



Custodian of Good Governance

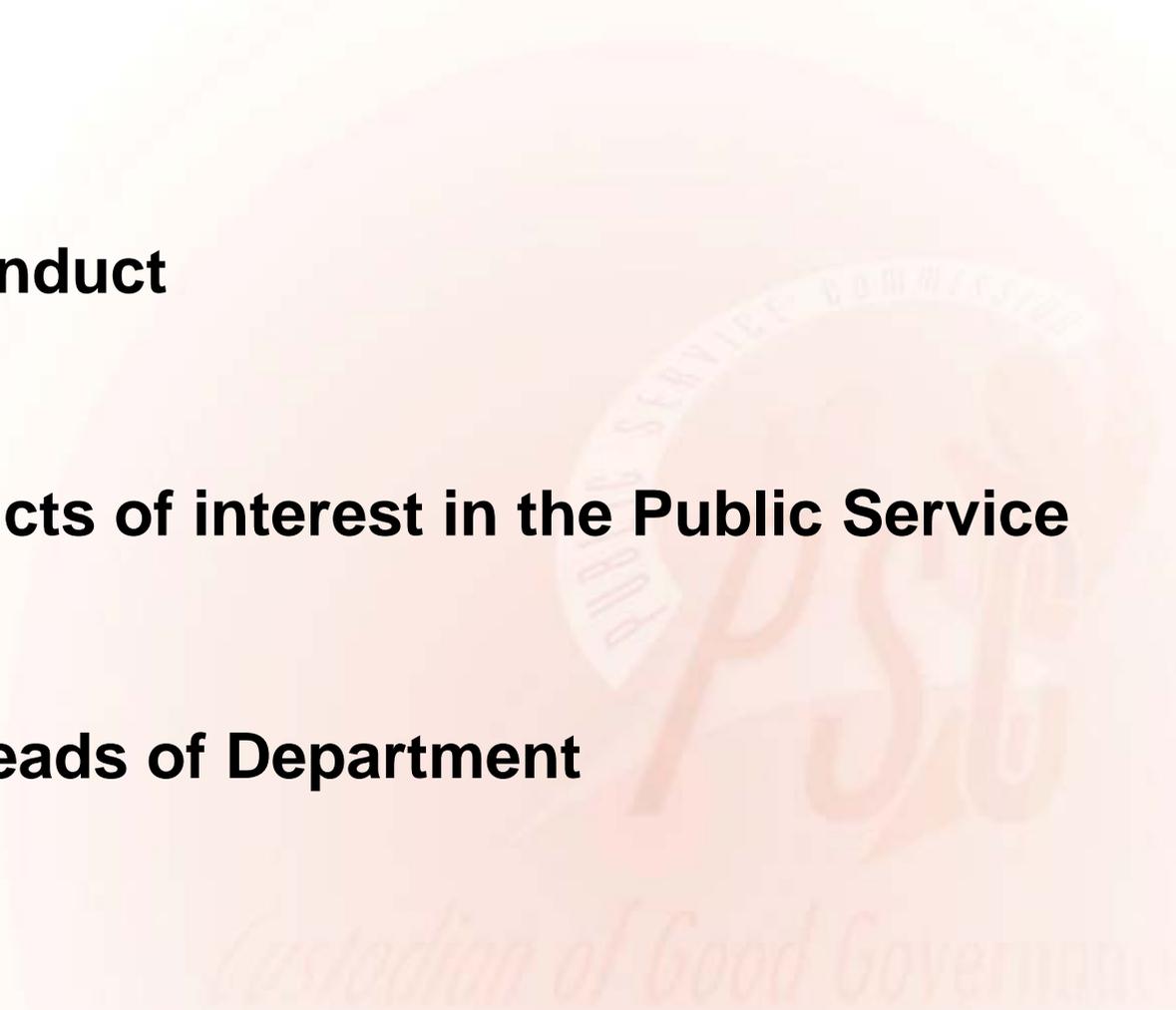
PRESENTATION TO THE STANDING COMMITTEE ON APPROPRIATIONS

Public Service Commission

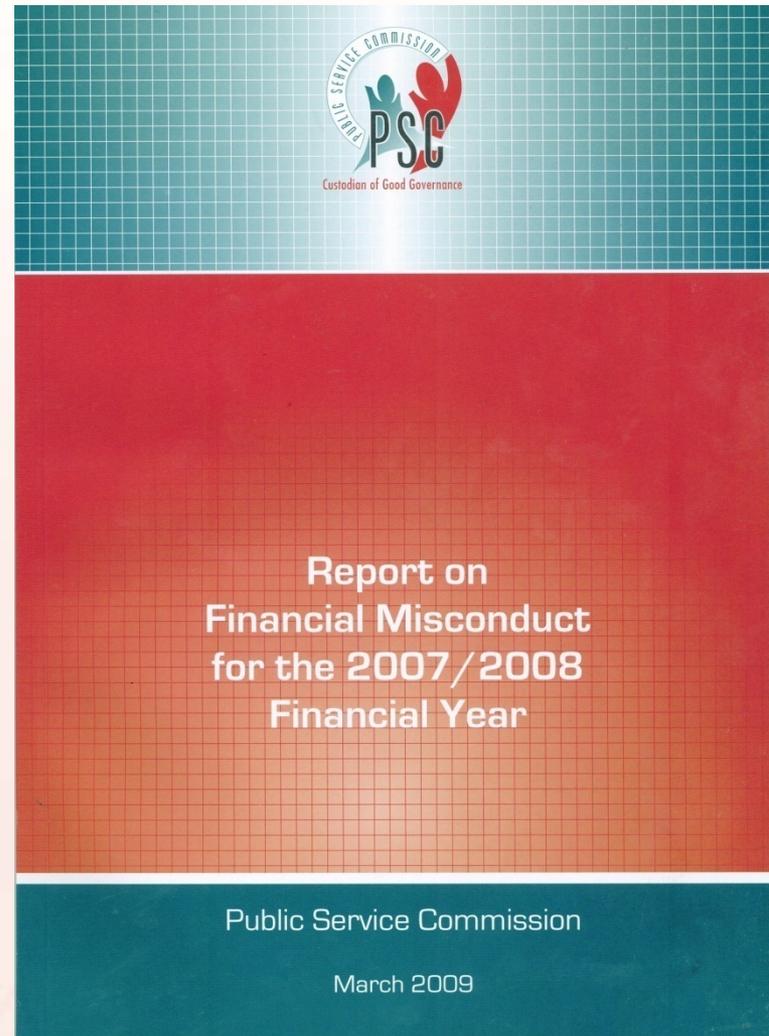
Date: 20 October 2009



PRESENTATION OUTLINE

- **Financial Misconduct**
 - **Managing conflicts of interest in the Public Service**
 - **Evaluation of Heads of Department**
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REPORT ON FINANCIAL MISCONDUCT FOR THE 2007/2008 FINANCIAL YEAR



INTRODUCTION

- Since 2001/2002, Departments have, in terms of the PFMA, reported finalized financial misconduct cases to the PSC.
- This Report covers finalized financial misconduct cases reported to the PSC for the **2007/2008** financial year and provides a statistical overview and trend analysis of information provided.
- Section 85(1)(a) of the PFMA determines that the Minister must make regulations prescribing the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct must be reported.
- Treasury Regulation 4.3 determines that the accounting officer must, as soon as the disciplinary proceedings are completed, report to, amongst others, the PSC on the outcome, including the name and rank of the official, the charges, the findings, any sanction imposed on the official; and any further action to be taken against the official, including criminal charges or civil proceedings.

REPORTING ON FINANCIAL MISCONDUCT

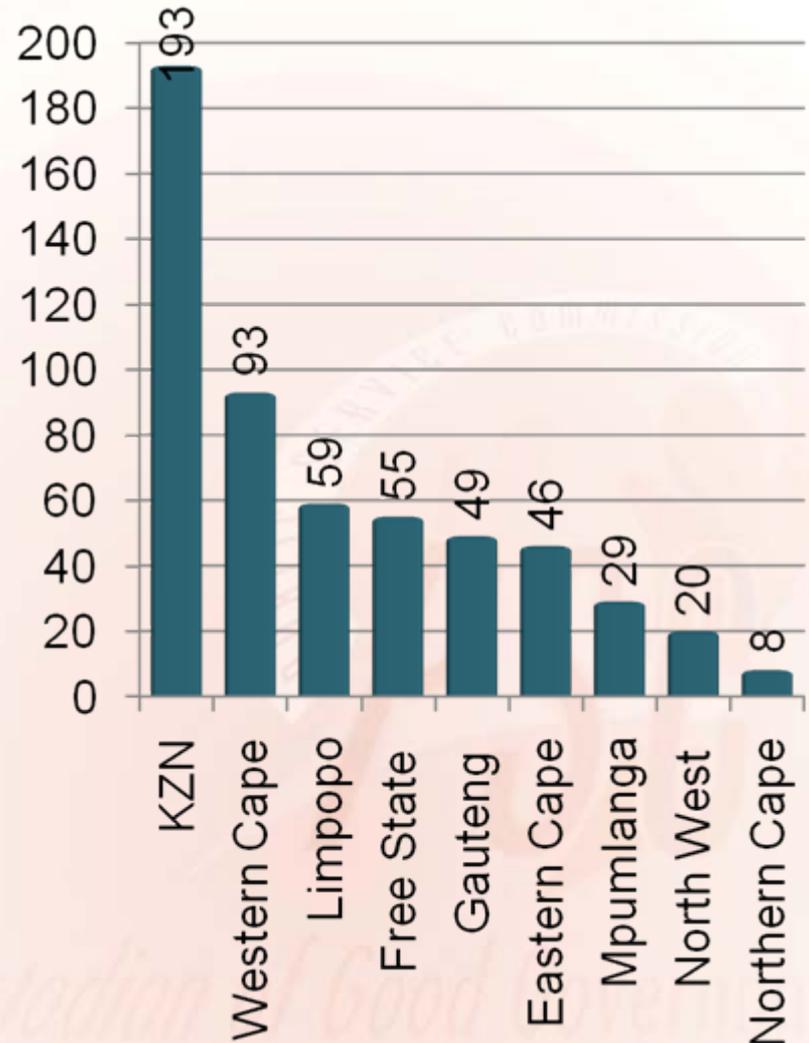
- National departments
 - ❑ All national departments submitted inputs.
 - ❑ Of the 35 national departments, 13 departments indicated that they had no financial misconduct cases in the particular financial year.
- Provincial departments
 - ❑ Of the 108 provincial departments, 107 submitted inputs.
 - ❑ Of the 108 provincial departments, 54 departments indicated that they had no financial misconduct cases in the particular financial year.

NUMBER OF CASES REPORTED

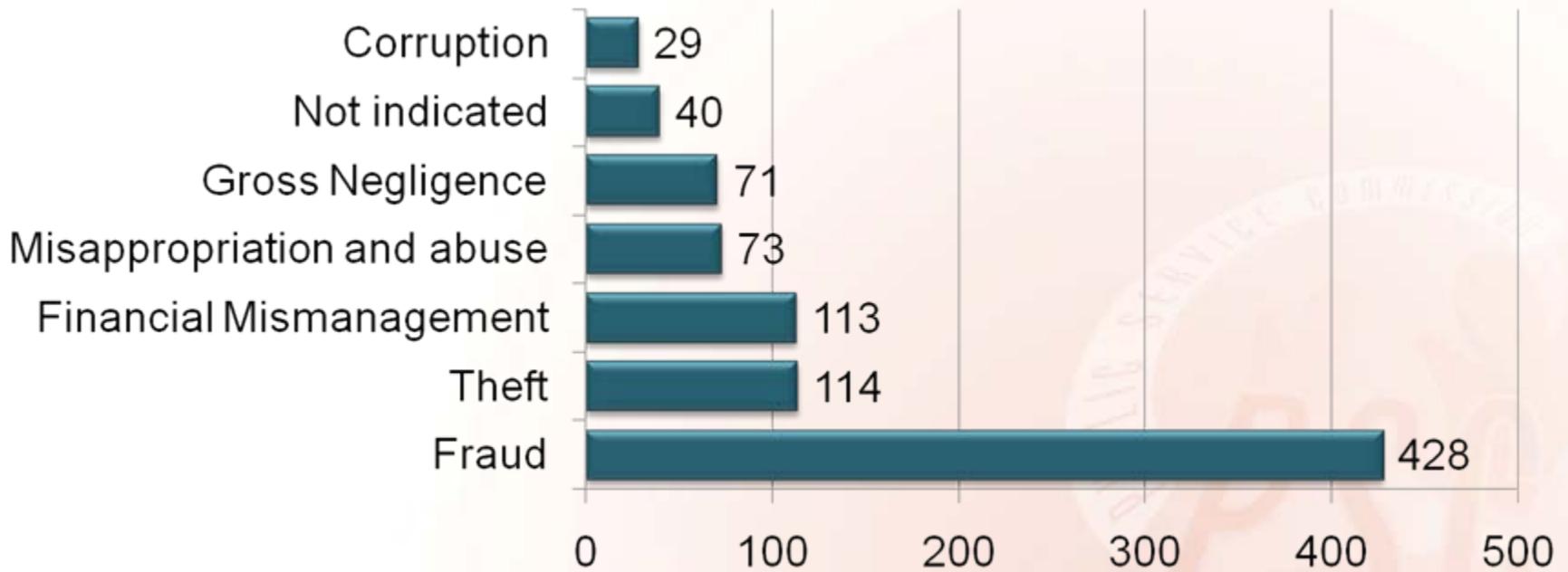
- 868 cases of financial misconduct were reported for the 2007/2008 financial year

National	Provincial
316	552

- At national level, the Department of Justice and Constitutional Development (DOJCD) reported the highest number of cases (113), followed by the Department of Correctional Services (54).
- KwaZulu-Natal Province reported the highest number of cases (193) at Provincial level.



TYPES OF FINANCIAL MISCONDUCT CASES



- Cases in the category “fraud” comprise a significant portion (49%) of the overall number of cases reported.
- Cases in the category “theft” comprise the second highest number of cases (13%).

LEVELS OF EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT

- Financial misconduct prevails at all levels of the Public Service.
- Employees on salary levels 6 and 7 have committed the highest number of financial misconduct cases.
- 0.7% of the total number of employees are employed at SMS level, whilst 2.5% of the finalized financial misconduct cases are in respect of SMS members. This suggests that employees in the SMS have a greater propensity to commit financial misconduct.



OUTCOME OF FINANCIAL MISCONDUCT CASES

- Of the 868 finalised financial misconduct cases reported, employees were found guilty of misconduct in 709 (82%) cases.

SANCTIONS IMPOSED IN CASES OF FINANCIAL MISCONDUCT

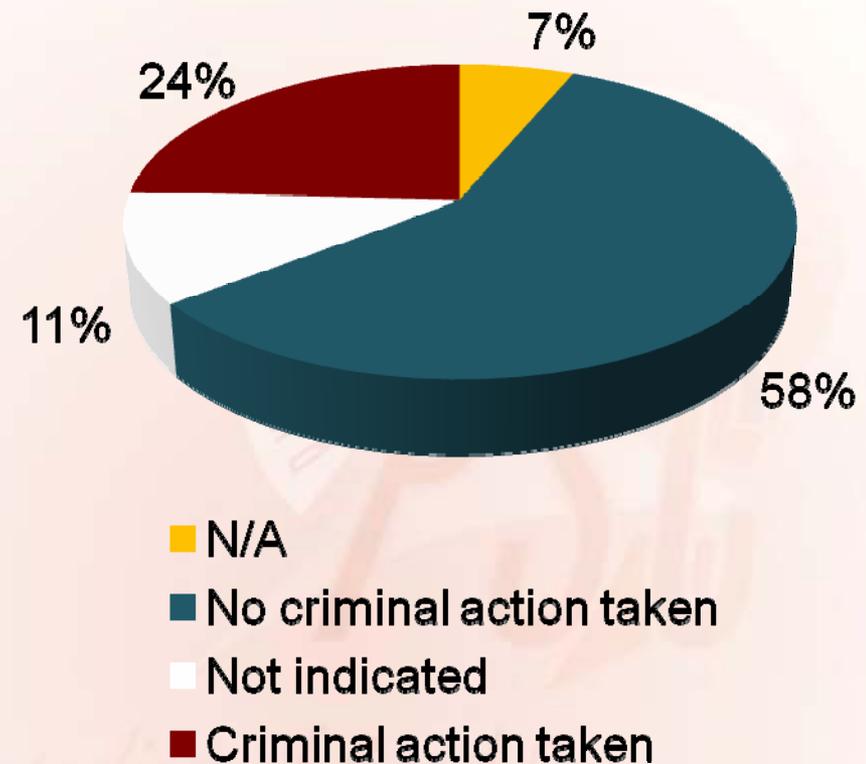
- Final written warnings were issued in 247 (34.4%) of the cases, and this was the most prevalent sanction imposed upon a finding of guilty.
- In 163 (22.7%) cases, employees were discharged from the Public Service.
- The low percentage of cases whereby employees were discharged could point to the fact that departments did not regard all acts of financial misconduct to have an irretrievable effect on the employment relationship to the extent that they want to end the relationship.

COST OF FINANCIAL MISCONDUCT

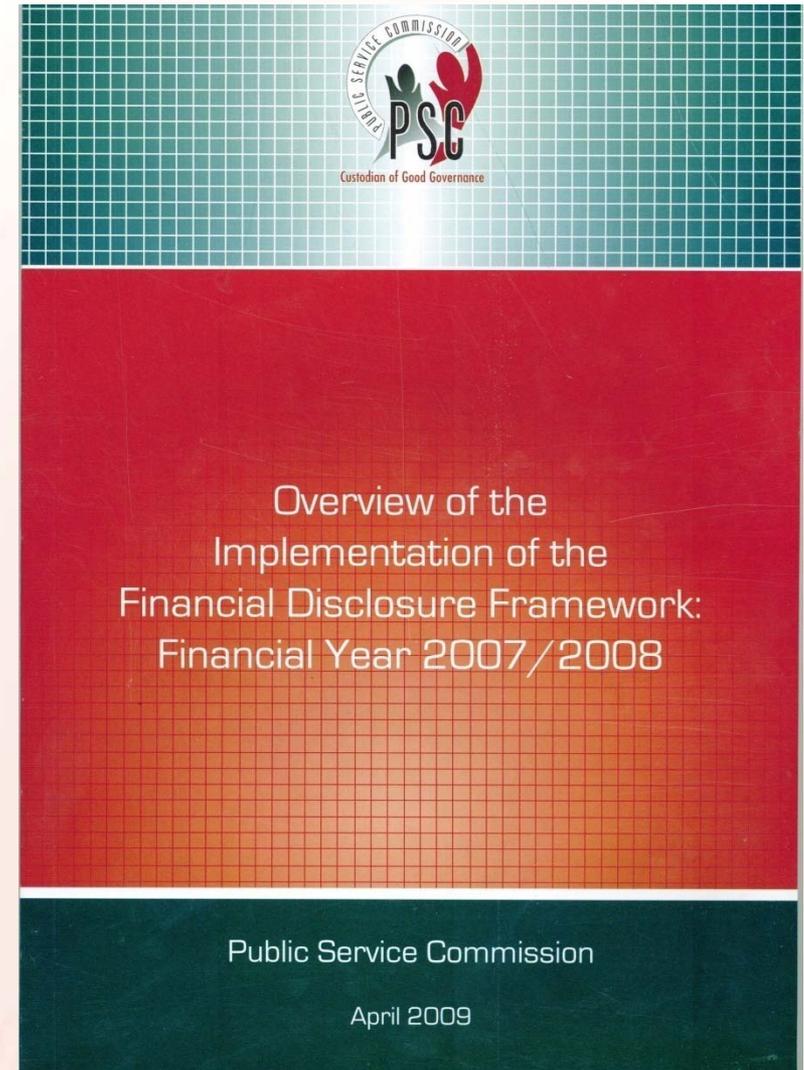
- The total cost reported by national and provincial departments emanating from unauthorized, irregular, fruitless and wasteful expenditure, as well as losses resulting from criminal conduct reported in respect of the 2007/08 financial year was R 21 776 948.93.
- R 8 805 596.00 (40%) of the R 21 776 948.93 was recovered from the employees found guilty of financial misconduct or the financial misconduct did not result in any loss to the State (e.g. a fraudulent Subsistence and Travel claim is not paid).
- However, the recovery of the value of the loss or damage associated with financial misconduct has not necessarily taken place at the time of reporting to the PSC.

CRIMINAL PROCEEDINGS INSTITUTED AGAINST EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT

- Criminal proceedings were instituted against employees in 210 (24%) of the cases.
- In 505 (58%) of the finalised cases, no criminal proceedings were instituted against employees.
- In 98 cases (11%) departments failed to provide any indication whether criminal or any other proceedings were instituted against employees charged with financial misconduct.



MANAGING CONFLICTS OF INTEREST IN THE PUBLIC SERVICE



INTRODUCTION

- The PSC has since the 1999/2000 financial year been responsible for the management of the Financial Disclosure Framework (FDF) for senior managers
- The FDF was initially only applicable to Heads of Department but since 2000/2001 has applied to all senior managers
- The objective of the FDF is to manage the potential conflicts that may exist between a senior manager's private interests and public responsibilities in order to ensure that actual conflicts of interest do not occur
- The PSC has since the inception of the Framework placed major focus on ensuring compliance with the submission of financial disclosures which is a regulatory requirement in terms of Chapter 3 of the Public Service Regulations

SUBMISSION OF FINANCIAL DISCLOSURES TO THE PSC

- The rate of compliance has improved since the inception of the FDF as indicated in the following table:

	2000/ 2001	2001/ 2002	2002/ 2003	2003/ 2004	2004/ 2005	2005/ 2006	2006/ 2007	2007/ 2008
COMPLIANCE RATE	62%	66%	82%	66%	72%	80%	87%	85%

- The PSC is of the view that only a 100% compliance rate would be acceptable
- What is of concern is the extent to which there are repeat offenders in respect of compliance to the FDF
- A recent assessment of the PSC found that there were 249 senior managers that did not submit their financial disclosures for both the 2006/2007 and 2007/2008 financial year¹

¹ Overview of the Implementation of the Financial Disclosure Framework: Financial Year 2007/2008, Public Service Commission, 2009

SUBMISSION OF FINANCIAL DISCLOSURES TO THE PSC

- Certain departments have also consistently not complied with the requirement of submitting the financial disclosures of their senior managers to the PSC. In this regard the National Department of Health has only submitted disclosures twice to the PSC since 200/2001, whilst the Department of Correctional Services did not submit disclosures for the last two financial years.
- As indicated the submission of financial disclosures is a regulatory requirement. The extent of non-compliance by senior managers and departments is unacceptable and does not bode well for integrity in the Public Service
- The responsibility of ensuring that disclosures are submitted to the PSC ultimately rests with Executive Authorities (EAs)

SUBMISSION OF FINANCIAL DISCLOSURES TO THE PSC

- Since the implementation of the FDF the PSC has consistently reminded EAs to submit the outstanding financial disclosures of senior managers and advised them to institute disciplinary measures against defaulting senior managers
- Reminders were also on several occasions forwarded to EAs by the Minister for Public Service and Administration at the request of the PSC
- Despite such reminders a 100% compliance rate has not yet been achieved and there has been no evidence of senior managers being charged with misconduct for failing to comply with the FDF

SCRUTINY OF FINANCIAL DISCLOSURES

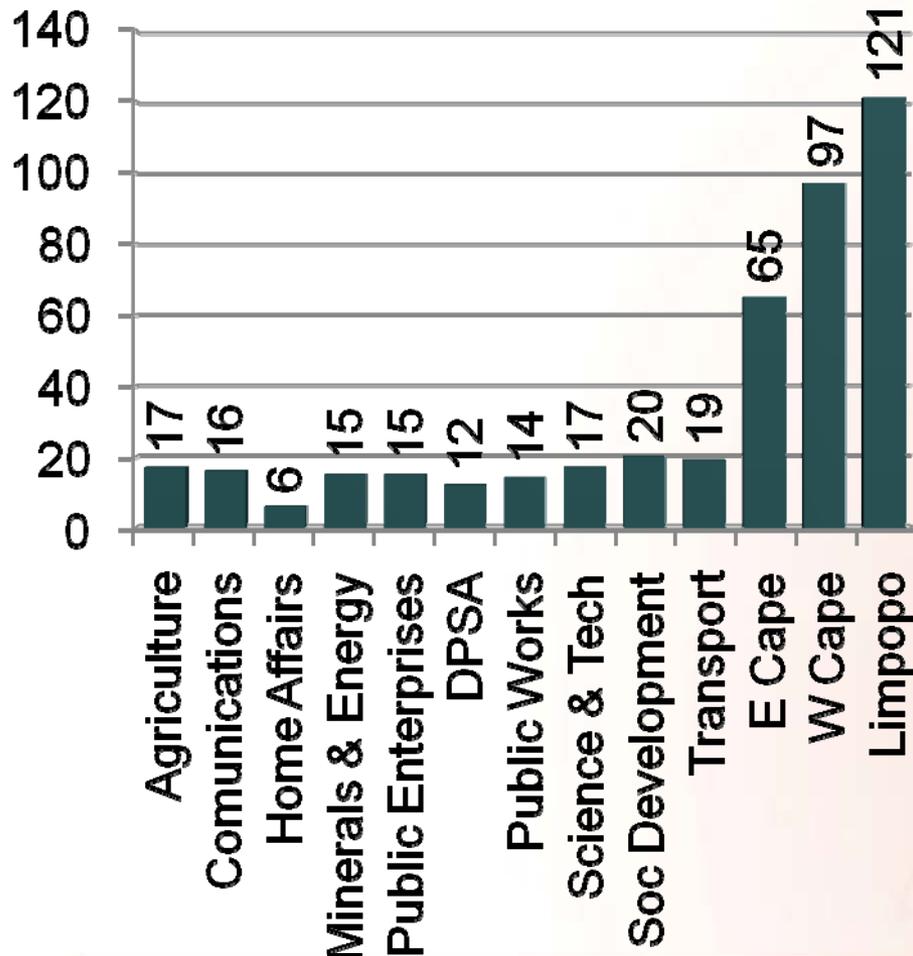
- Apart from compliance monitoring the PSC has shifted its focus to the scrutiny of the financial disclosure forms in order to identify potential conflicts of interest
- During 2008/2009 the PSC conducted an overview of the implementation of the financial disclosure framework² with the primary focus on determining whether senior managers may have potential conflicts of interest
- For this purpose the PSC scrutinised the financial disclosures of 30% of all senior managers that submitted their disclosures (2038)
- The sample included the Western Cape, Eastern Cape and the Limpopo Provincial departments as well as 10 national departments, namely:

<input type="checkbox"/> Agriculture	<input type="checkbox"/> Home Affairs	<input type="checkbox"/> Science and
<input type="checkbox"/> Communications	<input type="checkbox"/> Minerals and Energy	<input type="checkbox"/> Technology
<input type="checkbox"/> Public Service and Administration	<input type="checkbox"/> Public Enterprises	<input type="checkbox"/> Social Development
	<input type="checkbox"/> Public Works	<input type="checkbox"/> Transport

SCRUTINY OF FINANCIAL DISCLOSURES

- In scrutinising the disclosures of the sample of senior managers, the PSC assessed whether the private interests declared by senior managers could pose a potential conflict with their official responsibilities.
- The PSC was also concerned that those senior managers that submitted their financial disclosures may not have disclosed all their registrable financial interests
- In order to verify information on the financial disclosures, the PSC therefore obtained information on the Directorships and Partnerships held by the senior managers from the CIPRO data-base and on properties owned by them from the Deeds Register

NUMBER OF POTENTIAL CONFLICTS OF INTEREST IDENTIFIED



Of the **2038** financial disclosure forms scrutinized, **434** (21%) senior managers may have potential conflicts of interest between their private interests and their official duties.

- ▣ **341** senior managers that have directorships in companies that are related to their officials responsibilities

- ▣ **3** senior managers share the same interests in companies

- ▣ **210** SMS members did not disclose their interests in some companies or closed corporations.

RECOMMENDATIONS

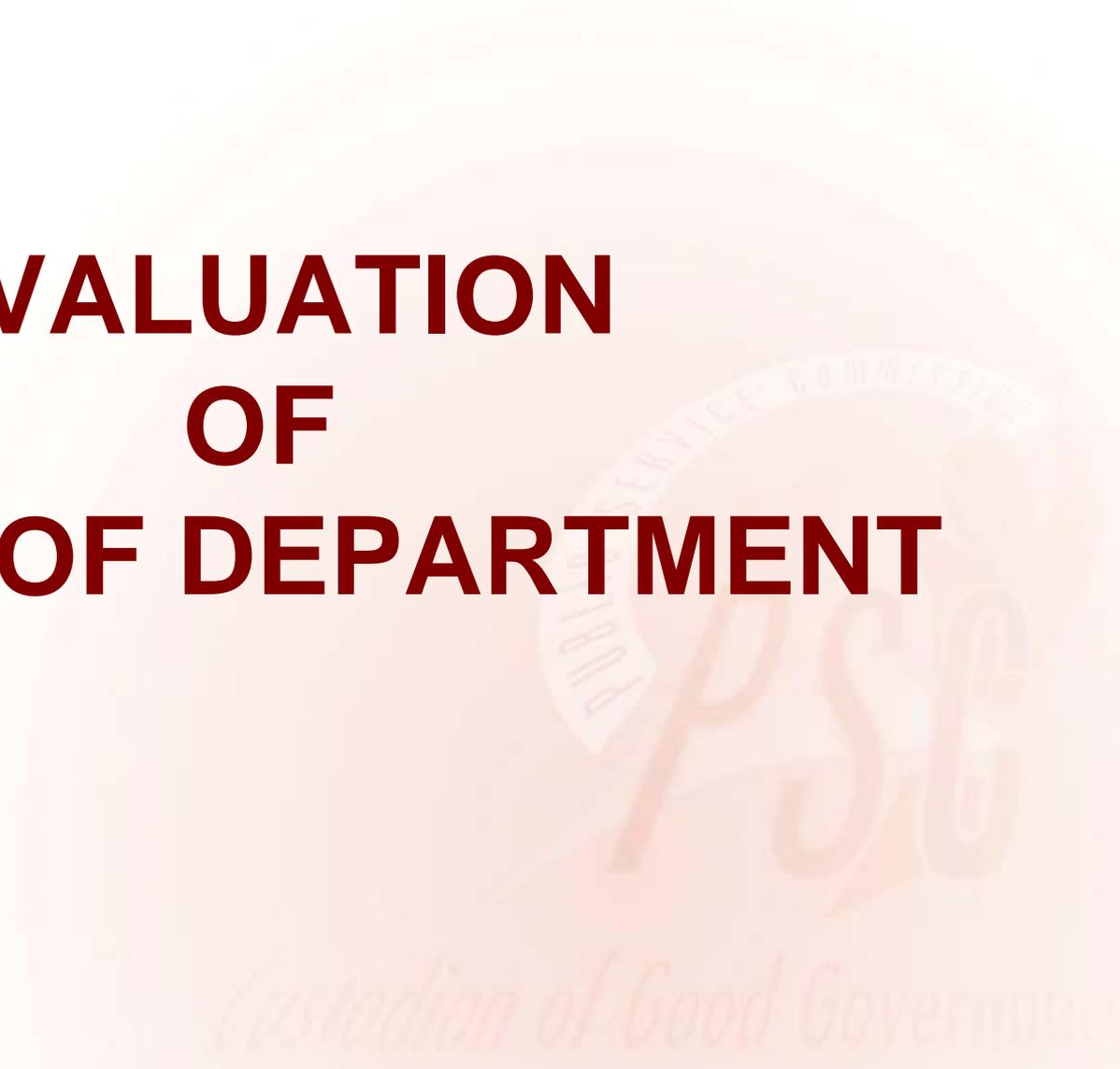
- HoDs and SMS members should be charged with misconduct for failing to disclose an interest. Instances where senior managers have been charged with misconduct must be reported to the PSC.
- EAs should assign the duty to manage the financial disclosure process and ensure that the forms are submitted timely to dedicated units within a department or dedicated staff members. Such staff members may liaise with officials of the PSC.
- SMS members be made aware of the fact that they need to disclose all companies, including dormant and non-profit making companies. Companies for which senior managers are performing work but are not receiving remuneration must also be declared.
- EAs should obtain the outstanding forms of the repeat offenders and submit them to the PSC as soon as possible.
- Given their Legislative and Parliamentary oversight role, Portfolio Committees should call departments and EAs to account where there has been non-compliance ,as well as low levels of compliance.

INITIATIVES TO IMPROVE THE MANAGEMENT OF CONFLICTS OF INTEREST

- The PSC during 2007 completed a study on the management of conflicts of interest in the Public Service.
- Emanating from this study the PSC recommended that –
 - a comprehensive framework for the management of conflicts of interest should be implemented in the Public Service
 - a conflicts of interest policy for the Public Service that would extend financial disclosures to categories of staff below the SMS.
- The PSC's recommendations have been taken up by the Department of Public Service and Administration and a draft conflict of interest policy was recently tabled before Cabinet for consideration.
- The draft policy includes the declaration of interests by officials that are involved the supply chain management processes of departments.



EVALUATION OF HEADS OF DEPARTMENT



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POLICY FRAMEWORK

- The PSC has since the year 2000 been involved in the facilitation of the evaluation of Heads of Department (HoDs).
- The PSC's involvement emanated from a Cabinet decision that mandated it to manage the evaluation process of HODs.
- These evaluations are conducted in terms of the Framework for the evaluation of HoDs (the Framework) which was adopted by Cabinet in November 2000.
- The basis for the framework is the Performance Management and Development System (PMDS) for Senior Management Service (SMS)
- The PMDS consolidates the provisions regarding performance management and development in the Public Service.

POLICY FRAMEWORK (CONT....)

- Chapter 4 of the PMDS requires all SMS members, including HoDs to enter into Performance Agreements (PAs) within the first two months of the new financial year, i.e. by 31 May.
- For the newly appointed HoDs the PAs have to be concluded within the first three months of appointment.
- These PAs should focus on one specific financial year and should be reviewed annually.
- However, for the 2009/10 financial year, the Minister for Public Service and Administration (MPSA) issued a circular dated 5 June 2009, which directs that in an event of national and provincial elections occurring, SMS members must conclude and sign their PAs within three months from the month of the elections. Hence, the deadline for the 2009/10 evaluations was 31 July 2009 and the date for filing with the PSC was extended to 31 August 2009.

IMPORTANCE OF CONCLUDING PAs TIMEOUSLY

- PAs are a basis for performance contracting to ensure accountability.
- The objective of timeous submission of PAs is to ensure that early in the financial year EAs and their HoDs clarify performance expectations as well as development needs for the year.
- They also serve as a point of reference for the HoD and EA in the performance management cycle for performance evaluations against departmentally set objectives.
- The PAs of the HoDs are supposed to be cascaded down to the rest of the staff. Thus where the signing of the HoD's PA is delayed it is likely to have a negative impact on how the rest of the employees in the department contract.

THE ROLE OF THE PSC IN THE MANAGEMENT OF PAs OF HODs

- The PSC receives, quality assures, and provides advice on the quality of PAs to the EAs.
- PAs that meet the quality standards are filed with the PSC and the EA informed accordingly.
- Those that do not comply with the quality requirements are returned to the departments for amendments
- Within a month of the deadline for filing the PAs, the PSC develops a report in the form of a factsheet which provides a status of which HoDs complied or did not comply with the requirements for filing their PAs.
- The factsheet is then forwarded to the Presidency, Parliament and all the Provincial Legislatures.

STATISTICS FOR THE FILING OF PAs FOR THE 2009/10 FINANCIAL YEAR

National/ Province	Total HoDs	Expected	Received	Outstan- ding	Acting/ Vacant	% Total Received/ Expected
AS AT 30 SEPTEMBER 2009						
National	42	32	14	18	10	44%
E Cape	13	7	7	0	6	100%
Free State	12	11	2	9	1	18%
Gauteng	11	3	0	3	8	0%
KZN	15	10	5	5	5	50%
Limpopo	11	9	6	3	2	66%
Mpu	12	5	0	5	7	0%
North West	11	9	5	4	2	55%
N Cape	12	8	2	6	4	25%
W Cape	12	6	5	1	6	83%

TRENDS OVER THE LAST THREE YEARS

Financial Year	Total HoDs	Expected	Received	Outstanding	Acting/ Vacant	% of Total Received /Expected
NATIONAL						
2006/2007	38	35	27	8	3	77%
2007/2008	38	35	32	3	3	91%
2008/2009	38	35	27	8	3	77%
2009/2010	42	32	17	15	10	53%
PROVINCIAL						
2006/2007	108	91	74	17	17	81%
2007/2008	108	93	80	13	15	86%
2008/2009	111	95	80	15	16	84%
2009/2010	109	68	32	36	41	47%



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THANK YOU!



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