furthermore, amongst the gifts received by SMS members, some were diplomatic gifts, which could not have been declined by the officials. The EAs were advised to consult with officials who received gifts/ sponsorships other than diplomatic gifts to verify if these were not gratification or gifts received, solicited or accepted in contravention of Regulation 13(a) and/or (h) of the PSRs, 2016. Where contravention of Regulation 13(a) and/or (h) could be established, the EAs were advised to consider taking disciplinary action against the affected officials in terms of section 16A of the Act.

#### **6.4.4 Non-disclosure of immovable properties**

The scrutiny of the financial disclosure forms revealed a further contravention of Regulation 19 of the PSRs, 2016, where some SMS members in both the national and provincial departments did not disclose their immovable properties. The PSC also assessed the non-disclosure of immovable property over a three-year period. The extent of non-disclosure of immovable property is reflected in **Table 14** below.

Table 14: The extent of non-disclosure of immovable properties between the 2018/19 and 2016/17 financial years

	Total number of SMS members in the departments	Non-disclosure of immovable properties				Total no. of SMS members who did not disclose immovable property in 2018/19 financial year	Total SMS members who did not disclose immovable property in 2017/18 financial year	Total SMS members who did not disclose immovable property in 2016/17 financial year
		DGs/ HODs	Deputy Directors-General	Chief Directors	Directors			
National Departments	5826	2	6	41	150	199	232	230
Government Components	145	0	0	1	0	1	N/A	N/A
Eastern Cape	648	0	1	1	6	8	10	15
Free State	371	0	1	1	8	10	7	14
Gauteng	774	1	1	7	15	24	0	38
KwaZulu-Natal	611	0	0	0	0	0	0	2
Limpopo	490	0	0	2	6	8	4	1
Mpumalanga	309	0	0	1	2	3	7	6
Northern Cape	249	0	0	1	0	1	9	12
North West	356	0	0	6	13	19	22	19
Western Cape	403	0	1	1	1	3	3	9
<b>OVERALL TOTAL FOR PROVINCES</b>	<b>4211</b>	<b>1</b>	<b>4</b>	<b>20</b>	<b>51</b>		<b>62</b>	<b>116</b>
<b>GRAND TOTAL</b>	<b>10182</b>	<b>3</b>	<b>10</b>	<b>62</b>	<b>201</b>	<b>276</b>	<b>294</b>	<b>346</b>

**Table 14** above shows that a total of **276** SMS members in the national, provincial and government components did not disclose their ownership of immovable property during the year under review. The majority of these SMS members (**199**) are from national departments. The provincial departments recorded a total number of **76** SMS members who did not disclose their ownership of immovable property.

#### 6.4.5 Non-disclosure of motor vehicles

Regulation 19 of the PSRs, 2016 further provides for the disclosure of vehicles. The scrutiny revealed that over a three-year period, there are still SMS members in the national and provincial departments who failed to disclose their vehicles. The extent of non-disclosure vehicles is reflected in **Table 15** below.

Table 15: The extent of non-disclosure of motor vehicles between the 2018/19 and 2016/17 financial years

	Total number of SMS members in the departments	Non-disclosure of vehicles				Total no. of SMS members who did not disclose vehicles in 2018/19 financial year	Total SMS members who did not disclose vehicles in 2017/18 financial year	Total SMS members who did not disclose vehicles in 2016/17 financial year
		DGs/ HODs	Deputy Directors-General	Chief Directors	Directors			
National Departments	5826	7	26	94	447	574	1 056	946
Government Components	145	0	0	2	14	16	N/A	N/A
Eastern Cape	648	0	3	11	55	69	123	128
Free State	371	0	0	0	2	2	14	37
Gauteng	774	2	4	33	96	135	155	194
KwaZulu-Natal	611	0	0	0	0	0	2	129
Limpopo	490	1	2	9	53	65	63	132
Mpumalanga	309	0	1	4	15	20	30	104
Northern Cape	249	0	1	3	32	36	45	69
North West	356	1	5	15	66	87	85	92
Western Cape	403	1	0	2	7	10	34	101
<b>OVERALL TOTAL FOR PROVINCES</b>	<b>4211</b>	<b>5</b>	<b>16</b>	<b>77</b>	<b>326</b>	<b>424</b>	<b>551</b>	<b>986</b>
<b>GRAND TOTAL</b>	<b>10182</b>	<b>12</b>	<b>42</b>	<b>173</b>	<b>787</b>	<b>1014</b>	<b>1 607</b>	<b>1932</b>

**Table 15** above shows a total of **1014** SMS members in the national, provincial departments and government components did not disclose their motor vehicles. The national departments recorded a total of **574** SMS members compared to **424** in provincial departments. The PSC has noted with concern that there are still HoDs who did not comply with the requirement to make full disclosure of their financial interests. The scrutiny revealed that **7** HoDs in national and **5** in provincial departments failed to disclose ownership of their motor vehicles.

There was a notable decrease in the number of SMS members who did not disclose their vehicles, from 1932 in 2016/17 to 1014 in 2018/19.

#### 6.4.6 Potential and actual conflict of interest

The scrutiny process also revealed cases of potential conflict of interest by SMS. The prevalence of actual conflict of interest during the 2018/19 financial year was found to be minimal.

##### (a) Potential conflict of interest

Potential conflicts of interest arise where a person has private business interests that if left unmanaged, could conflict with their official duties in the future. In essence, potential means capable of being but not yet in existence. Thus, when a public servant has potential conflict of interest due to some financial or personal situation, such official must exercise appropriate caution (sometimes extreme caution) to ensure that the unrealized, possible conflict does not graduate into actual conflict, which might be in violation of his or her official responsibilities. In the context of the scrutiny conducted by the PSC on the financial disclosure forms, potential conflict of interest was inferred by virtue of an official's link to a business entity.

The extent of identified cases of potential conflicts of interest is shown in **Table 16** below.

*Table 16: Findings on cases of potential conflict of interest in respect of the 2016/17 to 2018/19 financial years*

	Total number of SMS members in the departments	Cases of potential conflict of interest				Total cases & percentages of SMS members with potential conflict of interest in the 2018/19 financial year	Total cases & percentages of SMS members with potential conflict of interest in the 2017/ 18 financial year	total cases & percentages of SMS members with potential conflict of interest in the 2016/17 financial year
		DGs/ HODs	Deputy Directors-General	Chief Directors	Directors			
National Departments	5826	10	61	197	671	939 (16%)	1 092 (18%)	1114 (18%)
Government Components	145	1	2	9	18	30 (21%)	N/A	N/A
Eastern Cape	648	3	6	36	99	144 (15%)	109 (16%)	129 (19%)
Free State	371	3	5	4	33	45 (12%)	44 (12%)	43 (12%)
Gauteng	774	5	18	44	95	162 (21%)	235 (29%)	200 (25%)
KwaZulu-Natal	611	0	0	3	12	15 (2%)	8 (1%)	127 (21%)
Limpopo	490	5	4	28	101	138 (28%)	131 (26%)	128 (26%)
Mpumalanga	309	1	1	3	18	23 (7%)	21 (7%)	5 (2%)
Northern Cape	249	3	3	8	34	48 (19%)	23 (9%)	54 (21%)
North West	356	4	4	23	86	117 (33%)	105 (31%)	112 (36%)
Western Cape	403	0	1	0	1	2 (0,5%)	9 (2%)	13 (3%)
<b>OVERALL TOTAL FOR PROVINCES</b>	<b>4211</b>	<b>24</b>	<b>42</b>	<b>149</b>	<b>479</b>	<b>694 (16%)</b>	<b>685 (16%)</b>	<b>811 (19%)</b>
<b>GRAND TOTAL</b>	<b>10182</b>	<b>35</b>	<b>105</b>	<b>355</b>	<b>1168</b>	<b>1663 (16%)</b>	<b>1 777 (17)</b>	<b>1925(19%)</b>

**Table 16** above shows that during the 2018/19 financial year, **1663 (16%)** SMS members were involved in activities that could be construed as posing potential conflict of interest. The majority of these SMS members (**939**) were found in the national departments. The Western Cape Province recorded the least number (**2[0.5%]**) of SMS members with potential conflicts of interest. Amongst the nine provinces, Gauteng Province had the highest number (**162 [21%]**), of SMS members with potential conflicts of interest, followed by Eastern Cape and Limpopo with (**144[15%]**) and (**138[28%]**) respectively.

The PSC advised the EAs to ensure that the involvement of these SMS members in companies is closely and tightly monitored in order to avoid such involvement leading to actual conflicts of interest. The Ethics Officer of the respective departments must periodically consult the Central Supplier Database (CSD) of the National Treasury, to check if these companies do not appear thereon. Registration of companies on the CSD presupposes the intention to conduct business with organs of state. Conducting business with an organ of state has been outlawed in terms of Regulation 13(c) of the PSRs.

The PSC has also noted that between 2016/2017 and 2018/2019 financial years, the identified cases of potential conflicts of interests have since been decreasing. In 2016/2017, **1925** cases of potential conflicts of interest were reported, as compared to **1777**, which was recorded in the 2017/2018 financial year. The current financial year only recorded **1663**. This is attributed to the resignation of some of the SMS members from the companies to which they were linked. This follows the constant consultation by the PSC and the Ethics Officers in the Departments, with the SMS members. During the consultations, the SMS members are sensitised of activities that could lead to conflict of interests in the future, and how these conflicts could be averted. Divesting from companies is one of the recommendations that are made to these SMS members. Some of the companies were deregistered by the CIPC at the behest of the SMS members, or automatically as a result of non-submission of Annual Returns to the CIPC. All these activities had the effect of reducing the extent of potential conflict of interests among SMS members in the Public Service.

#### **(b) Actual conflicts of interest**

Actual conflicts of interest involve a direct conflict between a public service official's current duties and responsibilities and existing private interests. For example, in the context of the scrutiny conducted by the PSC on the financial disclosure forms, actual conflicts of interest were inferred where an SMS member had a company registered on the database of service providers of his/her employing department or that of the Central Supplier Database that is managed by the National Treasury.

The PSC found that the extent of involvement of SMS members in actual conflicts of interest has reduced as compared to the previous two financial years. The scrutiny findings on cases of actual conflicts of interest that were identified are reflected in **Table 17** below.



Table 17: Identification of cases of actual conflicts of interest in respect of the 2016/17 to 2018/19 financial years

	Total number of SMS members in the departments	Cases of actual conflict of interest during the 2018/219 financial year				Total cases of actual conflict of interest identified in 2018/19 financial year	Total cases of actual conflict of interest identified in 2017/18 financial year	Total cases of actual conflict of interest in 2016/17 financial year
		DGs/ HODs	DDGs	Chief Directors	Directors			
National Departments	5826	0	0	0	1	1	12	0
Government Components	145	0	0	0	0	0	0	0
Eastern Cape	648	0	0	0	0	0	0	0
Free State	371	0	1	2	3	6	0	0
Gauteng	774	1	0	0	1	2	9	15
KwaZulu-Natal	611	0	0	0	0	0	0	0
Limpopo	490	0	0	0	0	0	0	0
Mpumalanga	309	0	0	0	0	0	4	0
Northern Cape	249	1	0	0	0	1	0	1
North West	356	0	0	0	0	0	3	1
Western Cape	403	0	0	0	0	0	0	0
<b>OVERALL TOTAL FOR PROVINCES</b>	<b>4211</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>4</b>	<b>9</b>	<b>16</b>	<b>17</b>
<b>GRAND TOTAL</b>	<b>10182</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>5</b>	<b>10</b>	<b>28</b>	<b>17</b>

**Table 17** above further shows that only **10** cases of actual conflicts of interest were recorded from a total of **10182** SMS members in the national, provincial departments and government components. The **Department of Public Works & Infrastructure** was the only national department with a case of actual conflict of interest, with nine (**9**) cases recorded in provincial departments. The PSC advised the EAs to consult with the affected SMS members and consider taking disciplinary action in terms of Section 16A of the Act, and report the matter to National Treasury to prohibit the affected companies from doing business with the state.

The PSC has also noted that fewer cases of actual conflict of interest were recorded in the current financial year compared to **28** in the 2017/18 and **17** during the 2016/17 financial years, respectively. This could be attributed to the effective implementation of Regulation 13(c) of the *Public Service Regulations*, 2016, which forbids officials to conduct business with any organ of



state and/or being a director of a public or private company conducting business with an organ of state.

## 6.5 Actions taken by executive authorities with regard to identified cases of conflict of interest and non-compliance with the financial disclosure framework

Effective implementation of the Framework requires the commitment of both the SMS members and EAs alike. Failure to comply with the provisions of the Framework undermines the efforts taken in the endeavour to promote and maintain professional ethics in the Public Service. Regulation 21(1)(c) of the PSR, 2016 provides that upon referral of a matter to the EA by the PSC, the EA shall consult with the employees concerned and take the appropriate actions depending on the outcome of such consultations. The PSR, 2016 further provides in Regulation 21(1)(e) that the EA shall, within 30 days after referral by the PSC, report to the PSC by stating whether any steps were taken. If steps were taken, the EA should give a description of those steps or, if no steps were taken, give the reasons thereof.

Only **34%** of the EAs complied with Regulation 21(1)(e) of the PSR, 2016, by providing the PSC with feedback on actions taken emanating from the findings of the scrutiny conducted on the financial disclosures. The findings on actions taken are presented in **Table 18** below.

*Table 18: Compliance rate by the EAs with the recommendations of the PSC*

	ACTIONS TAKEN BY EXECUTIVE AUTHORITIES IN RESPECT OF THE 2018/19 FINANCIAL YEAR				
	Total number of EAs from whom feedback was expected	Total number of EAs who provided feedback on actions taken	No. of SMS members with whom the EA was satisfied with responses	No. of SMS members sensitised to disclose all of registrable interests and to avoid conflict of interest	Disciplinary action taken (e.g. verbal/ written warnings)
National Departments	16	0	0	0	0
Eastern Cape	12	1	7	12	0
Free State	12	5	23	17	0
Gauteng	13	7	96	31	0
KwaZulu-Natal	14	9	13	13	0
Limpopo	12	0	N/A	N/A	N/A
Mpumalanga	12	12	40	14	0
Northern Cape	12	3	17	17	0
North West	12	6	66	66	0

	ACTIONS TAKEN BY EXECUTIVE AUTHORITIES IN RESPECT OF THE 2018/19 FINANCIAL YEAR				
	Total number of EAs from whom feedback was expected	Total number of EAs who provided feedback on actions taken	No. of SMS members with whom the EA was satisfied with responses	No. of SMS members sensitised to disclose all of registrable interests and to avoid conflict of interest	Disciplinary action taken (e.g. verbal/written warnings)
Western Cape	13	0	N/A	N/A	N/A
<b>PROVINCIAL TOTALS</b>	<b>112</b>	<b>43</b>	<b>262</b>	<b>170</b>	<b>0</b>
<b>GRAND TOTAL</b>	<b>128</b>	<b>43</b>	<b>262</b>	<b>170</b>	<b>0</b>

**Table 18** above shows that a total of **128** EAs in both the national and provincial departments were expected to provide the PSC with feedback on actions taken as a result of the scrutiny findings. Only **43** of these EAs, all of whom are from provincial departments complied with Regulation 21(1)(e) of the PSRs, 2016 by providing the feedback in question. All the EAs who have provided feedback to the PSC indicated that they were satisfied with the responses given by some of the SMS members during the consultation process. The SMS members who did not disclose all of their registrable interests and those with potential conflicts of interest were sensitised of the need to comply with the Regulations and to avoid conflict of interest.

## 6.6 Recommendations

The recommendations are based on the key findings contained in this report and aimed at strengthening compliance with the Framework. The following key findings and recommendations were made:

### Non-compliance with Regulations 18 and 19 of the PSRs, 2016

There are SMS members who still fail to submit their financial disclosure forms in terms of Regulation 18 of the PSR, 2016. Others did not fully disclose all their registrable interests as required by Regulation 19 of the PSRs, 2016. In such instances, the HoDs must take disciplinary action against the affected SMS members in their respective Departments. Similarly, the relevant EAs must take disciplinary action against the affected HoDs.

Furthermore, the scrutiny also revealed that there are EAs and HoDs who still do not submit the copies of the financial disclosure forms to the PSC by the due date, even though the SMS members disclosed their registrable interests on time. The relevant EAs must take appropriate disciplinary action against defaulting HoDs. Parliament must, on the other hand, call the defaulting EAs to account for non-compliance with the regulatory framework.

## **Actual Conflicts of interest**

The PSC found **10** cases of actual conflict of interest, one (**1**) in National Departments and nine (**9**) in provincial departments. It was recommended that the respective EA/HoD must consider taking immediate disciplinary action and report the matter to National Treasury to restrict the affected companies from doing business with the state.

## **Potential Conflict of Interest**

The PSC found **1663 (16%)** SMS members who were involved in activities that could be construed as posing potential conflicts of interest. The Ethics Officer of the Department must periodically consult the Central Supplier Database (CSD) of the National Treasury, to check if these companies do not appear thereon. Registration of companies on the CSD presupposes the intention to conduct business with organs of state. Conducting business with an organ of state has been outlawed in terms of Regulation 13(c) of the PSRs.

## **Other remunerative work outside the Employees Work in the Public Service**

The scrutiny revealed that out of **400** SMS members who were engaged in ORW during the period under review only **209 (52%)** obtained the necessary approval. The EAs are advised to take the necessary actions in terms of section 31 of the Public Service Act, 1994 as amended.

## **Gifts and Sponsorships**

The PSC has identified cases where SMS members received gifts that exceeded the stipulated threshold of **R350.00** per year. The EAs were advised to consult with officials who received gifts and/or sponsorships, other than diplomatic gifts, to verify if these were not gratification or gifts received, solicited or accepted in contravention of Regulation 13(a) or (h) of the PSRs, 2016. Where contravention of Regulation 13(a) or (h) could be established, the EAs are advised to consider taking disciplinary action against the affected officials in terms of section 16A of the Act.

The Minister for Public Service and Administration (MPSA) should consider issuing a directive to make it compulsory for departments to have gift policies that can properly address the management of gifts in the public service in accordance with Regulation 13(h) of the PSRs, 2016. In addition, the MPSA may make it compulsory for departments to keep and maintain gift registers, which will enable the effective scrutiny of gifts and sponsorships by the PSC.

## **Feedback on actions taken by executive authorities with regard to identified cases of conflicts of interests**

The PSC received feedback from **43** EAs all of who are from provincial departments in respect of the 2018/19 scrutiny findings. None of the national departments and government components, provided feedback to the PSC in respect of the current financial year. Parliament must hold EAs, who did not provide feedback on actions taken as a result of the PSC's findings, accountable for non-compliance with the Framework.

## 6.7 Conclusion

An improvement on the submission of the financial disclosure forms by the respective due dates has been noted although compliance with full disclosure of registrable interest remains a challenge. A three year review has affirmed that although full disclosure is still a problem, the numbers of SMS members not disclosing or not disclosing all aspects, have been decreasing over the past three financial years, which affirms that SMS members' are willing to comply with the regulatory provisions. The receipt of gifts and sponsorships remains a thorny issue. An increase in the value of the gifts/sponsorships suggest that the gifts don't comply in terms of the stipulated threshold of **R350**. The PSC has also noted that the prevalence of conflict of interest has decreased substantially. This could be attributed to the consultations and workshops that the PSC and the EAs had with SMS members in various departments.

## CHAPTER 7: PROFESSIONAL ETHICS

## 7.1 Introduction

The PSC is mandated in terms of Section 195 of the constitution “to promote a high standard of professional ethics”. Over the years, the PSC has conducted workshops on the Code of Conduct for the public service as part of giving effect to this constitutional mandate. The promotion of professional ethics also lays the foundation for the professionalization of the public service. Taking into cognizance the need to intensify the professionalization of the public service, the PSC adopted a strategy for the systematic promotion of professional ethics.

## 7.2 Promotional Activities

The following activities were undertaken by the PSC to promote professional ethics in the Public Service:

- Briefings and workshops on the Code of Conduct to address issues related to professional ethics at departments.
- Roundtables on professional ethics
- An ethical leadership seminar that was held during Nelson Mandela Month, to engage with public servants on the ethical values that former President Nelson Mandela stood for.

Workshops on the Code of Conduct generally use an inter-active and small groups approach. Alleged unethical behaviour and irregular activities such as financial misconduct identified by the media and other sources have also been used to promote the Code of Conduct. Each department is profiled to ascertain the most prevalent ethical challenges relevant to its mandate. Furthermore, media reports and focused scenarios are employed to conduct the workshop.

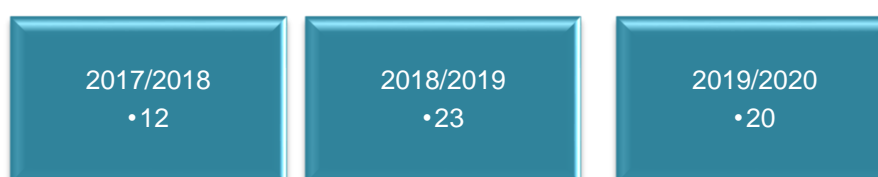
The theme for the Ethical Leadership seminar which was held on the 19<sup>th</sup> July 2019 was “*Leading like Mandela: Dawn of the new era of ethical, value-based leadership*”. This seminar, in partnership with the United Nations in South Africa, the Thembekile Mandela Foundation and the Moral Regeneration Movement, focused on the following topical issues: the current state of leadership; desired state of ethical leadership; the context of ethical leadership as well as a programme of action for attaining ethical leadership. Various speakers were invited to presented papers, including Dr. Reuel Khoza, Dr. Scholastica Kimaryo, Ms. Ndileka Mandela and Ms. Tsakani Ratsela. The key message from all the speakers was that action without vision is only passing time. Vision without action is merely daydreaming. Vision with action can change the world. They reflected on the current state of South Africa and Africa as a whole and reflected on the sharp contrast to what Mandela bequeathed to us. They explored ways in which Arica can confront and overcome poor leadership.

The commemoration of significant days such as the International Anti-Corruption day provide an opportunity for the PSC to also reflect on how the scourge of corruption impacts on the lives of ordinary citizens. International anti-corruption day is celebrated annually on 9 December in recognition of the United Nations Convention against Corruption (UNCAC). In 2019 the day was commemorated under the theme: “*United Against Corruption: Building a Culture of Accountability for Sustainable Development*”. The following topics were covered: Contextualising the extent of corruption; Taking concrete action against corruption: reflections and progress; and Active citizenry

in building an accountable governance. The key message from the Chairperson of the Public Service Commission was that as public servants we need to emulate Mandela as a global moral/ethical leader who was passionate about the plight of humanity, a visionary and strategist, a committed leader who was persistent and results orientated and sagacious.

### **7.3 Number of Code of Conduct workshops**

The Public Service Commission annually conducts workshops on the Code of Conduct as part of promoting professional ethics in the public service and contributing towards building a professionalized public service. The breakdown of the number of National Departments who were workshopped on the Code of Conduct over the five years financial years is illustrated below.



The promotion of the Code of Conduct has generally been successful due to the cooperation from departments and a keen interest from the Departments to implement the Code of Conduct. The logistical arrangements for the workshops included preparing questions relating to the mandate and mission of the respective departments and engaging with the identified contact person from the respective departments on the perceived unethical conduct most prevalent in their department. Therefore, the PSC was able to focus the workshops on challenges which were unique to the respective Departments. This also presented an opportunity for the workshop delegates to engage with the Code of Conduct using practical scenarios that illustrated to the delegates how to deal with the ethical dilemmas they may come across in their respective departments.

The new Public Service Regulations promulgated in 2016 by the DPSA requires the departments to conduct regular ethics climate assessments. Going forward this may play a role in evaluating the management and promotion of professional ethics in departments.

### **7.4 Obligation of SMS members to provide ethical guidance**

The Senior Management Handbook places an obligation on senior managers to play a leadership role, both in setting an example and providing guidance to subordinates in the area of professional ethics. This is discussed at length in Chapter 6 of the Senior Management Service Handbook.

It requires of them to have a thorough knowledge and understanding of the Code of Conduct as well as possess the managerial skills to promote and deal with ethical issues when these arise. It is also incumbent upon senior managers to avail themselves for the many training and development opportunities in the public service. However, the foregoing is largely dependent on the caliber of the senior managers who are appointed by the respective departments. Therefore, departments would be well placed when interviewing candidates for senior manager posts to subject such candidates to an assessment relating to the management of ethics. The foregoing will

impress upon the appointed candidates the significance of their complementary role in the promotion of professional ethics, besides their responsibility for their core functions.

## **7.5 Key Ethical Issues**

In spite of the efforts highlighted above, there are still ethical issues that continue to challenge the Public Service and all spheres of government at large.

### *The right Tone at the Top*

While members of the SMS are required to display the highest standard of ethical behavior and set an example to those reporting to them, it has come out in many workshops that the challenge of malpractice and deliberate disregard of prescripts is not at the ground level but at the top. This assertion is backed by the observation that escalating financial misconduct linked to irregular, unauthorized, wasteful and fruitless expenditure do not result in action taken or the recovery of money. In the Overview report on Completed Disciplinary Cases on Financial Misconduct, 2019/20 issued in December 2020, the PSC recommended that the EAs should hold the HODs/ Accounting Officers accountable for failure to enforce the consequence management required by the Public Finance Management Act and Treasury Regulations.

### *Conducting Business with the State*

Another ethical issue of concern relates to officials who conduct business with the state because that has been made a criminal offence. However, there are still officials who are found conducting business with the state despite the stringent measures that have been introduced like the sanction of a prison term of up to two years. There is a need for more awareness to be raised in this area.

### *Appointment irregularities*

It has been observed from the complaints reported to the PSC that appointment malpractice is still a phenomenon that poses a challenge to efficient and effective service delivery as people with little or no experience, technical skills and qualifications continue to be considered for appointment, particularly at the SMS level. Employees of government are encouraged to blow the whistle and report such irregular appointments to the PSC for investigation.



## CHAPTER 8: INSPECTIONS

## 8.1 Introduction

Inspections bring the PSC to the service delivery units located in communities across South Africa – that is, to the real public service in places such as police stations, hospitals, courts, prisons, schools and home affairs offices in localities across the country.

The inspections give the PSC the opportunity to see the practicalities of public administration and gain insights in what may go wrong and lead to poor service delivery.

The public service runs on the basis of standardised routines – there are policies and procedures to regulate all action. If these are implemented diligently, a level of stability and discipline is attained. Measures to improve efficiency and effectiveness, and to achieve a level of excellence, can then be built on this foundation. If the discipline is relaxed, things can deteriorate quickly.

To maintain a basic minimum level of service heads of service delivery units should be familiar with the policies and procedures in the same or a similar environment, and have the know-how to implement these policies and procedures diligently and humanely (also applying the Batho Pele Policy principle of “people first”).

## 8.2 Service Delivery Inspections conducted at the Mamelodi Hospital in Pretoria – Gauteng Department of Health: October 2019

<b>Problem statement</b>	<p>Following earlier service delivery inspections, the PSC over time observed negative media reports on poor service delivery at health centres in the Gauteng Province. This was epitomised by the media reports on 30 May 2019 regarding a 76-year-old patient who was allegedly chained to a steel chair at Mamelodi Hospital. In addition, the <i>Times Live</i> of 20 August 2019 reported that a newborn fell to his death at the Mamelodi Hospital after nurses allegedly refused to help his mother (Zimbabwean) who gave birth whilst standing.</p> <p>The PSC, therefore, deemed it an opportune time to conduct a dialogue with the hospital officials and promote the Constitutional Values and Principles (CVPs) governing public administration.</p>
<b>Objectives</b>	<p>The broad aim of the inspections was to verify if the Gauteng Department of Health implemented the PSC’s recommendations, which were made during earlier inspections; to conduct a dialogue with the hospital management and officials; and to promote the Constitutional Values and Principles (CVP) governing public administration.</p>
<b>Key findings</b>	<p>During the promotion of the CVPs, the hospital management informed the PSC of the difficulties it encounters in delivering health services and the progress made in improving the health services at the hospital. Key issues, which include, amongst others: issues of human resources management and related labour relations issues; equitable services to</p>

	<p>patients; public participation; use of resources; accountability, were highlighted during the discussions on CVPs. The following progress on the implementation of earlier PSC recommendations was reported by the hospital management during the dialogue:</p> <p><b>Improving hospital infrastructure</b></p> <ul style="list-style-type: none"> <li>• The hospital renovated unused wards in the old hospital. The newly renovated wards accommodate the psychiatric patients; and other wards are used as the medical wards.</li> <li>• The workspace for the workshop and office space for clinical technicians is now available.</li> <li>• The hospital is looking into expanding the neo-natal intensive care unit (ICU) and a 24-hours acute clinic, upon the completion of the renovations.</li> <li>• The National Department of Health is reviving plans for the hospital to have a Mother-Child Unit.</li> <li>• The hospital has undertaken several maintenance projects, which include the replacement of the old ventilation in the casualty and the neonatal wards.</li> <li>• The new oxygen points, medical air and suction systems were installed in the neonatal ward.</li> <li>• The hospital installed new electronic doors at the pharmacy, ICU, post-natal, neonatal and maternity wards, and in the main theatre.</li> <li>• New operating lights were installed in the main theatre and maternity theatre. Moreover, new equipment was installed in the main theatre.</li> <li>• The installation and upgrading of the hospital signage both inside and outside of the hospital.</li> <li>• The hospital installed and upgraded Closed-circuit Television (CCTV) and access control to the hospital.</li> <li>• The hospital is in the process of converting the “152 toilet flush master” to the new “FM 402 flush master” mechanism, cover seats; and replace damaged wall tiles.</li> <li>• The hospital purchased and installed a generator, to serve as back-up power when there is no electricity.</li> </ul> <p><b>Shortage of clinical and non-clinical staff</b></p> <ul style="list-style-type: none"> <li>• The hospital has submitted a motivation to the MEC and HoD, requesting approval for the filling of the additional posts in the hospital. The MEC and HoD approved the filling of these posts in the 2019/20 financial year.</li> <li>• A contractor was appointed to service all kitchen equipment.</li> </ul> <p><b>Actions taken as a result of the negative media reports</b></p> <p><b>a) Ill-treatment of the 76-year-old patient</b></p>
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	<ul style="list-style-type: none"> <li>• At the time of the PSC's visit to the hospital, the investigation was still in progress.</li> <li>• The MEC and HoD subsequently informed the PSC that the matter was resolved under the guidance of the South African Human Rights Commission and an amicable settlement was reached with the patient.</li> <li>• The hospital introduced an intensive programme to train employees on the 'Batho Pele Principles' and also to boost their morale to improve the employees' attitude when serving the patients.</li> </ul> <p><b>b) The ill-treatment of the Zimbabwean patient</b></p> <p>The hospital investigated the allegation of the Zimbabwean woman, who gave birth while standing. The investigation exonerated the accused employees from any wrongdoing. It was established through the investigation that the patient refused to follow the instructions given by the nurses. The nurses could not therefore use force against the patient.</p> <p><b>Functioning of the hospital board</b></p> <ul style="list-style-type: none"> <li>• The Chairperson of the Hospital Board indicated a lack of support by the Department to execute their duties optimally.</li> <li>• There is reluctance from the community to participate in meetings when the hospital wants to engage with community members. In this regard, the Chairperson of the Hospital Board enquired if there is a way in which the PSC can be of assistance to the hospital. The PSC Commissioner informed the Chairperson of the Hospital Board that the PSC has the Citizens' Forum Toolkit, which it uses to conduct stakeholder engagements. It was agreed that the PSC Commissioner and the Chairperson of the Hospital Board would have further discussion on this matter.</li> </ul> <p><b>Management of labour relations</b></p> <p>The Acting Chief Executive Officer (CEO) presented an overview of the management of labour relations at the Mamelodi hospital. The following was indicated:</p> <ul style="list-style-type: none"> <li>• The employees lodged 56 grievances from the 2017/18 to 2019/20 financial years. Of the grievances recorded, thirty (30) related to alleged unfair recruitment and selection processes.</li> <li>• Thirty-four (34) cases of general misconduct were recorded, during the same period. The two main transgressions related to insubordination and absenteeism (6 cases each).</li> </ul> <p>The main challenge for the management of labour relations was the slow rate at which appeals against disciplinary sanctions are finalised by the Office of the MEC. Six appeals are still outstanding. The PSC had the discussion with the MEC who indicated that a team is hard at work and he is hopeful that the backlogs on appeals will be cleared in the 2019/20</p>
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	<p>financial year. The PSC is closely monitoring the finalisation of appeals as it affects many hospitals.</p> <p><b>Emerging Issues</b></p> <ul style="list-style-type: none"> <li>• The acting CEO of the hospital informed the PSC that in the previous financial year, the hospital delivered more babies than Kalafong and Steve Biko hospitals combined but the resources allocated to the hospital are less as compared to the two afore-mentioned hospitals.</li> <li>• The acting CEO indicated that as much as concerted efforts have been made to address the earlier PSC inspection recommendations, the hospital was, however, still faced with several service delivery challenges such as: <ul style="list-style-type: none"> <li>✚ Shortage of both clinical and non-clinical staff members.</li> <li>✚ Over-crowding in casualty.</li> <li>✚ High staff turnover and slow rate of staff replacement due to underfunded organisational structure.</li> <li>✚ Few beds in all wards resulting in over-crowding.</li> <li>✚ Inadequate hospital infrastructure.</li> </ul> </li> </ul>
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### 8.3 Service Delivery Inspections conducted at Dr George Mukhari Academic Hospital in Ga-Rankuwa – Gauteng Department of Health: October 2019

<b>Problem statement</b>	<p>The PSC conducted unannounced inspections on service delivery at Dr George Mukhari Hospital on 2 May 2019. The following problems were identified by the PSC during the visit:</p> <ul style="list-style-type: none"> <li>• Abuse of hospital resources in that there was an unauthorised car wash (using hospital water) within the hospital premises.</li> <li>• Poor records management in that the patients' files were dumped at the basement and there were water leakages.</li> </ul> <p>The problems identified during the 2<sup>nd</sup> May 2019 inspections were not yet resolved when the PSC made a follow-up on 11 October 2019. For example, the leakages of pipes were not yet fixed and the health records remained unkempt in the basement. The PSC established that the hospital proceeded with the installation of shelves in the basement intended to hold and store the unkempt health records before they could repair leaking pipes in the same area, thus rendering the process fruitless.</p> <p>Subsequent to the unannounced inspections conducted at the hospital on 2 May 2019 and 11 October 2019, the negative reporting still continues and the PSC has noted the newspaper article by the African News Agency dated 20 October 2019, which reported 4097 patients who were awaiting surgery at George Mukhari Hospital.</p>
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<b>Objectives</b>	The broad aim of the inspections was to verify if the Gauteng Department of Health implemented the PSC's recommendations after findings were made during the 2 <sup>nd</sup> May and 11 <sup>th</sup> October 2019 inspections; and also to conduct a dialogue with the hospital officials and promote the Constitutional Values and Principles (CVPs) governing public administration.
<b>Key findings</b>	<p>During the promotion of the CVPs, the hospital management and the unions advised as follows:</p> <p><b>Surgical backlogs</b></p> <ul style="list-style-type: none"> <li>• The hospital management confirmed the surgical backlogs as reported in the media.</li> <li>• The hospital management reported that they had discussions with Legae, Odi, Jubilee and Brits Hospitals to devise strategies to reduce the surgical backlogs. Furthermore, it was reported that arrangements were underway with Steve Biko Hospital to provide chemotherapy for patients with breast cancer.</li> <li>• Although there was an appreciation for the plans in place, it was acknowledged that these plans should translate into health outcomes to ensure that the needs of the communities are addressed. Thus, the emphasis was put on the necessity to expedite the process.</li> <li>• The unions expressed concern that the surgical delays are costly for the patients, as they have to go back home without receiving the required health services and then return, thus incurring additional transport costs, which impacts negatively on the patients.</li> </ul> <p><b>Labour relations</b></p> <p>There was consensus that problem-solving amongst labour and management is worrying. There seems to be a challenge in terms of the understanding and application of the grievance procedures, to the extent that cases are referred to the MEC's Office before all internal processes are exhausted. This has the potential to create disharmony in the workplace and negatively affect the delivery of health services.</p> <p><b>Management and administration of the hospital</b></p> <ul style="list-style-type: none"> <li>• There was consensus from both labour unions and the management of the hospital that the functioning of the facility is not at the required level.</li> <li>• Although the hospital management acknowledged that there were some pockets of excellence in the hospital, there is however a need to strengthen the areas related to human resources management, e.g. the implementation of recruitment and selection policies and training and development plans.</li> <li>• It was agreed that the management in the hospital is important as it ensures that standards are set, performance is measured and the</li> </ul>

	<p>necessary corrective actions are taken to facilitate the delivery of health services and address the needs of communities.</p> <ul style="list-style-type: none"> <li>• Thus, if officials commit errors, corrective actions are speedily taken to avoid reputational damage to the hospital.</li> </ul> <p><b>Overcrowding in the hospital and its impact on patient waiting times</b></p> <ul style="list-style-type: none"> <li>• The hospital management advised that the societal ills, for example violence emanating from drug addiction, lead to overcrowding, which negatively impacts the delivery of quality health services rendered at the hospital. Overcrowding at the hospital causes problems for both patients and employees in that— <ul style="list-style-type: none"> <li>○ waiting times are longer than the times set in the service standards;</li> <li>○ medical errors often occur, and</li> <li>○ high patient mortality is experienced.</li> </ul> </li> <li>• Patient waiting time is a reflection of the responsiveness of the health system and the set standard was not achieved due to overcrowding.</li> <li>• The hospital management indicated that the catchment area of the hospital is large, thus affecting the doctor-patient-ratio adversely. However, there was consensus that there is a need to improve on this.</li> <li>• Although the hospital cannot turn these patients away, it was the view during the dialogue that a multi-pronged strategy was required. This should include other structures of government to assist with the scourge of substance abused in the affected areas.</li> <li>• It was agreed that several government departments and non-government organisations (NGO) should work together in this regard.</li> </ul> <p><b>Health records</b></p> <ul style="list-style-type: none"> <li>• There was a concern regarding the health records dumped in the basement where there were water leakages. According to the National Health Act, 2003, sections 14, 15 and 17, the Health establishment must ensure that health records are protected, managed and kept confidential.</li> <li>• The inaccurate filing system also impacts negatively on medico-legal claims and the Department is struggling to bring down its litigation cost. Proper record management cannot, therefore, be overemphasised.</li> </ul> <p><b>Hospital infrastructure</b></p> <ul style="list-style-type: none"> <li>• The PSC noted that the hospital building is old and some sections require maintenance.</li> <li>• The PSC emphasized the urgency of addressing the hospital infrastructure to comply with the provisions of the National Health Act, 2003. The Act stipulates that a health establishment and their grounds must meet the requirements of the building regulations i.e. compliance certificate and a maintenance plan.</li> </ul>
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	<ul style="list-style-type: none"> <li>• A progress report or project implementation plan on the steps taken to address the deficiencies of the building, including leaking pipes, would serve as a first step to indicate that the matter is receiving the necessary attention.</li> </ul> <p><b>Cleanliness and hygiene</b></p> <p>According to the National Health Act, 2003, health establishments must monitor the performance of cleaning services and take corrective measures where applicable. There was an acknowledgement by both management and labour unions that the hospital was indeed dirty. Some of the filthiness could be attributed to the hospital employees (by mere observation of the type of dirt) and littering to the members of the public. This suggests that shared responsibility by both labour unions and management is necessary to maintain cleanliness at the hospitals.</p> <p><b>Quality Assurance</b></p> <p>The hospital team mentioned that officials are not encouraged to attend customer care courses, which are deemed central to the improvement of quality health care. Hospital management should comply with the Quality assurance policy.</p>
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#### 8.4 Service Delivery Inspections conducted at Tembisa Hospital in Kempton Park – Gauteng Department of Health: November 2019

<b>Problem statement</b>	The PSC noted the issues emanating from media reports regarding poor service delivery at Tembisa Hospital. Including overcrowding in the maternity ward, resulting in the death of neonates. The PSC decided to visit the hospital to promote and have a dialogue on the CVPs with the hospital employees.
<b>Objectives</b>	The main aim was to ascertain the level of understanding of the CVPs. The hospital management and the labour unions attended the dialogue; and the discussions were frank and open.
<b>Key findings</b>	<p>The following findings were made by the PSC during the dialogue:</p> <p>The CEO of the hospital indicated that the hospital is classified as a Tertiary Hospital with 840 beds. The current resources allocated to the hospital do not support the classification of the hospital. The discussions revealed challenges in respect of the hospital infrastructure; shortage of critical skills; overcrowding and the high-turnover rate of critical employees.</p>



	<p><b>Overcrowding</b></p> <ul style="list-style-type: none"> <li>• The hospital confirmed the media reports regarding the overcrowding.</li> <li>• The population of Tembisa has grown significantly whereas the hospital infrastructure has remained the same.</li> <li>• There is no other relieving hospital around Tembisa to alleviate overcrowding in the hospital.</li> <li>• The hospital has high neonatal admissions; walk-in patients (referral systems not working because there is no district hospital around Tembisa); high inflow of the drug-induced-patients; and a high number of foreign nationals who are not documented.</li> </ul> <p><b>Hospital infrastructure</b></p> <ul style="list-style-type: none"> <li>• The PSC noted that the hospital building is old. The hospital was built in 1972.</li> <li>• The hospital design was not meant for a high number of patients.</li> <li>• There is a serious spatial constraint to extend or build a new hospital due to the dolomitic nature of the land.</li> <li>• The hospital does not have a neonatal unit.</li> <li>• There is no proper space to store Intensive Care Unit (ICU) equipment.</li> <li>• The hospital infrastructure also compromises the treatment of patients in that TB patients are mixed with non-TB patients.</li> </ul> <p><b>High turn-over of doctors and nurses</b></p> <ul style="list-style-type: none"> <li>• The hospital experienced a high turnover of doctors and nurses.</li> <li>• The employees feel unappreciated due to difficult working conditions.</li> <li>• The hospital has 113 approved unfunded posts.</li> <li>• Overtime is often used to ensure continuity in rendering health services.</li> </ul> <p><b>Lack of critical beds</b></p> <p>The hospital mentioned the lack of critical beds, e.g. beds used in the ICU as one of the challenges. For example, it revealed that the casualty department is sometimes used for ICU cases. This, according to the hospital management impacts negatively on the intake of the casualty patients.</p> <p><b>Safety of staff and patients</b></p> <p>The safety of employees and patients is one of the challenges that the hospital raised. It was indicated that psychiatric patients assault nurses and patients. The CEO indicated that the hospital does not have resources to protect employees from psychiatric patients.</p>
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## 8.5 Service Delivery Inspections at Cecilia Makiwane hospital (Psychiatric Ward)

<b>Problem statement</b>	Media reports alleged that the Cecilia Makiwane (CMH) Mental Health Unit was in disrepair with broken windows, abandoned medical equipment and exposed electrical wiring, which posed a danger to patients, staff and visitors. The media report indicated that the institution did not have Psychiatrists on its establishment since December 2018 and security was virtually non-existent.
<b>Objectives</b>	<ul style="list-style-type: none"> <li>• To assess the availability of adequate safety and security measures at the hospital</li> <li>• To assess the hospital's infrastructure and facilities</li> <li>• To propose measures to address the identified challenges and monitor the implementation thereof</li> <li>• To determine the level of compliance with the <i>Batho Pele</i> requirements by the facility</li> </ul>
<b>Key findings</b>	<ul style="list-style-type: none"> <li>• The old building is in total disrepair and have not been maintained for years.</li> <li>• Windows are broken, the walls peeling off, and there are exposed electrical wires in the passages posing serious threat to staff, patients, and citizens.</li> <li>• Both male and female psychiatric wards (25 beds each) were not fully occupied, but were cleanly maintained.</li> <li>• In the psychiatric ward, at certain times of the day, in-patients were taken to the two courtyards to allow them to socialize with each other, play and relax outside (therapeutic measure).</li> <li>• The secluded areas were not environmentally friendly. The design is similar to apartheid secluded prison cells and such structures are not good places for healing and rehabilitation.</li> <li>• While the secluded areas were provided with fixed cameras to monitor operations, none of those cameras were in a working condition. The implications of this are that staff would not be in a position to monitor the well-being of patients while in secluded area.</li> <li>• Patient records were kept in a safe and secure place. However, the documents were not properly filed as some lay around unattended.</li> <li>• There were designated nursing staff, social workers and a therapist in the Unit, but there was no full-time Psychiatrist (sessional doctor).</li> </ul>
<b>Recommendations</b>	<ul style="list-style-type: none"> <li>• The Seclusion Wards should be demolished and replaced with environmentally friendly rooms that are provided with all the necessary equipment for utilization by patients.</li> <li>• Funds should be set aside to fix the dysfunctional camera in the restraint or seclusion room in order for staff to be able to monitor the movements of patients detained in that room.</li> <li>• Whilst waiting for a long-term solution for the seclusion rooms, mattresses/beds and other safety equipment should be installed in these rooms.</li> </ul>

	<ul style="list-style-type: none"> <li>The building requires a major face-lift as it reflects years of lack of maintenance and the terrain outside is untidy and dirty.</li> </ul>
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## 8.6 Inspections at the Nerina House Nurses' Home Frere Hospital

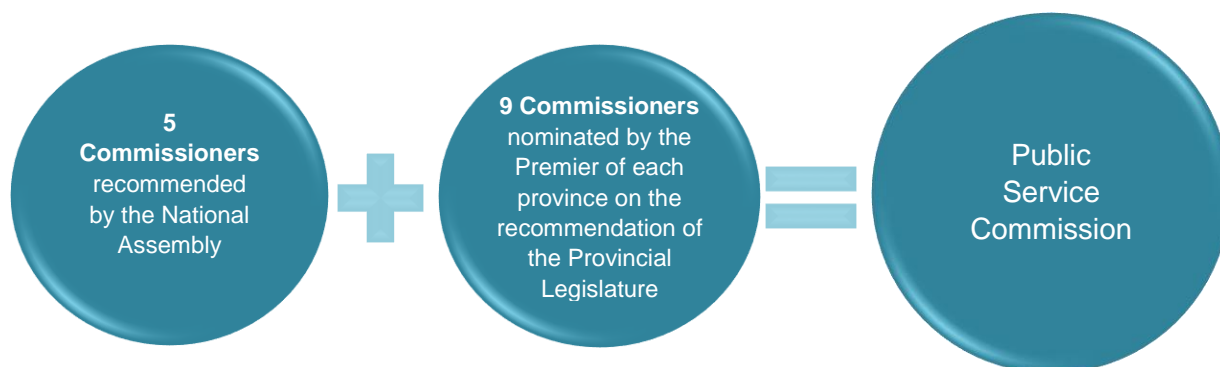
<b>Problem statement</b>	Nerina House fell into disrepair due to management neglect and lack of maintenance over several years. The lack of a firm hand in the residence administration simply allowed students to turn the building into a rubbish dump; cleaning staff neglected their duties, and security of the facility was simply non-existent.
<b>Objectives</b>	This inspection was done as part of the inspection of the psychiatric ward at Cecilia Makiwane Hospital – see objectives above.
<b>Key findings</b>	<ul style="list-style-type: none"> <li>The hostel is inhabitable and generally a physical and health hazard to both student nurses and their visitors.</li> <li>Heaps of uncollected waste pile alongside the entrance to the hospital. The first and second floors of the hostel emit a pungent smell, accompanied by buzzing flies and maggots.</li> <li>Waste was last collected in January 2019 by the municipality.</li> <li>The state of the infrastructure of the building is dire and the building has not been maintained for a long time and requires a face-lift.</li> <li>Numerous burglaries took place in the hostel due to lack of visible security. Laptops, cell phones, clothing and other accessories of the students were seized by criminals in those incidents.</li> <li>A security guard was dispatched by the hospital on the day of the inspection upon learning of the PSC's inspection.</li> </ul>
<b>Recommendations</b>	<ul style="list-style-type: none"> <li>The Eastern Cape Department of Health (ECDoH) should, as a matter of urgency, consider closing down Nerina House Nurses' Home while alternative accommodation for students is sought by the Lilitha Nursing College</li> <li>The ECDoH should set aside emergency funds to cater for the refurbishment of Nerina House Nurses' deteriorating (ageing) infrastructure. An action plan in this regard should be developed in conjunction with the Department of Public Works.</li> <li>The ECDoH, should apply an aggressive approach in improving the safety of students and employing security guards in the premises to prevent unauthorized personnel from entering the building. Access control should be strengthened to deter criminal elements from committing further burglaries in the premises.</li> </ul>

## **CHAPTER 9: PSC's GOVERNANCE AND STAKEHOLDER ENGAGEMENT**

## 9.1 Introduction

The PSC is an independent, impartial constitutional institution, which must exercise its powers and perform its functions without fear, favour or prejudice. The Constitution stipulates that there is a single PSC for the Republic of South Africa, consisting of 14 members appointed by the President. Five of the Commissioners are appointed on the recommendation of the National Assembly and 9 are appointed from each of the nine provinces, after nomination by the Premier of the province on the recommendation of the Provincial Legislature.

The diagram below illustrates the single PSC for the Republic of South Africa:



The PSC started the 2019/20 financial year with 13 Commissioners and a vacancy in the Eastern Cape Province. Two Commissioners' terms of office expired on 24 and 30 April 2019, respectively at the national office and Mpumalanga Province. Therefore, from 1 May 2019 the PSC had 11 Commissioners.

On 1 August 2019 a new commissioner for the Eastern Cape Province assumed duty, bringing the complement of Commissioners to 12. On 1 September 2019, the Commissioner for KwaZulu-Natal Province resigned. The complement remained 11 until the end of the 2019/2020 financial year.

Below is a table of the complement of the PSC during the 2019/2020 financial year:

Commissioners recommended by the National Assembly		Commissioners nominated by the Premier of each province	
1. Adv RK Sizani (Chairperson)		6. Eastern Cape	Ms LV Sizani (effective 1 August 2019)
2. Mr BM Mthembu (Deputy Chairperson)		7. Free State	Dr WH Boshoff
3. Ms SS Nkosi (until 24 April 2019)		8. Gauteng	Mr MH Seloane
4. Ms CP Nzimande		9. KwaZulu-Natal	Dr MP Sithole (Until 31 August 2019)
		10. Limpopo	Mr TG Mashamba
5. Dr TB Luthuli		11. Mpumalanga	Mr DS Mkhwanazi (Until 30 April 2019)
		12. Northern Cape	Ms MA Marais-Martin
		13. North West	Dr MS Leballo
		14. Western Cape	Mr LJ Goosen

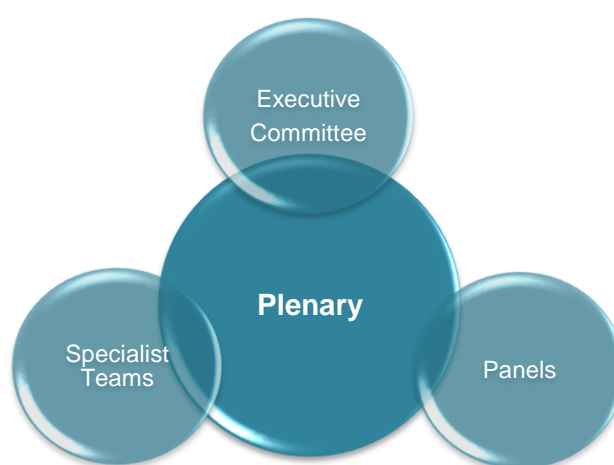
In order to ensure that the vacancies did not affect the PSC's work in the provinces where there was a vacancy for a Commissioner, the following Commissioners were assigned caretaker Commissioners for the respective Provinces:

Name of Province	Caretaker Commissioner	Period
Eastern Cape	Ms CP Nzimande	1 February to 31 July 2019
Mpumalanga	Mr BM Mthembu	1 May 2019 to 31 March 2020
KwaZulu-Natal	Ms CP Nzimande	1 September 2019 to 31 March 2020

## 9.2 Governance Structure

The PSC has, in terms of Section 11 of the PSC Act, 1997, issued Governance Rules of the PSC that were gazetted on 30 March 2015. These Governance Rules are comprehensive and define the role and functions of Commissioners and provide for various governance structures within the PSC. Furthermore, the PSC gazetted the delegations of powers to provincially based Commissioners and assignments of work to Commissioners on 19 June 2015 to provide for the Commissioners to execute certain functions on behalf of the PSC as a single PSC.

The following figure illustrates the governance structures of the PSC:



### 9.2.1 Plenary

The Plenary is the highest decision making body of the PSC and is constituted by all the 14 Commissioners or the number of the Commissioners on the PSC complement at the time of the meeting. All policy decisions of the PSC are taken at Plenary. Plenary meetings are held at least once every quarter. During the period under review, the PSC held four (4) Plenary meetings and attendance was as follows:

Name of Commissioner	May 2019 Plenary	Aug 2019 Plenary	Nov 2019 Plenary	Mar 2020 Plenary	Total Meetings Attendance
Adv RK Sizani	1	1	1	1	4/4
Mr BM Mthembu	1	0	1	1	3/4
Ms CP Nzimande	1	1	1	1	4/4
Dr TB Luthuli	1	1	1	1	4/4
Mr MH Seloane	1	1	1	1	4/4
Dr WH Boshoff	1	1	1	1	4/4
Ms MA Marais-Martin	1	1	1	1	4/4
Dr MP Sithole* (31/08/19)	1	1	N/A	N/A	2/2
Mr TG Mashamba	1	1	1	1	4/4
Dr MS Leballo	1	1	1	1	4/4
Mr LJ Goosen	1	1	1	1	4/4
Ms LV Sizani	N/A	1	1	1	3/3
<b>Total</b>	<b>11 out of 11</b>	<b>11 out of 12</b>	<b>11 out of 11</b>	<b>11 out of 11</b>	

\* Resigned

### 9.2.2 Specialist Teams (ST)

In order to execute the PSC's mandate, subcommittees are established in the form of Specialist Teams. The Specialist Teams provide strategic oversight of the key performance areas of the PSC and as such assess the effectiveness of work produced by the PSC. Specialist Teams must take decisions and make findings and recommendations on behalf of the PSC in line with the delegations framework. The Specialist Team meetings precede all Plenary meetings of the PSC and they formulate recommendations to be tabled for approval in the Plenary meetings. The Specialist Teams cooperate in the implementation of the programmes of the PSC and during the 2019/2020 financial year, all the Specialist Teams continued to be part of the implementation of the Constitutional Values and Principles (CVPs), which resides under the Monitoring and Evaluation Specialist Team. For the period under review, the Specialist Teams were constituted as follows:

Name of Specialist Team	Assigned Members
<b>Integrity &amp; Anti-Corruption</b>	1. Ms SS Nkosi (Convener until 24 April 2019)
	2. Mr MH Seloane (Convener from 25 April May 2019)
	3. Dr WH Boshoff
	4. Mr TG Mashamba
	5. Mr LJ Goosen
<b>Leadership and Management Practices</b>	1. Ms MA Marais-Martin (Convener)
	2. Dr TB Luthuli
	3. Mr BM Mthembu
	4. Ms LV Sizani (Member effective 1 August 2019)
<b>Monitoring &amp; Evaluation</b>	1. Dr MP Sithole (Convener until 31 August 2019)
	2. Dr MS Leballo (Convener effective 1 September 2019)
	3. Ms CP Nzimande
	4. Adv RK Sizani
	5. Mr DS Mkhwanazi (Member until 30 April 2020)

**Working committees** of the PSC in the form of panels/clusters are established to deal with decision-making in respect of investigations in terms of section 196 (4) (f) of the Constitution, in line with the Rules and the delegations framework. There are four panels/clusters that were tasked with the decision-making on all grievance and complaint cases lodged with the PSC and these were constituted as follows:

Panel/Cluster	Commissioners/Office
Panel 1 (National)	All Commissioners based at the National Office
Panel 2:	Commissioners based in Gauteng, Mpumalanga and North West
Panel 3: Cape Cluster	Commissioners based in Eastern , Western and Northern Cape
Panel 4	Commissioners based in Limpopo, Free State and KwaZulu-Natal

The establishment of the structures has facilitated a positive working environment especially in speeding up the backlog on grievance cases.

### 9.2.3 Executive Committee (EXCO)

The **Executive Committee** is constituted by the Chairperson, Deputy Chairperson, nationally-based Commissioners, Conveners of Specialist Teams and one provincially-based commissioner attending on a six-month rotational basis. EXCO's responsibility is to monitor the implementation of the decisions of Plenary and meets at least once a month. Furthermore, EXCO makes operational decisions within the parameters of the policy framework of the PSC and takes decisions regarding *ad hoc* projects based on recommendations submitted to it by the Director-General. As a result, during the year under review only 3 out of the 4 scheduled EXCO meetings were held in April, September 2018 and October 2019. The EXCO meeting scheduled to take place in February 2020 was cancelled due to a change in the programme of the PSC. The table below contains the details of attendance of EXCO meetings by the assigned Commissioners.

Commissioner	Position/Status	Meetings attended
Adv RK Sizani	Chairperson	3 out of 3
Mr BM Mthembu	Deputy Chairperson	2 out of 3
Ms CP Nzimande	Nationally-based Commissioner	3 out of 3
Dr TB Luthuli	Nationally-based Commissioner	2 out of 3
Dr MP Sithole	Convener (until 31 August 2019)	1 out of 1
Ms MA Marais-Martin	Convener	3 out of 3
Mr MH Seloane	Convener	2 out of 3
Mr LJ Goosen	Provincially-based Commissioner (Jan-June 2019 period)	1 out of 1
Ms LV Sizani	Provincially-based Commissioner (July-December 2019 period)	1 out of 2

### 9.2.4 Strategic Planning Session of the Commission 2019

In terms of Clause 5 of the Governance Rules of the PSC, the PSC is required to give direction for overall strategic planning and to hold strategic planning sessions to, amongst others, reprioritise



programs to align them with demands on the implementation of the mandate of the PSC. To this end, the PSC held its strategic planning session, at its premises in Arcadia, Pretoria, during the period 15 to 17 July 2019 under the theme “**Strengthening the PSC’s impact in building an Ethical and Values-Driven Public Service**”. All the Commissioners and the Executive Management attended the strategic planning session.

Following the adoption of the PSC strategic planning session report, the PSC developed its Strategic Plan for the 2020/21 to 2024/25 Medium Term Strategic Framework in line with National Treasury Regulations. The PSC also developed its Annual Performance Plan for the 2020/21 financial year based on the Strategic Plan, which were both tabled in Parliament in March 2020.

The session was graced by the Minister for Public Service Administration (MPSA), Mr Senzo Mchunu, whose speech focused on the following areas:

- Public Service Wage Bill
- Reconfiguration of Government
- Strengthening of the PSC’s impact in building an ethical and values driven Public Service

The Vice Chancellor of the University of Johannesburg, Professor Tshilidzi Marwala, also attended the Strategic Planning Session and his input focused on the 4<sup>th</sup> Industrial Revolution and the Public Service.

### **9.2.5 Key policy decisions taken by the Plenary of the PSC**

The following were the key policy decisions taken by Plenary in order to enhance the performance under the key performance areas of the PSC:

- Comprehensive Review of the Complaints Rules and the handling of complaints cases
- Complete Redrafting of the PSC’s Founding Legislation as part of an Institutional Practice Review
- Extension of the PSC’s mandate into local government and the state-owned entities: Due to budgetary cuts and financial constraints, the PSC will not pursue the matter to extend its mandate to cover local government and SOEs
- Guide on the induction of Executive Authorities and Heads of Department: The PSC will henceforth, at the beginning of each Administration and Parliament, conduct induction of the Executive, HoDs and Members of Parliament and the Provincial Legislatures
- Air travel: All Commissioners will travel economy class

### **9.3 Engagements of the PSC/ Interface with stakeholders of the PSC**

In the execution of its Constitutional mandate and in line with its stakeholder management strategy, the PSC interfaces and engages with various stakeholders including, amongst others, the following key stakeholders:

- The Executive: President, Cabinet Ministers, Premiers and Members of Executive Councils

- Legislatures: Parliament (National Assembly & National Council of Provinces) and the Provincial Legislatures
- National and Provincial Departments
- Institutions Supporting Democracy/Constitutional Bodies
- Strategic Partners e.g. Academia, Non-Governmental Organisations, Professional Bodies etc.
- Consultative Forums: FOSAD, MINMECs
- Organised Labour: PSCBC, Employee Organisations

The following section discusses the various interactions the PSC held in the year in review.

### 9.3.1 Interactions with Parliament and the Provincial Legislatures

The PSC is accountable to the National Assembly and interacts with Parliament and the Provincial Legislatures regularly, reporting on its activities and the performance of its functions as required by sections 196(4)(e) and 196(6) of the Constitution. The PSC conducts evidence-based research, monitoring and evaluation involving the gathering and collation of qualitative and quantitative data on public administration and government's compliance with the Constitutional Values and Principles and produce reports to assist the Legislatures to execute their oversight function. Therefore, the PSC's engagements and interactions with Parliament and the Provincial Legislatures are aimed, not only at fulfilling accountability requirements, but also to strengthen Parliamentary Committees to execute their oversight function over the Executive and Departments.

During the 2019/20, the PSC held **79** engagements with its legislature stakeholders as compared to **51** and **37** engagements in the 2017/2018 and 2018/19 financial years respectively. Eleven (**11**) of the 79 engagements were held with Parliamentary Committees and stakeholders whilst **68** engagements were held with the Provincial Legislatures. **A huge improvement has been observed in the 2019/20 financial year in engagements with provincial legislatures.**

At provincial level, the PSC interacted and engaged with provincial legislatures on a minimum of 5 occasions across all provinces. Traditionally, Provincial Commissioners are invited to Provincial legislatures for various briefings. **Tables 19 & 20** below provide the details of the engagements/interactions the PSC held with Parliament and the Provincial Legislatures respectively.

*Table 19: Engagements with Parliament (National Assembly & National Council of Provinces)*

Date	Name of Committee	Purpose of engagement	Strategic issues raised by the Committee/Comments
02/07/2019	Portfolio Committee (PC) on Public Service and Administration as well as Planning, Monitoring and Evaluation (PSA/PME)	Briefing on PSC's Annual Performance Plan 2019/20 financial year and the budget.	<ul style="list-style-type: none"> <li>• The adequacy of the PSC's capacity to execute its Constitutional mandate. Is the PSC adequately resourced in terms of staff composition?</li> <li>• Extension of the PSC mandate beyond the two spheres of government to include local government and public entities</li> <li>• The need for the PSC to be visible during service delivery protests</li> </ul>

Date	Name of Committee	Purpose of engagement	Strategic issues raised by the Committee/Comments
			<ul style="list-style-type: none"> <li>The need for a proper workshop for the PC on the work of the PSC was identified</li> </ul>
21/08/2019	PC on PSA/PME	Briefing on First Quarter performance of 2019/20 performance period.	<ul style="list-style-type: none"> <li>The PC noted the PSC's first quarter performance</li> <li>The filling of the vacancies at National Office and in Mpumalanga</li> </ul>
11/09/2019	PC on PSA/PME	Presentation on the evaluation of the effectiveness of the PMDS in the public service.	<ul style="list-style-type: none"> <li>Sampling criteria used by PSC to select the 6 departments limits the coverage across the country. PSC to consider a broader sample that covers the entire provinces</li> </ul>
09/10/2019	PC on PSA/PME	Budget Review and Recommendations Report (BRRR) process – Presentation of PSC annual report for the 2018/19 period.	<ul style="list-style-type: none"> <li>The PSC raised a concern that the administrative set-up of being supported by a public service department hampers its independence and integrity as an independent institution supporting democracy</li> <li>PSC recommendations should be legally binding and implementation should be enforceable through legislation.</li> <li>The PSC requested to evaluate the impact of transfer or movement of Accounting Officers from one department to another during a Cabinet reshuffle or on account of any reason on performance in the public service.</li> </ul>
06/11/2019	PC on PSA/PME	Briefing on the nature and extent of contract appointments in the public service.	<ul style="list-style-type: none"> <li>Consideration should be given to the need for a standardized fixed contract limit across the public service</li> </ul>
06/11/2019	Standing Committee on Appropriations (SCOA)	PSC comment on 2019 Medium Term Budget Policy Statement (MTBPS).	<ul style="list-style-type: none"> <li>SCOA proposed that the PSC should monitor departments' progress towards vision 2030 of the NDP to determine what could be done strategically to move towards achievement of the vision</li> </ul>
20/11/2019	PC on PSA/PME	Presentation on monitoring of the Financial Disclosure Framework in the public service.	None
05/02/2020	PC on PSA/PME	Workshop on the mandate and function of the PSC, and the proposed intervention measures in an effort to strengthen the institution.	<ul style="list-style-type: none"> <li>The importance for the PSC to formulate clear recommendations enabling Parliament to act on them.</li> <li>Whether the PSC has considered extension of its powers to include appointment of senior public servants (Senior Managers and/or Accounting Officers) as suggested by the Ad Hoc Committee on Review of Chapter 9 and associated institutions (Kader Asmal Report) of 2007.</li> <li>How does the PSC address the constitutional challenge of being unable to make inroads in Local Government? Whether this challenge should be addressed through legislative reform.</li> </ul>

Date	Name of Committee	Purpose of engagement	Strategic issues raised by the Committee/Comments
			<ul style="list-style-type: none"> <li>What is the PSC doing to safeguard its independence? How is it dealing with perceived corruption and/or nepotism?</li> </ul>
12/02/2020	Select Committee on Transport, Public Service & Administration, and Public Works & Infrastructure (National Council of Provinces)	Briefing on the PSC annual report for 2018/19 year.	<ul style="list-style-type: none"> <li>Constitutional accountability of the PSC to the NCOP – there is nothing in the Constitution about PSC's accountability to NCOP. Committee will seek Parliament's legal opinion to clarify the relationship of NCOP to the PSC.</li> <li>Effectiveness of the PSC recommendations: Does the PSC want more powers to be able to deal with transgressors?</li> </ul>
26/02/2020	PC on PSA/PME	Presentation of the Second (2 <sup>nd</sup> ) and Third (3 <sup>rd</sup> ) Quarter performance for the financial year 2019/2020	<ul style="list-style-type: none"> <li>The promotion of the Code of Conduct by the PSC can contribute to the reduction of corruption and maladministration.</li> <li>Recommendation was made for the PSC to conduct a study on negligence by health professionals in hospitals and the state of the public health system.</li> </ul>
04/03/2020	PC on PSA/PME	Briefing on the Guide on Governance Practice for Executive Authorities (EAs) and HoDs.	<ul style="list-style-type: none"> <li>PSC mandate with regard to appointment of special advisors to EAs.</li> <li>What is the relationship between the PSC and the NSG with reference to professionalizing the public service?</li> <li>There is a need for the PSC to conscientise the EAs on implications of long suspensions of staff particularly HoDs</li> </ul>

The PSC has interacted mainly with the PC on PSA/Planning, Monitoring and Evaluation because the PSC reports to Parliament through this Committee. In addition, the PSC has also engaged the SCOA and the Select Committee on Transport, Public Service & Administration and Public Works & Infrastructure in the NCOP. The Select Committee has indicated that henceforth the PSC should also account to it because of its work across the provinces.

Table 20: Engagements with the Provincial Legislatures

Province	Date	Name of Committee/ Stakeholders	Purpose of engagement and issues raised
Eastern Cape	04.06.2019	Office of the Premier (OTP): EC Provincial Legislature	PSC invited to present a Guide on Governance Practice for EAs and HoDs during the induction workshop for the newly appointed members of the Executive Council and Heads of Departments (HoDs).
	31.07.2019	Office of the Premier (OTP)	Introduction of the PSC's newly appointed Commissioner for the Province to the Premier and the Executive Council.
	05.09.2019	Office of the Premier (OTP)	PSC invited to partake at the launch of the Public Service Month.
	11.06.2019	OTP Portfolio Committee	PSC presentation on the Remuneration of HoDs in the Province
	23.10.2019	Speaker of the EC Provincial Legislature	PSC participated in the ECPL "Taking Legislature to the People", an annual programme.

	01.11.2019	Office of the Premier (OTP)	Dialogue session of the EC Government and social partners. PSC invited to contribute to the dialogue.
	26.11.2019	PC on Transport: EC Legislature	PSC presented its investigative report on Irregular Appointments and Procurement at the EC Department of Transport.
	03.12.2019	Speaker of the EC Provincial Legislature	PSC presented its report on Investigation into allegations of irregular appointments and procurement at the EC Department of Transport.
	25.02.2020	Chairperson of the PC on Transport	PSC presented an update on the litigation and review of the PSC report by staff of the Department of Transport implicated in the report.
	<b>Total Engagements: 9</b>		
Free State	22.05.2019	Free State Legislature	PSC invited to the swearing in of the Free State Members of the Legislature, nomination and election of the Speaker, Deputy Speaker and the Premier of the FS Province.
	12.06.2019	Free State Legislature	Induction workshop for the newly appointed Members of the FS Provincial Legislature. PSC presented its mandate and functions.
	02.07.2019	Free State Legislature	PSC invited to be a guest at the opening of the Legislature.
	11.07.2019	Free State Legislature	PSC attended as a guest during the Budget Vote for the Department of Health.
	15.10.2019	Free State Legislature	PSC presentation on investigation into alleged financial irregularities, financial misconduct and fraud investigated during 2018/19 financial year.
	04-10.03.2020	PC on Public Accounts and Finance: FS Legislature	PSC invited to the public hearings on investigations into slow response time, non-implementation of PSC recommendations, 30-day payment of service providers, and initiation of disciplinary cases relating to financial misconduct by various departments.
	<b>Total Engagements: 6</b>		
Gauteng	05.07.2019	Oversight Committee on the Premier's Office and the Legislature (OCPOL)	PSC invited to a committee where Legislative Researchers presented 4 <sup>th</sup> quarter performance for the Office of the Premier and Gauteng Legislature for 2018/19 financial year, as well as the Budget Vote 1 and 2 for 2019/20 financial year
	11.07.2019	OCPOL	PSC invited to participate during presentation by Office of the Premier and Gauteng Legislature on their 4 <sup>th</sup> Quarter performance for 2018/19 period, as well as the Budget Vote 1 & 2 for 2019/20 financial year.
	12.09.2019	Chair of Chairpersons' Committee: GPL	Presentation on Quarterly Review and strategic planning session.
	07.10.2019	SCOPA	PSC presented on the investigation into alleged financial irregularities, financial misconduct and fraud investigated during 2018/19 financial period.
	12.11.2019	OCPOL	Consideration of annual reports for 2018/19 financial year, and second quarter performance report for 2019/20 period for both the Office of the Premier and the Legislature
	07.02.2020	OCPOL	PSC invited to the Committee Researchers session on Annual Reports for 2018/19 and Third Quarter performance report for 2019/20 period.
	14.02.2020	Finance Portfolio Committee: GPL	PSC requested to make input on the 30-day payment of service providers in Gauteng Province.

	21.02.2020	OCPOL	PSC invited as the stakeholder to attend the meeting on Third Quarterly performance for 2019/20 period for both Office of the Premier (OTP) and Gauteng Provincial Legislature
	12.03.2020	Chair of Chairpersons' Committee	Presentation on Q3 performance of the Province.
	<b>Total Engagements: 9</b>		
KZN	04.06.2019	KZN Provincial Legislature	PSC presented its work to the newly appointed Members of the Legislature and the Guide on Governance Practice for EAs and HoDs.
	22.08.2019	Chairpersons of Committees: KZN Provincial Legislature	Workshop where the PSC presented on its role and mandate in supporting the Provincial Legislature to execute its oversight mandate.
	03.09.2019	PC on Human Settlements: KZN Provincial Legislature	Presentation on the profile of the Department of Human Settlements.
	13.09.2019	PC on Agric. and Rural Development: KZNPL	Presentation on the profile of the Department of Agric. and Rural Dev for the five financial years, 2013/4 – 2017/18.
	22.10.2019	SCOPA: KZNPL	Public hearings on the KZN Department of Education.
	25.10.2019	SCOPA: KZNPL	Public hearings on KZN Department of Health. PSC invited through its oversight mandate.
	<b>Total Engagements: 6</b>		
Limpopo	24.07.2019	Speaker: Limpopo Provincial Legislature	Meeting to introduce the PSC to the Speaker and deliberate on work relationship between the two offices (PSC and Speaker's office).
	01.08.2019	Office of the Premier (OTP)	Discussions on working relations between the Office of the Premier and the PSC.
	05.08.2019	Limpopo Provincial Legislature	Presentation on Ethics to the entire Legislature support staff.
	06.08.2019	Office of the Premier (OTP)	PSC presented on Ethics within the public service
	09.10.2019	PC on Public Administration: LPL	Presentation on the mandate and functions of the PSC.
	24.10.2019	Office of the Premier (OTP)	PSC invited to the Provincial SMS Summit to present and promote CVPs.
	07.11.2019	Limpopo Provincial Legislature (LPL)	PSC invited to present on Guide for EAs and HoDs, CVPs, and Ethics Management in the public service
	19.02.2020	Office of the Premier (OTP)	Meeting to resolve pending issues between the two institutions relating to NACH stats.
	12.03.2020	Office of the Premier (OTP)	PSC invited to OTP's Anti-corruption Workshop to present on Ethics and CVPs
	<b>Total Engagements: 9</b>		
Mpumalanga	22.05.2019	Mpumalanga Provincial Legislature	Swearing in ceremony of the Members of the Provincial Legislature for the 6 <sup>th</sup> Provincial Parliament.
	07.06.2019	Mpumalanga Provincial Legislature	Presentation on the Guide on Governance Practice for EAs and HoDs. Members of the Legislature were provided with copies of the Guide.
	27.06.2019	Office of the Premier	Presentation of the Guide on Governance Practice for EAs and HoDs. MECs and HoDs were provided with the copies of the Guide.
	31.07.2019	Mpumalanga House of Traditional Leaders and Executive Committee: MPL	PSC invited to the first ordinary sitting of the First Session of the House of Traditional Leaders (6 <sup>th</sup> Session).



	25.02.2020	Speaker of the Provincial Legislature	State of the Province Address, official opening of Provincial Legislature.
	11.03.2020	Speaker of the Provincial Legislature	PSC presentation on Section 196 (4) (e) report for 2018/19 financial year.
	<b>Total Engagements: 6</b>		
Northern Cape	13.08.2019	Office of the Premier (OTP)	PSC presented on its role with reference to National Anti-Corruption Hotline at the anti-corruption awareness campaign of the province.
	23.08. 2019	Office of the Premier (OTP)	Presentation of the PSC report on Gender and Disability targets
	12.09.2019	Office of the Premier (OTP)	Presentation on the following PSC reports: <ul style="list-style-type: none"> <li>• The Reconfiguration of the State</li> <li>• Non-implementation of Labour Court Orders and Arbitration Awards, and</li> <li>• The Extent and Nature of Contract Appointments in the public service.</li> </ul>
	02.12.2019	Speaker of the Provincial Legislature	Meeting with the Speaker regarding the role and work of the PSC at Provincial Government Level.
	28.01.2020	Office of the Premier (OTP)	Briefing on the three PSC reports: <ul style="list-style-type: none"> <li>• The extent and nature of Contract appointments in the Northern Cape Provincial Government;</li> <li>• Findings on the Scrutiny Reports of the FDF 2018/19, and</li> <li>• Report on Irregular Appointments in the Provincial Departments.</li> </ul>
	21.02.2020	Chair of Chairs: NC Provincial Legislature	Interaction with the Chairpersons and Members of Committees of the Legislature on the following PSC reports: <ul style="list-style-type: none"> <li>• Section 196 (4) (e) report</li> <li>• Contract Appointments in the public service</li> <li>• Report on the Financial Disclosure Framework of SMS members for 2018/2019</li> </ul> The Committee further held discussions on the end of term of the Commissioner and the process to appoint a new Commissioner
	27.02.2020	Office of the Speaker - NCPL	State of the Province Address
	05.03.2020	Office of the Premier (OTP)	<ul style="list-style-type: none"> <li>• Briefing by the PSC on the findings on Scrutiny reports of the FDF 2018/19;</li> <li>• appointment of the new Commissioner for the NC Province.</li> </ul>
	<b>Total Engagements: 8</b>		
North West	27.05.2019	Office of the Premier (OTP)	PSC invited to the Premier's inauguration.
	29.05.2019	North West Provincial Legislature Affairs and Premier of the Province	Induction to advocate compliance with the Ministerial Handbook.
	07.06.2019	NW Provincial Legislature	PSC presentation on Professional Ethics
	28.06.2019	NW Provincial Legislature	State of the Province Address
	26.07.2019	Office of the Premier (OTP)	Provincial public consultation workshop for the Anti-corruption strategy discussion.

	27.08.2019	Chairperson of the PC on Health and Social Development: NWPL	PSC invited to attend the sitting in support of the PSC's most important provincial stakeholder.
	23.10.2019	Provincial PC on Public Service	PSC presented and inducted Committee Members on its mandate.
	27-28.11.2019	Office of the Premier (OTP)	PSC attended Provincial EXCO Planning Lekgotla hosted by the Office of the Premier.
	11.02.2020	Office of the Premier (OTP)	PSC invited to guide the Premier in respect of the implementation of its findings in relation to FDF.
	21.02.2020	Office of the Speaker: NWPL	State of the Province Address (SOPA)
	<b>Total Engagements: 10</b>		
Western Cape	06.06.2019	Western Cape Provincial Legislature (WCPL)	PSC presented its mandate and functions to the newly appointed Members of the Legislature and inducted them on relevant prescripts.
	14.08.2019	Standing Committee on Premier and Constitutional Matters: WCPL	PSC invited to brief the Committee on the 2019/20 Strategic Plan and key priorities of the PSC.
	22.10.2019	Office of the Premier (OTP)	PSC invited to brief the Provincial Top Management on outstanding investigation cases lodged through NACH.
	28.01.2020	WC Provincial Speaker	The discussion focused on the processing of the PSC reports and how these reports are helpful and assist the Legislature in its oversight work.
	27.02.2020	WC Provincial Speaker: Chairpersons' Forum	PSC briefed the Chairperson's forum on the PSC's mandate and oversight role.
	<b>Total Engagements: 5</b>		

During the 2019/20 financial year, all the provincially based Commissioners engaged with their respective provincial legislatures, particularly through the Committees that oversee the work of the Premiers' Offices and the Legislatures. A new development during this period is the phenomenon where the PSC addressed the entire provincial legislature and this happened in Mpumalanga, North West, Northern Cape, KZN, Free State, Limpopo and the Western Cape. This enabled the PSC to market its services and to demonstrate how the PSC can support the provincial legislatures in the execution of their oversight responsibilities and this has led to an unprecedented rise in the number of engagements with the provincial legislatures since the establishment of the PSC in its current form. Given the positive working relationships between the PSC and the provincial legislatures, all the provincially based Commissioners attended the State of the Province Address (SOPA) in their respective provinces.

### 9.3.2 Engagements with the Executive

The primary focus of the work of the PSC is the investigation and monitoring and evaluation of departments which are headed by the Executive Authorities (EAs). Therefore, in the execution of its mandate, the PSC engaged with the Executive at national and provincial levels. In order to improve the execution of the above mandate, the PSC has assigned nationally based commissioners to national departments in accordance with the Ministerial Clusters established by Cabinet and each cluster Commissioner held various engagements with the Ministers and Deputy Ministers in their assigned cluster. On the other hand, Provincially-based Commissioners have



been assigned to engage with the Premier and the Members of the Executive Councils in their respective provinces. At national level, the Commissioners interacted with the EAs as follows:

Name of Cluster	Responsible Commissioner
Justice, Crime Prevention and Security (JCPS)	RK Sizani (Chairperson)
International Cooperation, Trade and Security	BM Mthembu (Deputy Chairperson)
Economic Sector, Employment and Infrastructure Development	CP Nzimande
Social Protection, Community and Human Development	SS Nkosi
Governance and Administration	TB Luthuli

### 9.3.3 Engagements with Institutions Supporting Democracy

The PSC is an active member of the Forum of Institutions Supporting Democracy (FISD), which incorporates all the Constitutional Bodies and Institutions Supporting Democracy. Through the Forum, the PSC has interacted with the other ISDs in strengthening Constitutional Democracy in South Africa. In order to strengthen its role in implementing its Constitutional mandate, the PSC has entered into memorandums of understanding (MoUs) with the other ISDs like the Public Protector, Auditor-General, etc. The ISDs as members of the FISD have agreed to share resources like boardroom and meeting rooms for use by the other ISDs.

## 9.4 Highlights and Reflections

### 9.4.1 PSC's support to the 6th Administration

The 2019/20 financial year marked the beginning of the 6<sup>th</sup> Administration resulting in the reconfiguration of the state and the ability of the Public Service to deliver on its mandate becoming a top priority of government. The PSC was equally expected to support the initiatives announced by the 6<sup>th</sup> Administration.

The PSC launched an initiative to induct and brief new ministers, MPs and heads of department on key public administration matters. As part of the induction process:

- the PSC developed a Guide on the Governance Practice for Executive Authorities (EAs) and Heads of Department (HoDs), with the aim to strengthen and improve governance, accountability and the performance of the Public Service.
- PSC Commissioners, both at national and provincial offices, led the induction process of the newly appointed EAs and HoDs.
- The guide remains a critical source of reference for departments. In addition, one-on-one follow-up sessions were also conducted in order to empower the EAs and HoDs to lead effectively in their respective portfolios.

In its various research, investigation, monitoring and evaluation reports, the PSC has observed a trend of unfamiliarity with the various legislative obligations placed upon Executive Authorities (EAs) regarding administration. This unfamiliarity has in some instances resulted in tensions at the political-administrative interface, and also impacted negatively on the performance of departments.

### **The objectives of the induction were as follows:**

- To create awareness of the legislative framework underpinning the EAs' administrative role in the Public Service with specific emphasis on the management of organisational structures, human resources, finance and integrated reporting;
- To enhance the effectiveness and functionality of the Public Service by advocating for systematic implementation of the PSC's recommendations and support initiatives; and
- To profile the work of the PSC.

The following were the key issues that emerged from the induction engagements:

### **Strategic issues**

- Political-administrative interface*: the need for an understanding of the relationship dynamics in the areas of appointments (including the termination of contract appointments), supervision, discipline, conflict resolution, performance contract signing and redeployment of HoDs across government (i.e. national and provincial) as well as delegations of authority. The need to clarify the role of EAs' staff (i.e. Heads of EAs' offices and Special Advisors) as it relates to and interface with the HoD and the department was also raised. In addition, the importance of considering the knowledge and capabilities of EAs for the portfolios they are appointed to was also alluded to.
- Single Public Service*: the need for integration of municipalities into the Public Service and the possibility of transferring employees from local government (municipality) to the Public Service in the absence of single Public Service enabling legislation.
- Efficiency of the Public Service and Ethics*: the need for understanding the PSC's role in addressing the lack of efficiency and ethics and in fighting corruption and maladministration in the Public Service.
- The PSC's recommendations*: the need for an understanding of the enforceability of recommendations from the PSC's various research, investigation and evaluation reports as well as the implications of departments' failure or refusal to implement the recommendations.
- Labour relations matters in the Public Service*: the need to understand the legal obligation of implementation of arbitration awards and court orders by departments; and recourse available to affected employees when implementation is not taking place.
- The Integrated Service Delivery Model in provincial administrations*: the need for an understanding of the challenges pertaining to these models on the ground to ensure that service delivery is achieved (for example, Operation Masiphathisane in the Eastern Cape).

### **Operational issues**

- Compliance focus*: the operational issues raised mainly focused on compliance with Human Resource Management and Development, Labour Relations and conflict of interest issues that the PSC and Department of Public Service and Administration (DPSA) could address through workshops and continuous engagements.
- Payment of service providers*: challenges relating to the payment of service providers on time (30-day payment) were also flagged continuously during interactions with departments by the PSC, DPSA and other departments such as the Department of Planning, Monitoring and Evaluation (DPME).

## Recommendations

- a) In order to deal with the strategic issues, the PSC should engage with policy departments, which are central in resolving the identified issues.
- b) With regards to the operational issues, the PSC should work closely with departments and should continue to provide advice and propose measures to address the challenges that departments are facing in the areas of governance, professional ethics, labour relations and human resource management.
- c) To address the weaknesses of few hours of induction, the PSC proposes that newly appointed Ministers, Deputy Ministers and MECs should attend a week long compulsory induction in public administration and management, inclusive of broader issues relating to governance, intergovernmental relations and interpretation of prescripts to assist in understanding the complexity of the Public Service and the laws regulating it. Since the 6<sup>th</sup> Administration is already underway, the PSC should engage with The Presidency and National School of Government on the feasibility of implementing such a structured induction and orientation programme in the future.

The PSC has continued to engage with some departments on a one-on-one basis as per the follow-up invitations of EAs and such engagements will continue.

In addition, the PSC has been engaging with key departments such as DPSA, DPME and the National School of Government in order to address some of identified challenges. However, work slowed down due Covid-19 pandemic and associated lockdowns. The engagements will continue through the various task teams that have been established by the MPSA and other platforms will be used to facilitate the implementation of the recommendations.

### 9.4.2 Monitoring the payment of invoices within 30 days

In responding to the President's call for the timely payment of service providers, the PSC continued to vigorously monitor departments' compliance with the requirement that invoices should be paid within 30-days and also publish information on invoices not paid within 30 days in its quarterly bulletin called the Pulse of the Public Service.

The role that the PSC has adopted is to both monitor trends in the payment of invoices and report to the relevant authorities and to investigate and intervene on behalf of suppliers who have lodged complaints with the PSC.

### 9.4.3 Oversight at service delivery points

Through its role in promoting the CVPs, which are closely linked to the Batho Pele principles, the PSC has a strong service delivery oversight mandate. Consequently, the PSC conducts a few announced and unannounced service delivery inspections every year.

The Eastern Cape, Gauteng and North-West commissioners all observed that issues affecting the health sector were of concern. The inspections were prompted by media reports about the dire state of some of the facilities.

The table below shows some of the critical engagements.

Engagements with hospitals
<p><b>Gauteng:</b></p> <p>Bheki Mlangeni hospital  George Mkhari hospital  Mamelodi hospital  Thele Mokgoerane hospital  Raheem Moosa  Thembisa  Charlotte Maxeke</p> <p><b>Eastern Cape:</b></p> <p>Cecilia Makiwane Psychiatric Unit  Nerina House Nurses' Home at Frere Hospital</p>

In Gauteng, the oversight visits were prompted by various complaints from stakeholders. The complaints were around irregular appointments, the lack of linen as well as lack of security at the hospital facilities. The Commissioner met with the Acting MEC to discuss these issues affecting the good governance in the hospitals as well as in the Department of Health. A recommendation to the Premier was that the Gauteng Provincial Department of Health needs to be micro-managed until stability returns.

In North-West the Commissioner supported the provincial legislature and was invited to sit in the health portfolio committee to assist the committee in its oversight. The Premier of North-West also requested the PSC to advise him about recruitment and selection irregularities.

The PSC's findings and recommendations were forwarded to the relevant health department for consideration and implementation. In response to the hospital visits by the PSC, additional beds were provided to address overcrowding (Mamelodi), work is in progress to address structural defects (Bheki Mlangeni and Tembisa), eye treatment equipment was procured (Charlotte Maxeke) and surgical backlogs resolved by referring patients to neighboring hospitals (George Mukhari).

#### 9.4.4 Human Resource matters

The EC resident commissioner has engaged departments in the province on a number of human resources-related challenges. Areas dealt with include:

- Non-compliance with recruitment and selection regulations;
- Non-implementation of court awards and judgements;

- Non-compliance with the Code of Conduct;
- Ignorance of public service legislation by officials; and
- Professional ethics in the workplace.

#### *Non-compliance on recruitment and selection regulations*

The Eastern Cape office in their work of dealing with complaints and grievances has observed the non-adherence with recruitment and selection prescripts leading to a lack of credibility of the process. Departments turn to the court even when PSC has provided them with sound advice. The resident commissioner expressed that this was a concern because even HR units are not able to advise on legislation.

#### *Non-implementation of awards and court judgements*

The PSC office has during this period dealt with cases where departments are not implementing recommendations of the PSC only later to be instructed by the court on the same matter that the recommendation dealt with.

### **9.4.5 Promotion of Professional Ethics and Ethical Leadership in the Public Service**

In promoting good governance and integrity in the Public Service, the PSC, in partnership with the United Nations in South Africa, the Thembekile Mandela Foundation and the Moral Regeneration Movement, held a seminar on Ethical Leadership under the theme “*Leading like Mandela: Dawn of the New Era of Ethical, Value-Based and Leadership*”. This took place on the 19<sup>th</sup> of July 2019. This seminar focused on the following topical issues: the current state of leadership; desired state of ethical leadership; the context of ethical leadership as well as a programme of action for attaining ethical leadership.

The PSC in partnership with the South Africa-European Union Strategic Partnership’s Dialogue Facility and University of South Africa (UNISA) hosted a Dialogue under the theme: A **Values-Driven Public Sector: Building State Capacity through Professional Ethics and Integrity**. The main objective of the Dialogue was to create a platform for stakeholders to engage on the critical challenges and opportunities related to strengthening ethics and integrity in public administration. The Minister for Public Service and Administration (MPSA), Mr Senzo Mchunu, delivered a keynote address.

Finally, the PSC in partnership with UNISA and the United Nations Office on Drugs and Crime jointly commemorated the International Anti-Corruption Day on Monday 9 December 2019 under the theme “**United Against Corruption: Building a Culture of Accountability for Sustainable Development**”. The following topics were covered: Contextualising the extent of corruption; Taking concrete action against corruption: reflections and progress; and Active citizenry in building an accountable governance.

### **9.4.6 Colloquium on reviewing the National Development Plan (NDP) to make South Africa a Developmental State**

The National Planning Commission, in partnership with the PSC, University of Johannesburg and the Human Resource Development Commission, held a two-day colloquium on the National Development Plan (NDP) from 26-27 July 2019 at the University of Johannesburg. The event was

held under the theme “*Reviewing the NDP to make South Africa a Developmental State*”. Some of the pertinent topics discussed at the colloquium included the following:

- 25 Years of Democracy and the Implementation of the NDP
- Developmental Planning for South Africa
- Challenges of Social Transformation in the South African State.

The Minister in the Presidency: Planning, Monitoring and Evaluation, Mr Jackson Mthembu delivered a keynote address.

#### **9.4.7 Roundtable on the Land Restitution and Land Redistribution Programmes of the Department of Rural Development and Land Reform**

The PSC has identified a need to engage on the Land Restitution and Land Redistribution programmes of the Department of Rural Development and Land Reform (DRDLR). These programmes have a huge potential of redressing the imbalances of the past and improving the lives of the people. However, blockages impeding the successful implementation of these programmes persist.

A Roundtable took place on 11 February 2019 at the PSC offices attended by Public Service Commissioners, the Restitution Commissioner, a group of experts in the Land Sector and senior officials from the Office of the PSC, Restitution Commission and the DRDLR, to contribute to the discussion regarding the challenges and blockages facing the programmes.

Challenges highlighted during the discussions included problems with the legal and regulatory framework, capacity of the state to deliver on the mandate of land reform, corruption, the lack of political will and non-performance. The key issues affecting land reform are well documented and are broadly divided between policy and conceptual issues, where the PSC does not have a mandate, and “organisation and administration” issues, where the PSC has an explicit constitutional mandate in accordance with section 196(4)(b) of the Constitution.

The Department does not have clear policy positions that can create certainty on policy to facilitate efficient administration. It needs to, where necessary, embark on law reform. The report of the *High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change* (High-Level Panel) proposed a new framework law for land reform and this needs to be pursued.

Furthermore, the High Level report proposed the following principles that could guide the policy development/ law reform process:

- a. Ownership
- b. Tenure that is legally secure [Section 25(6) of the Constitution]
- c. Just and equitable compensation [section 25(3)]
- d. Equitable access to land [Section 25(5)]
- e. When to expropriate [Section 25(2) and (3)]



- f. How to determine compensation – through negotiation with the owner or by a court [Section 25(2)(b)]

The Department needs to decolonise spatial planning, and redefine the planning profession beyond regional and town planning. Given the migration of people, spatial planning should offer solutions that are responsive to the needs of people.

The Land Rights Amendment Act, 2014, extended the cut-off date for the lodging of claims for a further period of five years (from 1 July 2014 to 30 June 2019). However, the law was found to be unconstitutional (LAMOSA judgement). Several flaws in the Restitution Act could also be considered for law reform according to the High-Level panel. There are unconstitutional customary practices that remain unresolved and unconstitutional provisions must be amended.

As a result of these challenges, it may be prudent for the PSC to conduct an intervention into the operations and business processes of the Department of Rural Development and Land Reform as well as the Commission for the Restitution of Land Rights. In respect of its mandate, jurisdiction can be found in terms of section 196(4)(b) and section 196 (4)(c), which empowers the PSC to *investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public services and to propose measures to ensure effective and efficient performance.*

The challenges at the Department of Rural Development and Land Reform and the Commission for the Restitution of Land Rights are deep rooted, which would require the PSC to conduct an in-depth and comprehensive intervention. Therefore, the PSC decided to explore possible interventions within two areas, namely, a) the capacity of the department and b) coordination of post-settlement support.

#### **9.4.8 Roundtable with Organised Labour on advancing the Constitutional Values and Principles (CVPs)**

The Public Service Commission (PSC) engaged Organised Labour on 19<sup>th</sup> February 2019 at its Pretoria office with 15 labour unions representatives with the view to promote the Constitutional Values and Principles (CVPs). The purpose was to develop a shared understanding of their respective roles in building a capable and values-driven Public Service in support of democracy. Equally important, is labour's commitment to upholding the values and principles of public administration enshrined in Section 195 of the Constitution and other laws, through adopting the Public Service Charter in 2013 in the Public Service Coordinating Bargaining Council (PSCBC).

In her opening remarks, Commissioner Phumelele Nzimande highlighted the importance of Organised Labour as a key stakeholder that can and must play a significant role in the promotion of the Constitutional Values and Principles (CVPs) while it continues to carry its mandate of protecting the rights of employees.

The high rate of public protests on service delivery are a direct result of the deficiencies that exist in the public service such as poor human relations and inefficiency. Despite this, the 25-year review highlighted many achievements of the Public Service in ensuring access to essential services to the citizens of South Africa.

The Public Service follows 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. A commitment to the CVPs and the Batho Pele principles, which are intrinsically linked, is paramount. Part of the solution to change the system is to bridge the gap between a compliance-driven and a values-driven public service.

Participants were reminded that the National Development Plan identifies the improvement of the quality of public services as critical to achieving transformation. This requires government to focus on identifying and overcoming obstacles to achieving improved outcomes, including the need to strengthen the ability of government to fulfil its developmental role.

Some of the issues raised during the engagement included a need to create a culture of high performance, career development, rewarding of good performance, human dignity, lack of resources that prohibits the delivery of efficient and effective delivery of services, and the safety of employees.

In concluding the Chairperson of the PSC expressed his appreciation for the good turnout by Organised Labour. The Chairperson supported the call of Organised Labour to meet with the PSC quarterly to share ideas.

#### **9.4.9 Engagement on PSC products**

In its continued efforts to engage stakeholders on the products of the PSC, the PSC hosted a Roundtable on the extent and nature of contract appointments in the Public Service. The Roundtable was arranged as a result of the PSC's observations regarding, amongst others, an increasing number of employees being appointed on contract for extended periods of time, mostly additional to the establishment.

Likewise, the PSC hosted another successful Roundtable on the Performance Management and Development System (PMDS) with a particular focus on the role of the Moderating Committees.



## **CHAPTER 10: IMPLEMENTATION OF THE PSC'S RECOMMENDATIONS**

## 10.1 Introduction

The period covered in this section is the financial years 2018/19 and 2019/20. The chapter focuses on recommendations that were issued during the two financial years and tracks the feedback and outcomes as recorded in the PSC data base. The 2018/19 period will also cover the number of feedback and outcomes <sup>11</sup>on the recommendations.

## 10.2 Issued recommendations 2018/19

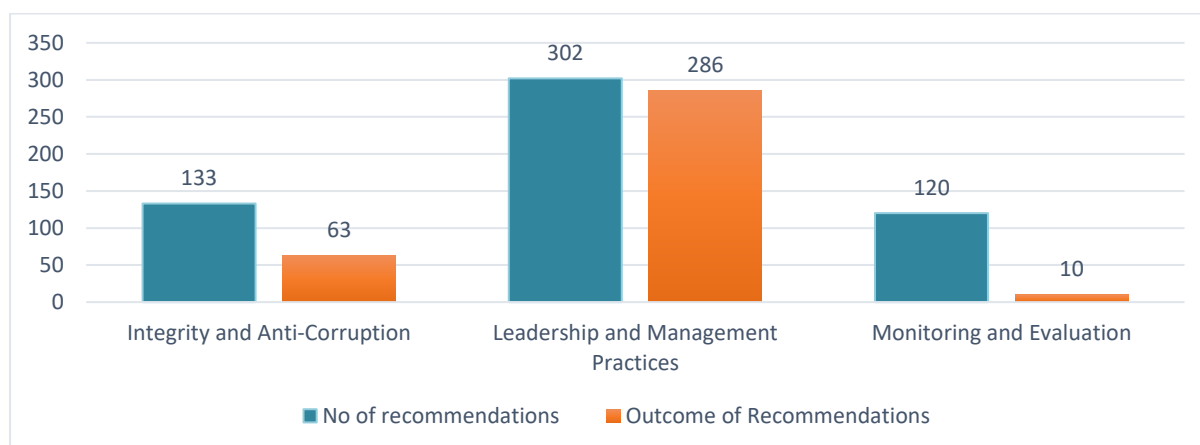


Figure 10: Number of recommendations and outcomes 2018/19

**Figure 10** above shows the number of recommendations that were issued by each of the branches. In the 2018/19 period the PSC issued five hundred and fifty-five (555) recommendations and recorded three hundred and fifty nine (359) outcomes.

## 10.3 Outcome of recommendations 2018/19

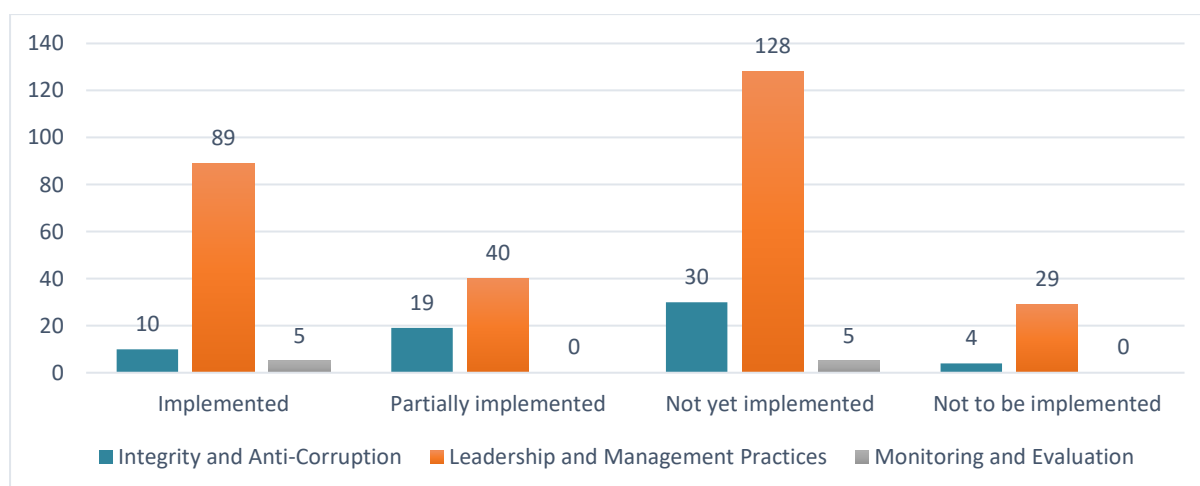


Figure 11: Outcome of recommendations 2018/19

<sup>11</sup> Outcome relates to the labels, Implemented, Partially Implemented, not yet implemented and not to be implemented.

For the 2018/19 period, the PSC recorded three hundred and fifty nine (359) outcomes across all three branches. Of the **359** outcomes, only **28%** were recorded as 'implemented'. (See **Figure 11** above). The majority (**128**), making up over a third of recommendations, were recorded as not yet implemented. The latter is a standing challenge with the majority of the recommendations.<sup>12</sup>

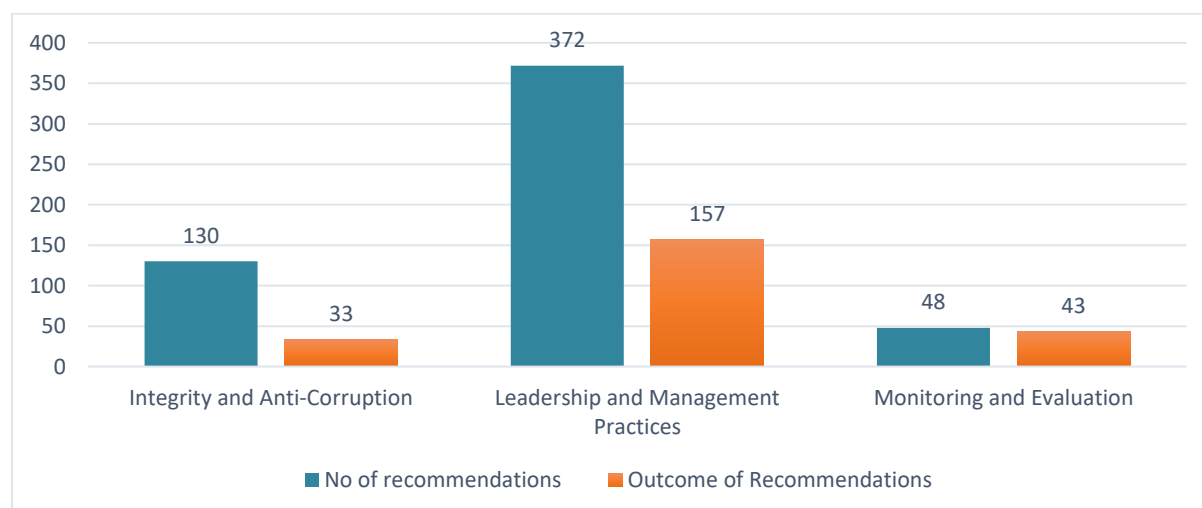
The table below shows the breakdown on the outcome for each of the branches.

*Table 21: Outcome of recommendations 2018/19*

Branch	Implemented	Partially implemented	Not yet implemented	Not to be implemented	Total
Integrity and Anti-Corruption	10	19	30	4	<b>63</b>
Leadership and Management Practices	89	40	128	29	<b>286</b>
Monitoring and Evaluation	5	0	5	0	<b>10</b>
<b>Total</b>	<b>104 (28%)</b>	<b>59</b>	<b>163</b>	<b>33</b>	<b>359</b>

#### 10.4 Issued recommendations 2019/20

In 2019/20 financial year, the PSC issued **550** recommendations across all three branches (Integrity and Anti-corruption, Leadership and Management Practices and Monitoring and Evaluation). Of the total recommendations, two hundred and thirty three (233) outcomes were received.



**Figure 12: Number of recommendations and outcomes 2019/20**

<sup>12</sup> Departments do not always provide information on why recommendations have not yet been implemented.

## 10.5 Outcome of recommendations 2019/20

For the period 2019/20, only **15%** of recommendations were implemented with 2% not to be implemented by departments. Feedback received from departments indicate that about 81 recommendations (**14.7%**) were not yet implemented.

**Table 22: Outcome of recommendations 2019/20**

Branch	Implemented	Partially implemented	Not yet implemented	Not to be implemented	Total
Integrity and Anti-Corruption	12	1	18	2	33
Leadership and Management Practices	53	36	54	14	157
Monitoring and Evaluation	21	13	9	0	43
<b>Total</b>	<b>86 (15%)</b>	<b>50</b>	<b>81</b>	<b>16</b>	<b>233</b>