



PRESENTATION TO THE JOINT COMMITTEE ON ETHICS AND MEMBERS' INTERESTS

SEMINAR ON ETHICS

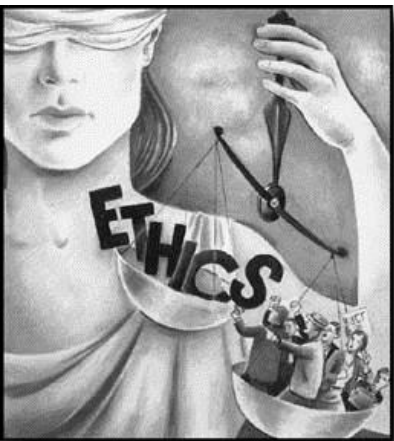
5 JUNE 2013



PRESENTATION OUTLINE

- Key message
- Ethics in the Public Service
- Closer look: Code of Conduct
- Lessons learned: Code of Conduct
- Closer look: Financial Disclosure Framework
- Lessons learned: Financial Disclosure Framework
- Concluding remarks

KEY MESSAGE



- Ensuring ethical professional conduct in the post-apartheid Public Service is a major challenge.
- Our material conditions (intense poverty and systemic, structural inequality and unemployment) exacerbate the current challenges.
- Prior to 1994, economic exclusion denied the black majority opportunities to accumulate wealth.
- The state must lead in economic transformation and development.
- Public procurement is a key lever of economic transformation, as well as a mechanism of corruption.
- Mechanisms to improve ethics are in place but these require deepening and strengthening.

ETHICS IN THE PUBLIC SERVICE (1)

- Professional ethics refers to the principles and standards that underlie one's responsibilities and conduct in a particular field of expertise.
- This demonstrates that special norms and principles governing a profession override individual rights and other moral principles.
- Institutionalized values are the only ethical binding mechanism to achieve a common ethical framework within which to achieve the goals of an institution.



Ethical behaviour results when one does not merely consider what is good for oneself, but also considers what is good for others
(Gortner: Professional Ethics in Contemporary Society, 1991)

ETHICS IN THE PUBLIC SERVICE (2)

- In the Public Service, the Constitution forms the cornerstone for the type of Public Service required. The Constitution, 1996, states that public administration should, amongst others, promote and maintain a high standard of professional ethics.
- The Public Service Act, 1994 sets out the framework of authority within which public administration is managed.
- The Public Service Regulations, 2001 contains two Chapters dealing with the conduct of public servants and transparency.
 - The Code of Conduct for the Public Service
 - The Financial Disclosure Framework (FDF)



ETHICS IN THE PUBLIC SERVICE (3)

- There are also other mechanisms used to promote professional ethics, which include the following:
 - A number of progressive laws and policies (PFMA; PAIA; PAJA; PDA; PRECCA)
 - Dedicated anti-corruption agencies (including the PSC, the PP and others) and inter-agency cooperation
 - Requirements that Departments have anti-corruption strategies, forums, capacity, databases and investigative capacity
 - Whistle blowers protection
 - National Anti-Corruption Hotline



A CLOSER LOOK: CODE OF CONDUCT

- The Code of Conduct for the Public Service, which is contained in Chapter 2 of the Public Service Regulations, was issued in 1997, has laid a basis for an ethics infrastructure and achieving a culture of good governance.
- It is an important barometer against which the conduct of public servants is measured and held accountable.
- The primary purpose of the Code is a positive one, viz. to promote exemplary conduct.
- Notwithstanding this, an employee shall be guilty of misconduct, and may be dealt with in accordance with the Disciplinary Code and Procedures for the Public Service if she or he contravenes any provision of the Code of Conduct or fails to comply with any provision thereof.

A CLOSER LOOK: CODE OF CONDUCT (2)

- The areas covered by the Code deal with the relationship of public servants to the legislature and executive, their relationship with the public and fellow employees and the performance of their duties.
- A careful reading of the Code shows that it puts the public interest first subject only to the Constitution.
- Although the Code of Conduct was drafted to be as comprehensive as possible, it is not an exhaustive set of rules regulating standards of conduct.
- Since its implementation in the public service, extensive training and promotion of the Code has been done by the PSC.

A CLOSER LOOK: CODE OF CONDUCT (3)

- As part of the popularization of the Code, an Explanatory Manual was issued in 2003, and it was also translated into all official languages.
- Research conducted by the PSC suggests that the application of the Code still requires further refinement such as making it more compliance based with clear sanctions built in for non-compliance.
- The Code continues to cultivate essential values.



LESSONS LEARNED: CODE OF CONDUCT

- The Code must be easy to read, understand and apply.
- The effective implementation of a Code of Conduct requires establishing a successful administrative structure for managing the Code.
- The review of the Code should involve internal and external stakeholders to ensure buy-in.
- There must be a legal basis for the Code to build legitimacy and credibility, and make it enforceable.
- The Code of Conduct goes a long way in providing a suitable climate for an ethical culture to thrive and promote a professional ethos in the public service. However, the Code only becomes meaningful if there are measures to enforce in in order to provide for sanctions.
- The Code should be communicated to all stakeholders and there should be a focus on educating employees as partners in creating an ethical culture.

A CLOSER LOOK: FINANCIAL DISCLOSURES

- The PSC has since 1999 realized the importance of managing the potential conflicts of interest of public servants and subsequently developed the FDF.
- The FDF is aimed at promoting the perception of integrity in government by preventing conflicts of interest before they occur.
- All members of the SMS are required to disclose to their respective Ministers or Executive Authorities (EAs), particulars of all their registrable interests not later than 30 April each year.
- The PSR further requires EAs to submit copies of the forms on which designated employees disclosed their financial interests, to the PSC by no later than 31 May of each year.

A CLOSER LOOK: FINANCIAL DISCLOSURES (2)

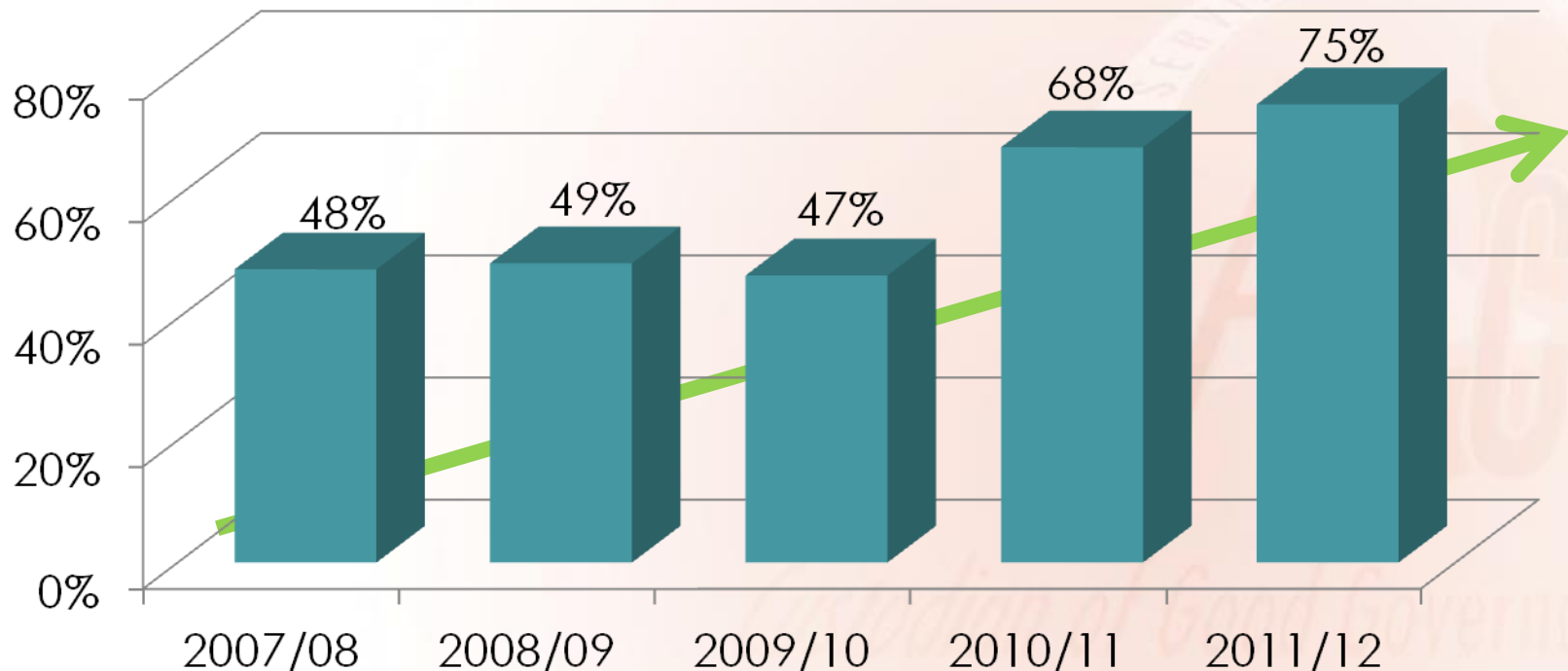
- The Framework provides for the PSC's role in the management of conflicts of interest in the Public Service.
- During the initial years, the focus of the PSC's work on the Framework was on monitoring compliance with the requirement to submit financial disclosure forms.
- Since 2006, the PSC expanded its focus to include the scrutiny of the disclosures to identify potential and actual conflicts of interest in departments and to advise Executive Authorities accordingly.

Potential: A public official is in a position where s/he may be influenced by his/her private interests when doing his/her job

Actual: A public official is in a position to be influenced by his/her private interests when doing his/her job

A CLOSER LOOK: FINANCIAL DISCLOSURES (3)

- The compliance rate by the due date from the 2007/2008 financial year to the 2011/2012 financial year has improved.
- While there has been an improvement, only 100% compliance is acceptable!



A CLOSER LOOK: FINANCIAL DISCLOSURES (4)

- As at 31 May 2012 a total of 84 out of 159 departments had a 100% compliance rate, of which 15 were at National level and 69 were at Provincial level.

2011/12 Financial Year	No of SMS Members	No of Forms Received	% Received
National	5206	3468	67%
Eastern Cape	621	508	82%
Free State	331	212	64%
Gauteng	648	641	99%
Kwazulu-Natal	520	465	89%
Limpopo	494	472	96%
Mpumalanga	299	287	96%
Northern Cape	227	227	100%
North West	312	83	27%
Western Cape	358	358	100%
COUNTRY TOTAL	9016	6721	75%

SCRUTINY OF FINANCIAL DISCLOSURES

- The scrutiny process involves the verification of information relating to directorships and partnerships on the Companies and Intellectual Property Commission (CIPS) database.
- The Deeds Registry database is also consulted to verify whether a particular senior manager disclosed all his/her properties.
- The nature of activities relating to consultancies and retainerships as well as work performed by an SMS member outside of the Public Service, are used to formulate an opinion on the prevalence of potential or actual conflicts of interest.
- All the activities that an SMS member is involved in are assessed against the official activities of the particular SMS member.
- Departmental Supplier databases will also be consulted to assess whether a SMS member does business with his/her employer.

SCRUTINY OF FINANCIAL DISCLOSURES (2)

Outcome of the scrutiny for potential conflicts of interest

	No of Forms Scrutinised	% of SMS members with potential conflicts of interest	% of SMS members with many companies
National	582	31.0%	16.2%
Eastern Cape	176	34.7%	18.8%
Free State	47	27.7%	17.0%
Gauteng	285	35.8%	21.4%
Limpopo	189	33.9%	24.9%
KZN	139	23.0%	9.4%
Mpumalanga	96	39.6%	25.0%
Northern Cape	64	28.1%	17.2%
North West	41	48.8%	22.0%
Western Cape	94	16.0%	9.6%
GRAND TOTAL	1713	30.6%	18.0%

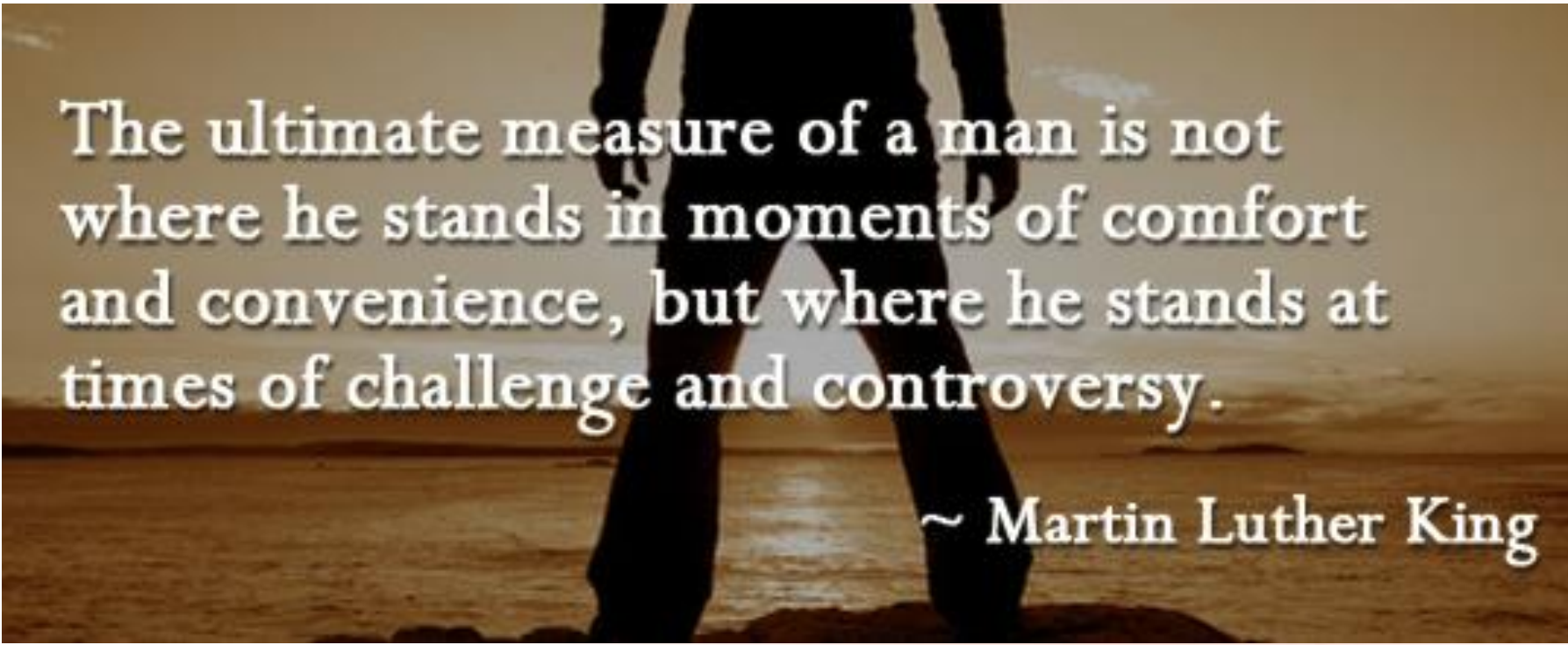
LESSONS LEARNED: FINANCIAL DISCLOSURES

- Capacity to identify and manage potential conflicts of interest must be in place.
- The scrutiny process should involve a thorough investigation to identify potential conflicts of interest and there should be a link with other information platforms.
- The following lessons were learned through a comparative analysis of the management of conflicts of interest:
 - ✓ Cash loans, earned income, cash and debts should be disclosed.
 - ✓ Registrable interests should be disclosed when there is a change in assets.
 - ✓ Clear-cut sanctions and fines should be imposed on late and non-submissions of financial disclosure forms.
 - ✓ Disclosure of financial interests upon leaving office.
 - ✓ Sanctions for non-compliance should be adequate enough to prevent it from happening in the future.

CONCLUDING REMARKS

- Shift from a Code of Conduct to regulate conduct to leveraging a values-based code that inspires principled performance amongst employees.
- The behavioral objective should be to encourage employees to ask ethical questions and to see the building of a culture of ethics and compliance as a natural part of their day-to-day work.
- Regular ethics exposure through continuous training, as people forget, circumstances and legislation change and responsibilities increase.
- Attention must be paid to the independence and authority of the structure that is responsible for the implementation of the Code of Conduct, as well as the management of Financial Disclosures.
- There must be consequences for non-compliance.

AN INCONVENIENT TIME....



The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.

~ Martin Luther King

Custodian of Good Governance



Custodian of Good Governance

SIYABONGA ENKOSI



www.psc.gov.za

National Anti-Corruption Hotline for the Public Services: 0800 701 701
