

Overview of the Implementation of the Financial Disclosure Framework: Financial Year 2008/2009



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Foreword

Serving the public interest is fundamental to being a public official. In serving the public interest, public officials should always make decisions that benefit the public good, without thinking about their own personal gain. Importantly, public duties should be conducted in a fair and impartial manner; and therefore public officials are required to behave in a manner that minimise the potential for conflicts of interest.

The Public Service Commission (PSC) has as early as 1999 realised the importance of managing the conflicts of interest of public servants, and developed a Financial Disclosure Framework for senior managers. This Framework requires all members of the Senior Management Service in the Public Service to disclose all their registrable interests annually to their Executive Authorities. The Executive Authorities in turn, are required to submit copies of the financial disclosure forms to the PSC by 31 May of each year.



The PSC has an important role to play with respect to the scrutiny of the Financial Disclosure Forms, to identify potential conflicts of interest and to alert Executive Authorities accordingly. Given this important role in the management of conflicts of interest, the PSC has deemed it appropriate to report on the management of conflicts of interest of senior managers on an annual basis.

This overview report for the 2008/2009 financial year provides insight into the extent of senior managers' involvement in private interests, such as directorships and partnerships in private companies and close corporations. It is to be expected that there will be occasions when a senior manager's private interests will come into conflict with his/her public duties, and this must be avoided through a structured process of management of conflicts of interest. Where conflicts of interest cannot reasonably be avoided they should be appropriately managed.

The PSC is, therefore, pleased to present this overview in the hope that it will encourage departments to apply concerted efforts in the management of conflicts of interest. It is trusted that the management of conflicts of interest will build integrity amongst senior managers in the disclosure of their financial interests and in so doing, engender public trust.

DR RR MGIJIMA
CHAIRPERSON: PUBLIC SERVICE COMMISSION





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Abbreviations

AG	Auditor-General
CIPRO	Companies and Intellectual Property Registration Office
DRS	Deeds Registration System
HoD	Head of Department
PALAMA	Public Administration, Leadership and Management Academy
PERSAL	Personnel and Salaries System
PPFA	Preferential Procurement Policy Framework Act
PSC	Public Service Commission
SMS	Senior Management Service





Executive Summary

1. INTRODUCTION

The Public Service Commission (PSC) has an important role to play with respect to the scrutiny of the Financial Disclosure Forms, to identify potential conflicts of interest and to alert Executive Authorities accordingly. Given this important role in the management of conflicts of interest, the PSC has deemed it appropriate to report on the management of conflicts of interest of senior managers on an annual basis.

This overview report looks at the submission rate of Financial Disclosure Forms for the 2008/2009 financial year and provides insight into the extent of senior managers' involvement in private interests, such as directorships and partnerships in private companies and close corporations.

2. OBJECTIVES OF THE RESEARCH REPORT

The PSC through this report seeks to promote accountability and transparency by reporting on the following:

- The submission of the financial disclosure forms for the 2008/2009 financial year.
- The scrutiny of a sample of 30% of the financial disclosure forms received for the 2008/2009 financial year and to point out cases of potential conflicts of interest.
- The assessment of receipt of gifts by senior managers in the Public Service.
- Recommendations for the effective management of conflicts of interest.

3. MANDATE OF THE PSC

The PSC's mandate to report on the Framework is contained in the Constitution of the Republic of South Africa, 1996, as well as the *Public Service Commission Act*, 1997, and the Public Service Regulations. The provisions are as follows:

LEGISLATION	DESCRIPTION
Constitution of the Republic of South Africa, 1996	In terms of Section 195 and 196 of the Constitution, 1996, the PSC is mandated to promote a high standard of professional ethics in the Public Service and to investigate, monitor and evaluate the organisation and administration, and

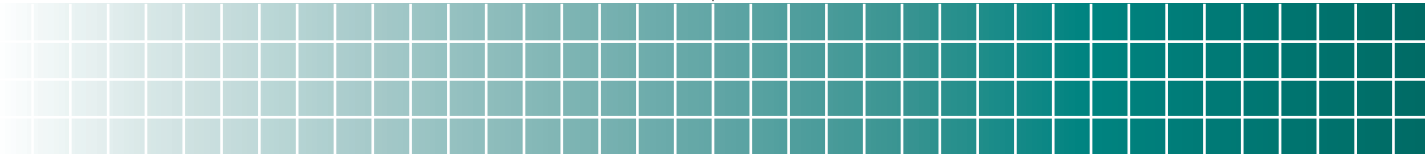




LEGISLATION	DESCRIPTION
	<p>personnel practices of the Public Service. In addition, the PSC may evaluate the application of public administration practices and report to Executive Authorities and Legislatures. In terms of this mandate the following sections of the Constitution, 1996¹ are applicable:</p> <p>“195 (i)(a) to promote a high standard of professional ethics in the Public Service”,</p> <p>“196(4)(b) to investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service;”</p> <p>“196(4)(f)(i) to investigate and evaluate the application of personnel and public administration practices, and to report to the relevant executing authority and legislature;”</p>
Public Service Commission Act, 1997	<p>The following sections of the Public Service Commission Act, 1997 are applicable.</p> <p>“8. Subject to the provisions of the Constitution, the Commission may exercise the powers and shall perform the duties entrusted to the Commission by or under this Act, the Constitution or the Public Service Act.</p> <p>The Commission may inspect departments and other organisational components in the Public Service, and has access to such official documents or may obtain such information from heads of those departments or organisational components or from other officers in the service of those departments or organisational components as may be necessary for the performance of the functions of the Commission under the Constitution or the Public Service Act”.</p>
Public Service Regulations	<p>Chapter 3 of the Public Service Regulations, 2001, deals with the prescripts of the Financial Disclosure Framework (the Framework) and provides for the PSC's role in the management of the Framework.² In this regard, section G of Chapter 3 of the Public Service Regulations³ specifically provides that the PSC may scrutinise and verify the information contained in the financial disclosure forms, to identify potential conflicts of interest and to alert Executive Authorities accordingly.</p>

Thus, the PSC monitors the implementation of the Framework within the Public Service in line with the relevant legislative framework, in fulfillment of its mandate to promote professional ethics within the Public Service.

1 Republic of South Africa, the Constitution of the Republic of South Africa, 1996, Act No. 108 of 1996.
2 Republic of South Africa, Chapter 3 of the Public Service Regulations 2001.
3 Republic of South Africa, Chapter 3 of the Public Service Regulations, 2001.



4. RESEARCH METHODOLOGY

The methodology that was adopted in compiling this report entailed the scrutiny of financial disclosure forms received to identify potential conflicts of interest. This included a search on the Companies and Intellectual Property Registration Office (CIPRO) as well as the Deeds Registry on a sample of disclosures. A desktop analysis on the receipt of gifts as disclosed by SMS members was also conducted.

4.1 Selection of a Sample of the Disclosure Forms

In addition to the desktop study, a random sample of thirty percent (30%) of the disclosure forms, submitted during the 2008/2009 financial year, was taken to assess whether potential conflicts of interest exist. Due to financial and capacity constraints, the sample for the scrutiny of the disclosure forms was limited to 30% of the disclosure forms. The sample covered the following twelve (12) national departments as well as provincial departments of three (3) provinces:

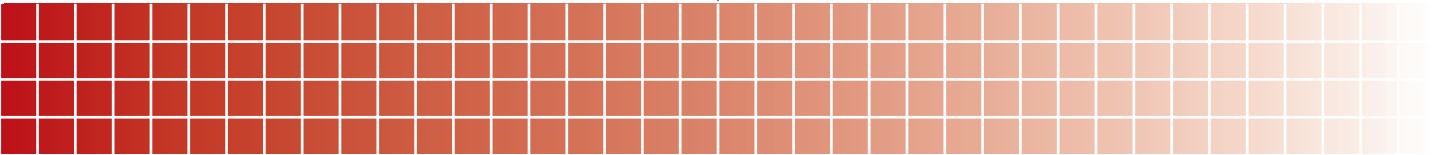
NATIONAL DEPARTMENTS
Office of the Public Service Commission Department of Education (both Basic Education and Higher Education & Training) National Treasury Department of Cooperative Governance and Traditional Affairs Department of Human Settlements Department of Labour Department of Home Affairs Statistics South Africa Public Administration, Leadership and Management Academy Presidency State Security Department of Sports and Recreation
PROVINCES
Northern Cape Province Gauteng Province Free State Province

4.2 Scrutiny and Verification of the Disclosure Forms

During the scrutiny of the selected sample of disclosure forms, a list of private companies and close corporations was obtained from the CIPRO. A desktop analysis of this list was done against the companies as disclosed by SMS members to identify cases of non-disclosure. Finally, in order to verify the properties as disclosed by members of the SMS, the PSC utilised the Deeds Registration System (DRS) of the Deeds Registration Office, within the Department of Rural Development and Land Reform. From this verification the PSC was able to obtain information and clarification on whether or not a designated official has neglected to disclose a property.

A separate assessment, which is additional to the sampled departments and provinces, was done on the disclosures of heads of national and provincial departments. The PSC reports on this assessment in this report.





As part of the scrutiny of the disclosure forms, the PSC deemed it necessary to assess the extent to which members of the SMS received gifts.

5. LIMITATIONS

One of the limitations of this overview is that the PSC did not receive all the disclosure forms of the senior managers of the selected departments. Therefore, it was not possible to assess whether the financial interests of some of the senior managers in these departments posed a potential or actual conflict of interests. Similarly it was not possible to ascertain whether all senior managers received gifts, due to the non-disclosure of financial interests.

A further limitation experienced is that some of the departments within the sample did not have gift registers. The PSC was, therefore, not able to perform a scrutiny on the receipt of gifts by all the sampled members of the SMS, and assess whether the receipt of gifts constitutes a potential or actual conflict of interests.

6. FINDINGS

In this research study the PSC made numerous findings pertaining to the submission of the disclosure forms and the identification of potential conflicts of interest. The major findings of the PSC were that:

- The PSC found that 542 (21%) senior managers out of the sample of members of the SMS (2 628) may have potential conflicts of interest between their private interests and their official duties i.e. 228 from national departments and 314 from provincial departments.
- The PSC found that 576 (22%) senior managers out of the sample of 2 628 did not disclose their directorships/partnerships in private companies and close corporations. This figure includes 338 senior managers from national departments and 238 from provincial departments.
- The PSC also found that 276 senior managers did not disclose their properties as required in terms of Chapter 3 of the Public Service Regulations. Of these, 103 were from national departments and 173 from provincial departments. The disclosure of properties, as assets, forms an integral part of the Financial Disclosure Framework and action should be taken against senior managers who do not comply in this regard.
- Out of the sample of 30%, the PSC found that 101 senior managers received gifts to the value of R740 100,00.

With regard to the assessment that was conducted in respect of Heads of Department, the following findings were made:

- Of a total number of 150 Heads of Department assessed, only 122 submitted their financial disclosure forms. The forms of 28 were outstanding at the time of compiling this report.
- The assessment revealed that the financial interests of fifty (50) i.e. 33% of the HoDs, present a potential conflict of interests to their departments.
- Forty-eight (48), i.e. 32% of HoDs did not disclose some of their directorships and/or partnerships in private companies/close corporations.
- Twenty-six (26) HoDs did not disclose their properties.





7. RECOMMENDATIONS

Based on the findings of this report the PSC has deemed it appropriate to make the following recommendations to improve the management of the Framework:

- Charging Members of the SMS with misconduct:** The PSC recommends that Executive Authorities should ensure that transgressing HoDs and other members of the SMS are charged with misconduct for failing to disclose their financial interests in terms of the Disciplinary Code and Procedures, as contained in the SMS Handbook for not complying with the Financial Disclosure Framework. The Executive Authorities should also inform the PSC of any steps taken in this regard and if no steps were taken state the reasons thereof.
- Disclosure of Private Companies and Close Corporations:** A total of 576 members of the SMS failed to disclose their directorships/partnerships in private companies and close corporations, while 276 did not disclose their properties. This is in contravention with Chapter 3 of the Public Service Regulations and it is recommended that Executive Authorities charge transgressing HoDs and ensure that other members of the SMS are charged with misconduct for failing to disclose their registrable interests by instructing their HoDs to do so. It is further recommended that members of the SMS 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 disclosed. Instances where such managers have been charged with misconduct must also be reported to the PSC.
- Addressing the Management of Conflicts of Interest:** In the PSC's report on the "Management of Conflicts of Interest in the Public Service" it was mentioned that *"effective management of conflicts of interest is based on the ability to identify specific conflicts of interest and managing them while they remain potential conflicts. Effective management also depends on staff and senior managers being aware of the Public Service's approach to conflicts of interest and their responsibilities towards managing conflicts of interest"*.⁴ The PSC therefore recommends that in managing conflicts of interest at departmental level, departments should consider strategies in dealing with persons who have been identified, through the disclosure of their financial interests, as having a potential conflict of interest. In this regard the following could be considered:
 - "Re-assigning the duties of the official if this can be effected in the interest of the state.*
 - If it is not possible to re-assign the duties of the official, the feasibility of a transfer to another component if in the interest of the state should be considered.*
 - If the re-assignment of duties or a transfer is not possible consideration should be given to request the official to resign from the private interest that is causing the conflict of interest"*.⁵
- Strengthening Conflicts of Interest Regulations:** Through this overview the PSC has come to realise that there is a gap in the regulations regarding the participation of SMS members in government contracts. It came to light in this overview that SMS members have companies which regularly interact with government departments by obtaining contracts. However there is no provision that regulates such interaction. The Institute for Security Studies⁶, in its research found that "at local level, restrictions on elected officials tendering for municipal contracts are controlled in terms of the *Municipal Finance Management Act*⁷. At the national and provincial level, however, the *Public Finance Management Act*⁸ fails to regulate the same activity". The PSC, therefore, recommends that the *Public Finance Management Act* should be amended to provide for the regulation of private companies linked to public officials and doing business with government.
- Conducting of Lifestyle Audits:** Due to the continuing reluctance of SMS members to submit their financial disclosures, the PSC is of the opinion that the management of conflicts of interests could further be strengthened

4 Republic of South Africa, Public Service Commission, Report on the Management of Conflicts of Interest in the Public Service, 2006.
5 Republic of South Africa, Public Service Commission, Report on the Management of Conflicts of Interest in the Public Service, 2006.
6 Institute for Security Studies: Financial Disclosure Requirements in South Africa 2004-2008.
7 Republic of South Africa, Municipal Public Finance Management Act (Act No. 56 of 2003).
8 Republic of South Africa, Public Finance Management Act (Act No. 1 of 1999).



by conducting lifestyle audits. This implies that if an Executive Authority or the PSC is of the opinion that there has been incomplete disclosure of financial interests by a senior manager, it may embark on a lifestyle audit. Here it must be emphasised that such a lifestyle audit would not question an official's right to wealth, but rather, how such wealth has been acquired. This recommendation of lifestyle audits should be regarded as one of the strategies that could add value to the management of conflicts of interest and the combating of corruption in the Public Service.

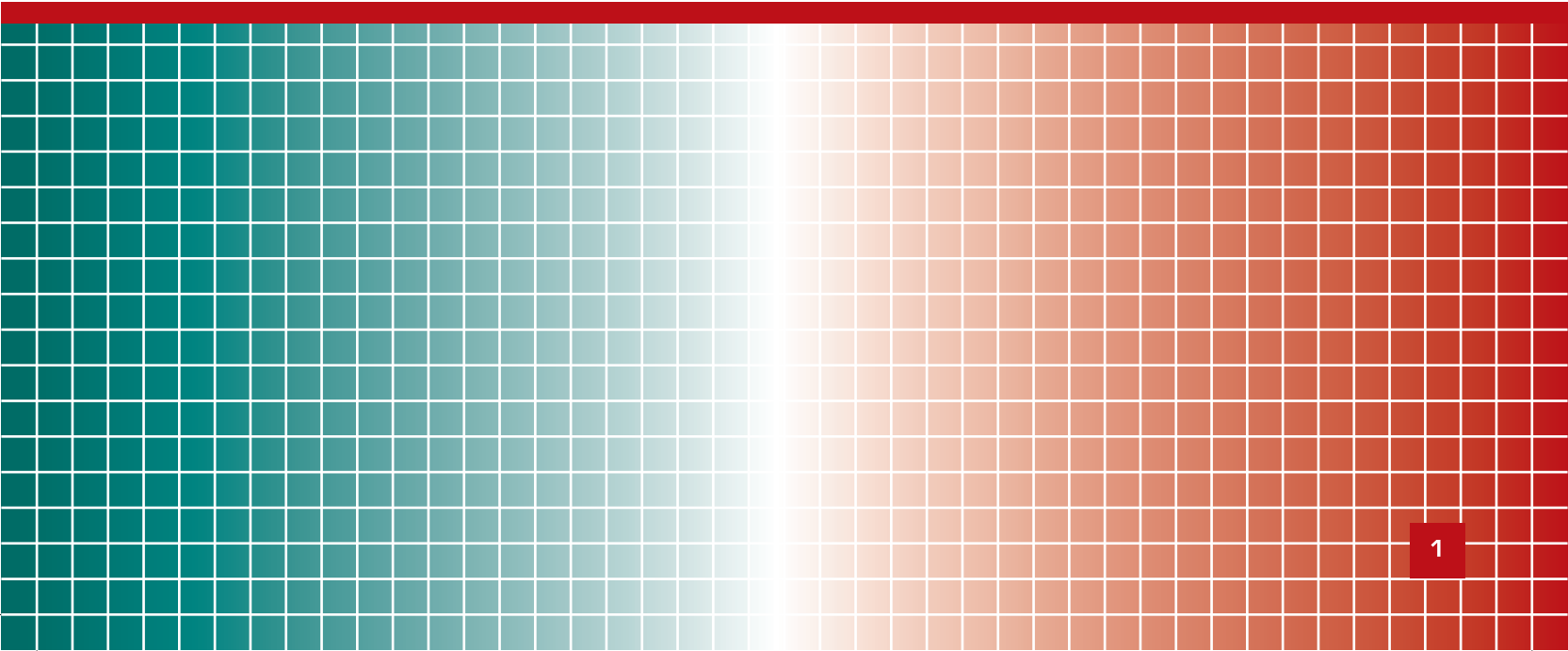
- **Monitoring by Portfolio Committees:** The PSC recommends that given their Legislative and Parliamentary oversight role, Portfolio Committees should call departments and Executive Authorities to account where there has been non-compliance as well as low levels of compliance to the Financial Disclosure Framework.

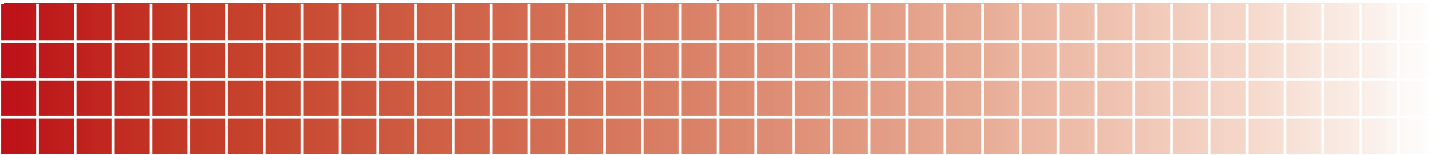




Chapter One

Introduction





1.1 BACKGROUND

To manage potential conflicts of interest and thereby ensure greater accountability, many democracies such as South Africa, have introduced financial disclosure regulations. Financial disclosure regulations set obligations on senior public officials to disclose their registrable interest and are aimed at preventing conflicts of interest. Senior managers in the Public Service are entrusted with public funds and, therefore, they need to maintain the highest standard of professional ethics. Their integrity and that of their departments must be beyond question. Therefore, the introduction of a Financial Disclosure Framework (the Framework) in the South African Public Service was seen as imperative. This Framework requires all members of the Senior Management Service (SMS) in the Public Service to disclose all their registrable interests annually to their Executive Authorities. The Executive Authority in turn, is required to submit a copy of the financial disclosure form to the PSC by 31 May of each year.

The PSC has an important role to play with respect to the scrutiny of the Financial Disclosure Forms, to identify potential conflicts of interest and alert Executive Authorities accordingly. Given this important role in the management of conflicts of interest, the PSC has deemed it appropriate to report on the management of conflicts of interest of senior managers on an annual basis.

This overview report for the 2008/2009 financial year provides insight into the extent of senior managers' involvement in private interests, such as directorships and partnerships in private companies and close corporations. The view of the PSC is that there is nothing wrong in having such private interests. However, it is to be expected that there will be occasions when a senior manager's private interests will come into conflict with his/her public duties, and this must be avoided through a structured process of management of conflicts of interest. Where conflicts of interest cannot reasonably be avoided they should be appropriately managed.

Due to financial constraints the PSC scrutinised only 30% of the disclosures. The scrutiny focused on the declaration of directorships and partnerships in companies through a verification of information on the Companies and Intellectual Properties Registration Office (CIPRO) database. The extent to which such directorship and partnerships pose potential conflicts of interest was assessed. The scrutiny also involved a desktop analysis of the gifts received by senior managers. The broad aim of the assessment is to identify the extent to which the registrable interests of senior managers pose a potential conflict of interest and how such conflicts of interest should be managed within the Public Service.

1.2 OBJECTIVES OF THE RESEARCH REPORT

The PSC through this report seeks to promote accountability and transparency by reporting on the following:

- The submission of the financial disclosure forms for the 2008/2009 financial year.
- The scrutiny of a sample of 30% of the financial disclosure forms received for the 2008/2009 financial year and to point out cases of potential conflicts of interest.
- The assessment of receipt of gifts by senior managers in the Public Service.
- Recommendations for the effective management of conflicts of interest.





1.3 MANDATE OF THE PSC

The PSC's mandate to report on the Framework is contained in the Constitution of the Republic of South Africa, 1996, as well as the *Public Service Commission Act*, 1997, and the Public Service Regulations. The provisions are as follows:

LEGISLATION	DESCRIPTION
Constitution of the Republic of South Africa, 1996	<p>In terms of Section 195 and 196 of the Constitution, 1996, the PSC is mandated to promote a high standard of professional ethics in the Public Service and to investigate, monitor and evaluate the organisation and administration, and personnel practices of the Public Service. In addition, the PSC may evaluate the application of public administration practices and to report to Executive Authorities and Legislatures. In terms of this mandate the following sections of the Constitution, 1996⁹ are applicable:</p> <p>“195 (i)(a) to promote a high standard of professional ethics in the Public Service”,</p> <p>“196(4)(b) to investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service;”</p> <p>“196(4)(f)(i) to investigate and evaluate the application of personnel and public administration practices, and to report to the relevant executing authority and legislature;”</p>
Public Service Commission Act, 1997	<p>The following sections of the <i>Public Service Commission Act</i>, 1997 are applicable.</p> <p>“8. Subject to the provisions of the Constitution, the Commission may exercise the powers and shall perform the duties entrusted to the Commission by or under this Act, the Constitution or the Public Service Act.</p> <p><i>The Commission may inspect departments and other organisational components in the Public Service, and has access to such official documents or may obtain such information from heads of those departments or organisational components or from other officers in the service of those departments or organisational components as may be necessary for the performance of the functions of the Commission under the Constitution or the Public Service Act”.</i></p>
Public Service Regulations	<p>Chapter 3 of the Public Service Regulations, 2001, deals with the prescripts of the Financial Disclosure Framework (the Framework) and provides for the PSC's role in the management of the Framework.¹⁰ In this regard, section G of Chapter 3 of the Public Service Regulations¹¹ specifically provides that the PSC may scrutinise and verify the information contained in the financial disclosure forms, to identify potential conflicts of interest and to alert Executive Authorities accordingly.</p>

9 Republic of South Africa, the Constitution of the Republic of South Africa, 1996, Act No. 108 of 1996.
10 Republic of South Africa, Chapter 3 of the Public Service Regulations, 2001.
11 Republic of South Africa, Chapter 3 of the Public Service Regulations, 2001.





Thus, the PSC monitors the implementation of the Framework within the Public Service in line with the relevant legislative framework, in fulfillment of its mandate to promote professional ethics within the Public Service.

1.4 RESEARCH METHODOLOGY

The methodology that was adopted in compiling this report entailed scrutiny of financial disclosure forms received to identify potential conflict of interest. This included a search on the CIPRO as well as the Deeds Registry on a sample of disclosures. A desktop analysis on the receipt of gifts as disclosed by SMS members was also conducted.

1.4.1 Selection of a Sample of the Disclosure Forms

In addition to the desktop study, a random sample of thirty percent (30%) of the disclosure forms, submitted during the 2008/2009 financial year, was taken to assess whether potential conflicts of interest exist. Due to financial and capacity constraints, the sample for the scrutiny of the disclosure forms was limited to 30% of the disclosure forms.

The sample covered the following twelve (12) national departments as well as provincial departments of three (3) provinces:

NATIONAL DEPARTMENTS
Office of the Public Service Commission Department of Education (both Basic Education and Higher Education & Training) National Treasury Department of Cooperative Governance and Traditional Affairs Department of Human Settlements Department of Labour Department of Home Affairs Statistics South Africa Public Administration, Leadership and Management Academy Presidency State Security Department of Sports and Recreation
PROVINCES
Northern Cape Province Gauteng Province Free State Province

1.4.2 Scrutiny and Verification of the Disclosure Forms

During the scrutiny of the selected sample of disclosure forms, a list of private companies and close corporations was obtained from the CIPRO. A desktop analysis of this list was done against the companies as disclosed by SMS members to identify cases of non-disclosure. Finally, in order to verify the properties as disclosed by members of the SMS the PSC utilised the DRS of the Deeds Registration Office, within the Department of Rural Development and Land Reform. From this verification the PSC was able to obtain information and clarification on whether or not a designated official has neglected to disclose a property.





A separate assessment, which is additional to the sampled departments and provinces, was done on the disclosures of heads of national and provincial departments. The PSC reports on this assessment in this report.

As part of the scrutiny of the disclosure forms the PSC deemed it necessary to assess the extent to which members of the SMS received gifts.

1.5 LIMITATIONS

One of the limitations of this overview is that the PSC did not receive all the disclosure forms of the senior managers of the selected departments. Therefore, it was not possible to assess whether the financial interests of some of the senior managers in these departments posed a potential or actual conflict of interests. Similarly it was not possible to ascertain whether all senior managers received gifts, due to the non-disclosure of financial interests.

A further limitation experienced is that some of the departments within the sample did not have gift registers. The PSC was, therefore, not able to perform a scrutiny on the receipt of gifts by all the sampled members of the SMS, and assess whether the receipt of gifts constitutes a potential or actual conflict of interests.

1.6 OUTLINE OF THE REPORT

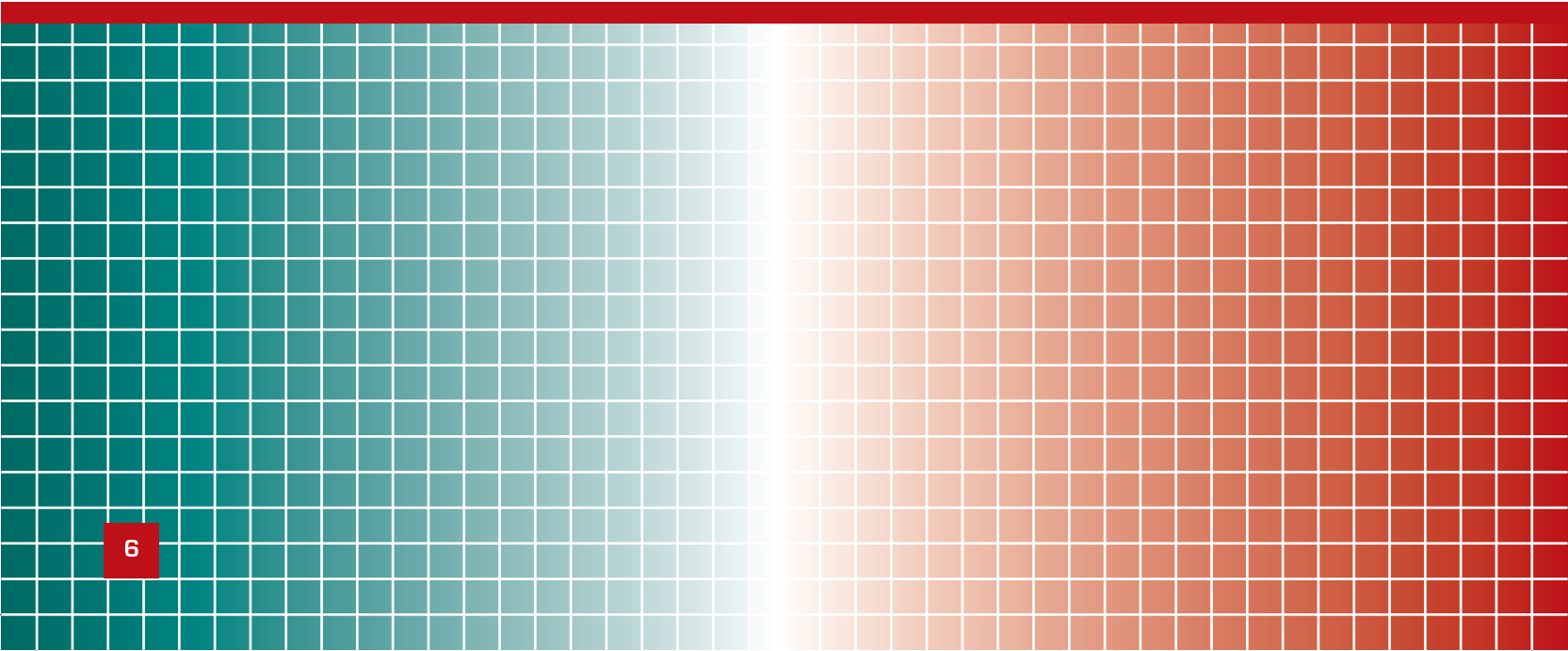
Chapter 1 provides an introduction to the report. In Chapter 2 an indication of the senior managers who did not disclose their private interests such as their partnerships/directorships in private companies and close corporations as well as their properties is provided. Importantly, this Chapter provides an indication on the extent to which the private companies and close corporations pose a potential conflict of interest to a department. Chapter 3 contains the outcome of the assessment of the disclosures of heads of national and provincial departments as well as the findings on the extent of gifts received by senior managers during the 2008/2009 financial year. Chapter 4 contains the findings of the overview and the recommendations of the PSC whilst in Chapter 5 a conclusion to the overview is provided.





Chapter Two

Scrutiny of the Financial Disclosure Forms





2.1 INTRODUCTION

The purpose of the Framework is to identify potential conflicts of interest of senior managers to afford Executive Authorities and departments the opportunity to put in place measures to manage conflicts of interest. In this regard the PSC has an important role to play as provided for in Chapter 3 of the Public Service Regulations.¹² Regulations G.1 and G.2 state -

“If the Commission is of the opinion that a registrable interest of a designated employee disclosed in terms of regulation C of this Chapter conflicts or is likely to conflict with the execution of any official duty of that employee, it shall verify the information regarding that interest and consult with the employee in question.

If, after such verification and consultation, the Commission is of the opinion that there is such conflict or that such conflict is likely to occur, it shall refer the matter to the relevant executing authority”.

This Chapter presents the findings of the PSC's assessment of the financial disclosures submitted to it with specific reference to the extent to which potential conflicts of interests have been identified. An indication is also provided of the senior managers who did not disclose private interests such as partnerships/directorships in private companies and close corporations as well as their properties. Due to capacity and financial constraints, the PSC has decided to assess a sample of 30% of the financial disclosures received.

2.2 PROCESSES APPLIED BY THE PSC IN ASSESSING FINANCIAL DISCLOSURES TO IDENTIFY POTENTIAL CONFLICTS OF INTEREST

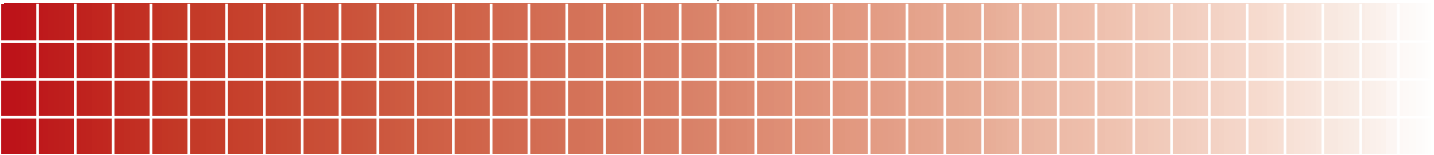
In terms of the Public Service Regulations, the following are types of registrable interests that must be disclosed by a SMS member:

Shares and other financial interests in private or public companies and other corporate entities recognised by law;
Directorships and partnerships;
Remunerated work outside the Public Service;
Consultancies and retainerships;
Sponsorships;
Gifts and hospitality from a source other than a family member; and
Ownership and other interests in land and property, whether inside or outside the Republic of South Africa.

In order to arrive at an “*opinion*” on whether any particular disclosure by a senior manager constitutes a potential conflict of interest between his/her private interests and official responsibilities, the PSC applied a stringent verification process. This verification process includes the following:

¹² Republic of South Africa. Public Service Regulations, 2001 (Government Notice No. R. 1 of 5 January 2001 as amended).





Check proper name of company/consultancy/close corporation.
Check on the CIPRO website if company/consultancy is registered in the official's name.
Check the type of business the company is doing as indicated by the designated official.
Check on the CIPRO website, whether the type of business actually correlates to what the official has indicated on the disclosure form.
Assess the correlation between what the company is doing against the official duties of the designated official as well as identifying the general purpose of a department.
Check through the disclosure forms who else is involved in the same company.
Check if the company is dormant and if the designated official receives remuneration.
Where applicable check if approval was granted to perform work outside of the Public Service.

The information contained in the disclosure forms is assessed through a diligent application of the above checklist. Information relating to directorships and partnerships was verified against information on the CIPRO website. Furthermore, with regard to consultancies and retainerships as well as work performed outside of the Public Service, the nature of the activities was assessed against the nature of the official's responsibilities in order to formulate an opinion on potential or actual conflicts of interest. The PSC further used the DRS to check and to verify whether a senior manager has disclosed all his/her properties.

In addition, the PSC developed and approved rules for the management of conflicts of interest.¹³ Although geared towards the management of conflicts of interest, the rules are also aimed at strengthening the scrutiny processes and to assist the PSC in formulating an opinion on conflicts of interest and advising Executive Authorities. These Rules were published in Government Gazette No. 3228 of 12 June 2009.

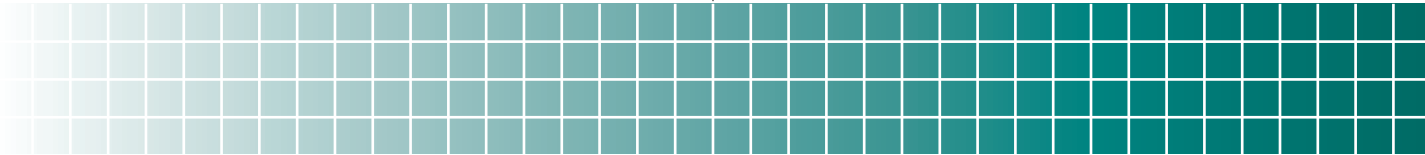
With the Rules on Managing Conflicts of Interest as the basis, the PSC used the following parameters to formulate an opinion on whether or not the financial interests of a designated official could lead to a potential conflict of interest:

- Link between the operations of a department or official duties of a senior manager and the business activities of a company or consultancy:** In this instance the opinion is formulated on the basis that if there is a correlation between the official duties of an official and the company with which he/she is involved in, then it is deemed to be a potential conflict of interest. A typical example would be of a senior manager whose responsibilities involve managing communication projects for a department, and who then is also involved in a telecommunications company or is receiving gifts from a telecommunications company as a partner or director.
- Identification of conflicts of interest by number of companies:** In a research study which the PSC did in conjunction with the Auditor-General (AG)¹⁴ it was found that many senior managers are involved in more than one company. In one instance, for example, it was found that a senior manager was involved in more than thirty (30) companies. The PSC presupposed that an official involved in a large number of companies could experience potential conflicts of interest. In this regard note was taken of Section 30 of the *Public Service Act, 1994* (as amended) which stipulates that: "every officer and employee shall place the whole of his or her time at the disposal of the State".¹⁵ The PSC is therefore of the opinion that should an official be involved in three or more companies, he or she would not, in all probability, have the time to devote his/her full attention to the requirements of the State in terms of his/her job.

¹³ Republic of South Africa. Public Service Commission, *Rules of the Public Service Commission: Managing Conflicts of Interest Identified Through the Financial Disclosure Framework*.

¹⁴ Republic of South Africa. Report of the Auditor-General on the Declarations of Interests by Ministers, Deputy Ministers and Government Employees, 2006.

¹⁵ Republic of South Africa, *Public Service Act, 1994* (as amended), Section 30.



- **Officials sharing companies:** It is quite common that in some instances two or more officials from the same department are involved in the same company or companies. The PSC identified this as a potential conflict of interest as such officials could make decisions that favour one another during the discharge of their official duties.

2.3 ASSESSING A SAMPLE OF THE FINANCIAL DISCLOSURE FORMS

In terms of the scope of this report, a sample of thirty percent (30%) of the disclosure forms received for the 2008/2009 financial year was assessed for the purpose of identifying potential conflicts of interest. This sample included the Northern Cape, Gauteng and the Free State provincial departments. The financial disclosure forms of the senior managers of the following national departments were also included as part of the sample:

Office of the Public Service Commission
Department of Education (Basic Education and Higher Education & Training)
National Treasury
Department of Cooperative Governance and Traditional Affairs
Department of Human Settlements
Department of Labour
Statistics South Africa
Department of Arts & Culture
Public Administration, Leadership and Management Academy
Presidency
State Security
Department of Sports & Recreation

Table I indicates the number of the financial disclosure that were expected and received in order to determine the extent of potential conflicts of interests in the Public Service. It should be noted, however; that in cases where disclosure forms were not submitted, other means were devised to obtain information that assisted with the scrutiny of registrable interests of SMS members. To this end, information was obtained from PERSAL in order to identify the relevant SMS members of the departments within the sample.

Table I: Submission of Financial Disclosure Forms for the 2008/2009 Financial Year as at 31 March 2010

NATIONAL DEPARTMENT/ PROVINCE	NO. OF SMS MEMBERS	NO. OF FORMS RECEIVED	NO. OF FORMS OUTSTANDING	PERCENTAGE RECEIVED
National Departments	4 667	3 703	964	79%
Eastern Cape	675	521	154	77%
Free State	381	229	152	60%
Gauteng	992	793	199	80%



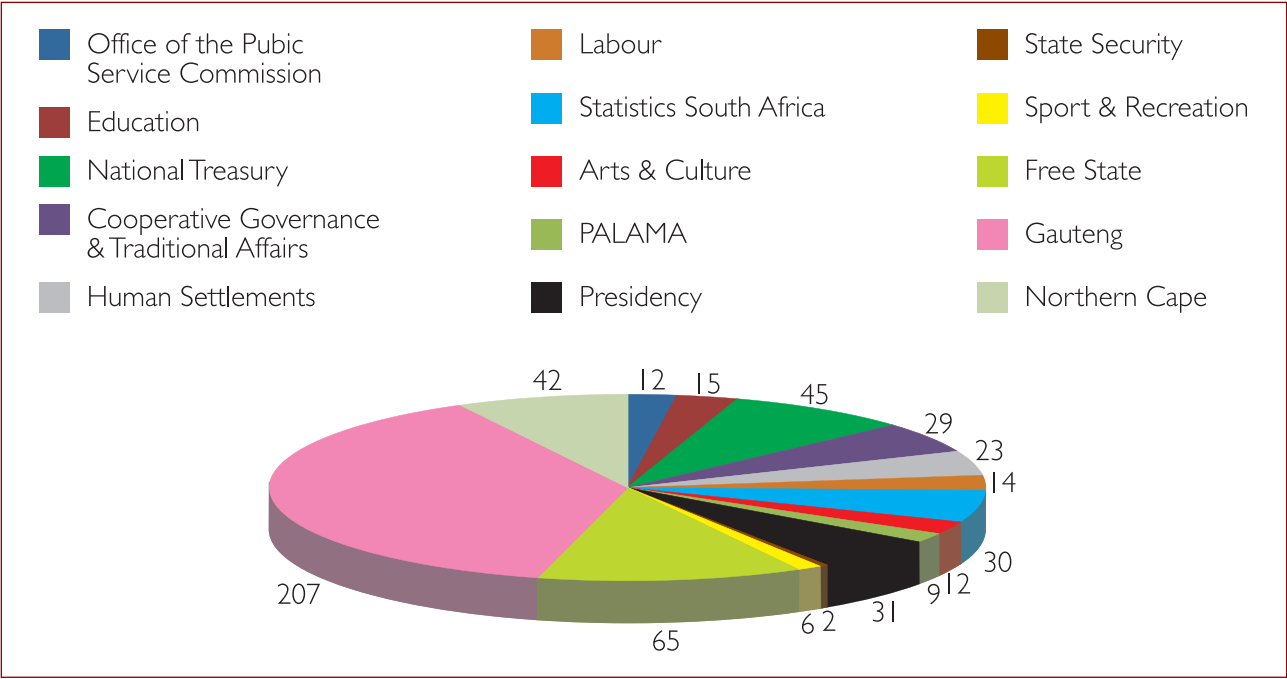
NATIONAL DEPARTMENT/ PROVINCE	NO. OF SMS MEMBERS	NO. OF FORMS RECEIVED	NO. OF FORMS OUTSTANDING	PERCENTAGE RECEIVED
KwaZulu-Natal	715	539	176	75%
Limpopo	476	458	18	96%
Mpumalanga	316	236	80	75%
Northern Cape	196	196	0	100%
North West	306	306	0	100%
Western Cape	404	404	0	100%
COUNTRY TOTAL	9 128	7 385	1 743	81%
OVERALL PROVINCIAL SUBMISSION	4 461	3 682	779	83%

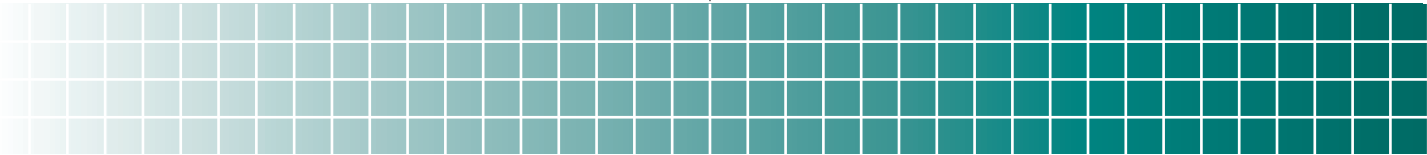
In terms of **Table I**, the Northern Cape, North West and Western Cape Provinces have achieved 100% compliance rates. The compliance rate for national departments as at 31 March 2010 was only 79%. The PSC is of the view that only a compliance rate of 100% is acceptable. It is of concern that 19% of senior managers did not comply with the regulatory requirement to disclose their registrable interests. This does not bode well for integrity in the Public Service.

2.4 NUMBER OF POTENTIAL CONFLICTS OF INTEREST IDENTIFIED

Of the total number of 9 128 SMS members the PSC scrutinised a sample of 30%, which amounted to 2 628 financial disclosure forms. This included the forms of the departments and provinces as listed in paragraph 2.3 received by the PSC by 31 March 2010. **Figure I** reflects the number of potential conflicts of interest identified per department and province based on the PSC's assessment of the sample.

Figure I: Number of SMS members that may have potential conflicts of interest





As indicated in **Figure I**, out of the 2 628 financial disclosure forms scrutinised, the PSC identified 542 senior managers that may have potential conflicts of interest between their private interests and their official duties. This total represents 20% of all senior managers from national and provincial departments that formed part of the sample. The fact that 20% of all senior managers that formed part of the sample may experience potential conflicts of interest illustrates the importance of a system such as the Financial Disclosure Framework as a mechanism to prevent corruption. Through the identification of the potential conflicts of interest departments would be able to manage the risks associated with the conflicts of interest, and ensure that they do not become actual conflicts of interest.

As will be noted from **Figure I** the highest number of potential conflicts of interest at provincial level were identified in the Gauteng Province (207) whilst the National Treasury has the highest number of potential conflicts of interests as compared to other national departments. The extent to which potential conflicts of interest were identified is further analysed in the following sections per national department and province.

2.5 IDENTIFICATION OF POTENTIAL CONFLICTS OF INTEREST: NATIONAL DEPARTMENTS

The incidences of cases of potential conflicts of interest per national department are reflected in **Table 2** below. In this table, the incidences per department are ranked from highest to lowest in terms of the percentage conflicts of interest that were identified.

Table 2: Identification of potential conflicts of interest: national department results

NATIONAL DEPARTMENT	NUMBER OF SMS MEMBERS	NUMBER OF FORMS RECEIVED	NUMBER OF FORMS OUTSTANDING	CASES OF POTENTIAL CONFLICTS OF INTEREST	PERCENTAGE POTENTIAL CONFLICTS OF INTEREST
State Security	3	3	0	2	67%
Presidency	81	47	34	31	38%
Human Settlements	74	68	6	23	31%
Office of the Public Service Commission	42	42	0	12	29%
Arts & Culture	46	41	5	12	26%
Sport & Recreation	24	24	0	6	25%
Cooperative Governance & Traditional Affairs	121	120	1	29	21%
PALAMA	43	41	2	9	21%
National Treasury	257	257	0	45	18%
Labour	77	72	5	14	18%
Statistics South Africa	187	181	6	30	16%
Education	104	97	7	15	16%
TOTAL	1 059	993	66	228	22%





As indicated in **Table 2**, the registrable interests of one-thousand-and fifty-nine (1 059) SMS members of twelve (12) national departments were scrutinised. Out of this total of SMS members, the PSC found that two-hundred-and-twenty-eight (228) senior managers (22% of the disclosures received) may have potential conflicts of interest between their private interests and their official responsibilities. The National Treasury has the highest number of officials with potential conflict of interest. The Department of State Security, on the other hand, has the highest percentage of officials with potential conflicts of interest (67% of the total number of disclosure forms scrutinised from this department). The risk that such conflicts of interest pose to integrity and good governance will have to be managed effectively to prevent the potential conflict of interest from becoming actual conflicts of interest. Of further concern is the fact that 34 senior managers in the Presidency did not submit their disclosure forms as 31 March 2010. This translates to 42% of senior managers in the Presidency who did not comply with the Financial Disclosure Framework. The extent of potential conflict of interests in this institution could, therefore, be worse than what has been established.

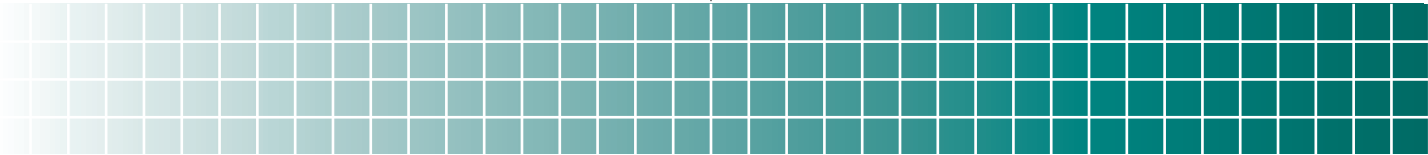
The situation at the National Treasury, where it was found that 18% (45 out of 257) of the senior managers that have submitted financial disclosures may experience potential conflicts of interest, may lead to serious challenges if not properly managed. This is due to the nature of the functions (i.e managing public finances) performed by this institution.

2.6 IDENTIFICATION OF POTENTIAL CONFLICTS: PROVINCIAL DEPARTMENTS RESULTS

The extent to which potential conflicts of interest were identified in the departments within the provinces that were selected for the sample is illustrated in **Table 3** below.

Table 3: Identification of potential conflicts of interest: provincial departments' results

PROVINCE / PROVINCIAL DEPARTMENT	NUMBER OF SMS MEMBERS	NUMBER OF FORMS RECEIVED	NUMBER OF FORMS OUTSTANDING	CASES OF POTENTIAL CONFLICTS OF INTEREST	PERCENTAGE POTENTIAL CONFLICTS OF INTEREST
NORTHERN CAPE PROVINCE					
Agriculture & Land Reform	13	13	0	7	54%
Education	24	24	0	8	33%
Transport, Roads & Public Works	14	14	0	4	29%
Social Services & Population Development	13	13	0	3	23%
Sports, Arts & Culture	9	9	0	2	22%
Office of the Premier	28	28	0	6	21%
Housing & Local Government	17	17	0	3	18%
Safety & Liaison	6	6	0	1	17%
Economic Affairs	15	15	0	2	13%



PROVINCE / PROVINCIAL DEPARTMENT	NUMBER OF SMS MEMBERS	NUMBER OF FORMS RECEIVED	NUMBER OF FORMS OUTSTANDING	CASES OF POTENTIAL CONFLICTS OF INTEREST	PERCENTAGE POTENTIAL CONFLICTS OF INTEREST
Provincial Treasury	15	15	0	2	13%
Tourism, Environment & Conservation	10	10	0	1	10%
Health	32	32	0	3	9%
TOTAL	196	196	0	42	21%
GAUTENG PROVINCE					
Gauteng Shared Services Centre	81	75	6	28	34%
Office of the Premier	37	30	7	14	38%
Local Government & Housing	93	90	3	6	6%
Provincial Treasury	59	48	11	9	15%
Agriculture, Conservation & Environment	37	37	0	7	19%
Education	76	65	11	28	37%
Community Safety	27	25	2	4	15%
Health	357	301	56	67	19%
Economic Development	47	27	20	22	47%
Social Development	25	25	0	6	24%
Infrastructure Development (Previously known as Public Works, Roads and Transport)	See Roads and Transport	See Roads and Transport	See Roads and Transport	0	0%
Roads & Transport (Previously known as Public Works, Roads and Transport)	133	50	83	10	8%
Sports, Arts, Culture & Recreation	20	20	0	7	35%
TOTAL	992	793	199	208	21%
FREE STATE PROVINCE					
Sports, Arts, Culture and Recreation	13	1	12	3	23%





PROVINCE / PROVINCIAL DEPARTMENT	NUMBER OF SMS MEMBERS	NUMBER OF FORMS RECEIVED	NUMBER OF FORMS OUTSTANDING	CASES OF POTENTIAL CONFLICTS OF INTEREST	PERCENTAGE POTENTIAL CONFLICTS OF INTEREST
Public Works & Rural Development	23	22	1	9	39%
Cooperative Governance, Traditional Affairs and Human Settlements (Previously known as Local Government and Housing)	41	30	11	17	41%
Economic Development, Tourism & Environmental Affairs	19	17	2	5	26%
Agriculture	17	0	17	7	41%
Education	42	2	40	10	24%
Police, Roads and Transport	13	8	5	4	31%
Office of the Premier	29	24	5	6	21%
Social Development	24	7	17	4	17%
Provincial Treasury	19	17	2	1	5%
Health	141	62	79	0	0%
TOTAL	381	190	191	66	17%
GRAND TOTAL	1 569	1 179	390	315	20%

As indicated in **Table 3**, one thousand-one-hundred-and-seventy-nine (1 179) disclosure forms of senior managers from the three (3) provinces that formed part of the sample were scrutinised. The PSC found that three-hundred-and-fifteen (315) senior managers (20% of the disclosures received) may have potential conflicts of interest between their private interests and their official responsibilities. In the Gauteng Province a total of 208 senior managers (21%) may be experiencing potential conflicts of interest. The fact that such a high number of senior managers in Gauteng may have potential conflicts of interest between their private interests and official responsibilities is of concern and may indicate that the Province is at risk of actual conflicts of interest occurring. Such potential conflicts of interest should be managed appropriately before incidences of actual conflicts of interest arise.

In the Free State Province, 66 senior managers (17%) may have potential conflicts of interest between their private interests and official responsibilities. As in the Gauteng Province this is still a high percentage compared to the Northern Cape (42). The situation in the Free State is even more worrying considering that almost 50% (191) of the senior managers did not submit their financial disclosure forms. In terms of the provinces, the Gauteng Province has the highest number of SMS members with potential conflicts of interest. This illustrates the need to proactively identify and manage conflicts of interest in the province.





The following three departments in each of the provinces have the highest percentage of senior managers with potential conflicts of interest:

Free State Province:	Department of Cooperative Governance, Traditional Affairs and Human Settlements (41%) Department of Agriculture (41%) Department of Public Works & Rural Development (39%)
Gauteng:	Economic Development (47%) Office of the Premier (38%) Education (37%)
Northern Cape Province:	Department of Agriculture & Land Reform (54%) Department of Education (33%) Department of Transport, Roads & Public Works (29%)

As would be observed, the provincial departments that manage substantial contracts with service providers in all three provinces (Cooperative Governance, Traditional Affairs & Human Settlements, Public Works & Rural Development in the Free State; Economic Development in Gauteng; and Transport, Roads & Public Works in the Northern Cape) feature in a list of departments that have high percentages of senior managers with potential conflicts of interest. The fact that such a high percentage of senior managers in these departments may experience conflicts of interest may point to risks that should be managed in the process of procuring service providers. The management of conflicts of interest in these departments should therefore be prioritised by the respective Executive Authorities, and the declaration of interests should form part and parcel of the supply chain management process. For example, should a senior manager be part of a Tender Committee, the Committee should ascertain whether that senior manager has disclosed his/her financial interests, and whether such interests could pose potential conflicts of interests. If it is the case then the senior manager should not be part of the supply chain management process.

2.7 IDENTIFICATION OF POTENTIAL CONFLICTS OF INTEREST ACCORDING TO CATEGORY

The potential conflicts of interest of senior managers were identified by the PSC on the basis of the following variables:

- The relationship between the work of the senior manager and that of the private company the individual is involved in.
- The number of companies the senior manager is involved in.
- Instances where senior managers share interests in a company with their colleagues.

The different categories of potential conflicts of interest that senior managers that formed part of the sample may experience are outlined in **Table 4** on the next page. Included in this table is a number of officials from the sample, who were also identified in the Auditor-General's Report¹⁶ as conducting business with government departments.

16 Republic of South Africa. Report of the Auditor-General on a Performance Audit of Entities that are Connected with Government Employees and Doing Business with National Departments, 2008.



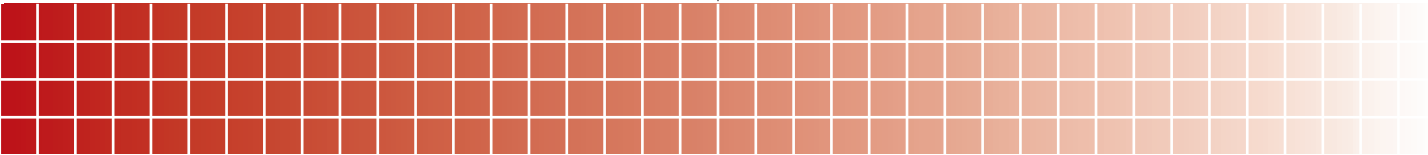


Table 4: Identification of potential conflicts of interest by specific categories

DEPARTMENT OR PROVINCE	LINK BETWEEN OFFICIAL RESPONSIBILITIES AND PRIVATE COMPANY	IDENTIFICATION BY NUMBER OF COMPANIES	OFFICIALS SHARING COMPANIES	OFFICIALS IDENTIFIED BY THE AUDITOR-GENERAL
Office of the Public Service Commission	7	4	6	0
Education	13	6	0	1
National Treasury	35	16	0	0
Cooperative Governance & Traditional Affairs	21	16	0	0
Human Settlements	15	8	0	0
Labour	10	1	0	0
Statistics South Africa	25	11	0	0
Arts & Culture	6	8	0	0
PALAMA	8	2	0	0
Presidency	11	20	0	0
State Security	0	1	0	0
Sport & Recreation	3	4	0	0
Northern Cape	35	27	2	1
Gauteng	116	89	0	1
Free State	46	46	8	0
TOTAL	351	259	16	3

As indicated in **Table 4**, the relationship between the official responsibility of a senior manager and his/her interest in a private company poses the highest likelihood of potential conflicts of interest. In this regard, the PSC established 351 cases of senior managers who have interests in private companies whose functions are closely related to those of their departments. The PSC formed an opinion on the basis of the relationship between the work of the designated official and that of the private company the individual is involved in, for example, a senior manager who has shares in a construction company and is employed by the Department of Public Works.

A further 259 cases of potential conflicts of interests were as a result of senior managers having directorships or shares in multiple companies. This raises concerns about the amount of time that such an official would be able to devote to his/her full time employment in the Public Service. For example, the extent of such senior managers' involvement in the activities of three or more companies may pose conflicts of interest with regard to their official duties, as Section 30 of the *Public Service Act, 1994* (as amended)¹⁷ stipulates that: “every officer shall place the whole of his or her time at the disposal of the State”. The view is that should an official be involved

17 Republic of South Africa. *Public Service Act, 1994* (Act No. 103 of 1994).



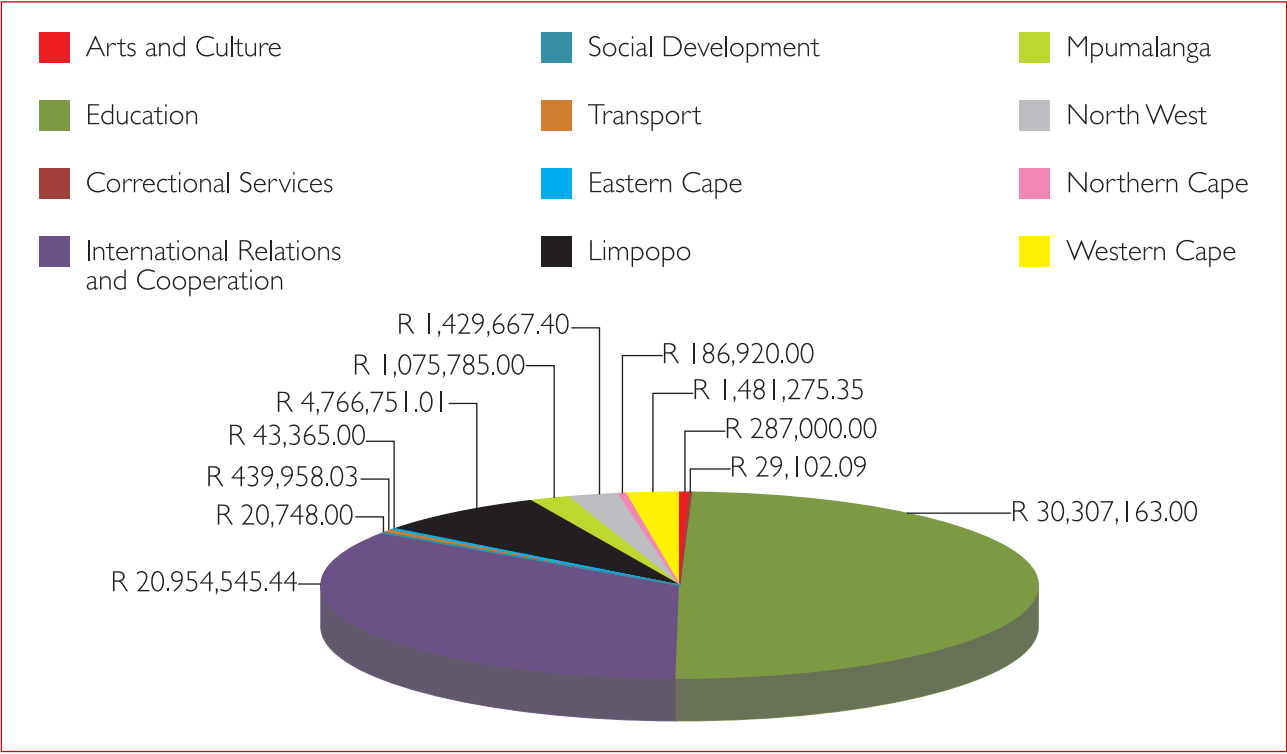
in three or more companies he/she would not, in all probability, have the time to devote his/her full attention to the requirements of the State in terms of his/her official responsibilities.

Cases of officials within the same department sharing a company/private interest were identified in the Office of the Public Service Commission (6), the national Department of Education (6), the Northern Cape (2) and Free State (8). This is potentially a dangerous situation as these officials, in order to advance the interests of their companies, may make decisions that could favour each other.

Moreover, the Auditor-General identified 20 senior managers that did business with government departments.¹⁸ As would be noted from **Table 4**, only three out of a total number of twenty (20) SMS members from the Auditor-General's report are from the sampled departments. The breakdown of the amount paid by departments to the twenty officials in question is depicted in **Figure 2** below.

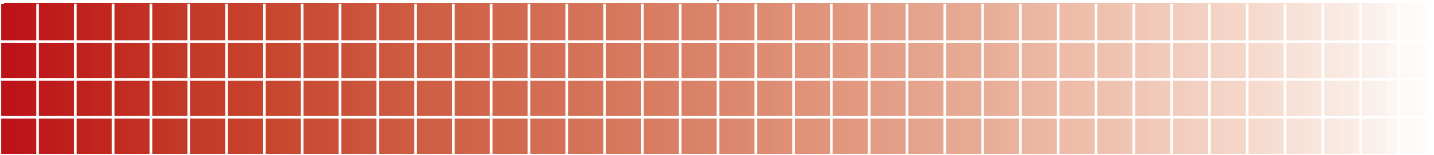
The report of the Auditor-General was tabled in Parliament during May 2009, which was within the assessment period covered in this report. The PSC, therefore, deemed it necessary to include some of the findings of the Auditor-General in this report because some of the officials implicated in the Auditor-General's report are SMS members of departments that formed part of the PSC's sample. The identification and management of conflicts of interest as identified by the Auditor-General is, therefore, in the view of the PSC, an imperative that cannot be ignored.

Figure 2: Amount paid to SMS members identified in the Auditor-General's report as doing business with government departments¹⁹



According to **Figure 2**, the total amount paid by national departments to officials doing business with Government during the period 2005 to 2007 is R52 038 516.56. The bigger amounts in this regard were paid by the Departments of International Relations & Cooperation (R20 954 545.44) and Education (R30 307 163.00). The total amount spent by provinces is R8 015 557.26, with the bigger spenders being the Departments of Roads & Transport in

¹⁸ Republic of South Africa. Report of the Auditor-General on the Declarations of Interests by Ministers, Deputy Ministers and Government Employees, 2006.
¹⁹ Adapted from the report of the Auditor-General on the Declarations of Interests by Ministers, Deputy Ministers and Government Employees, 2006, referred to above.



Limpopo (R3 527 492.21), Local Government in North West (R1 362 117.50) and Transport & Public Works in the Western Cape (R1 481 275.35).

The fact that serving officials are doing business with government is a serious concern as this is a classic example of actual conflicts of interests, which may also lead to corruption. Officials can use their influence in the Public Service to secure Government contracts unduly and to the detriment of well deserving competitors. Moreover, the Auditor-General, in its report²⁰ raised the following concerns on this matter:

- *Tenderers made misrepresentations by not declaring in the tender documentation that employees were related to the companies and CCs that were tendering.*
- *Departments did not always obtain three quotations for transactions with a value above R10 000 but not exceeding R200 000, in line with the regulations for the procurement of goods and services.*
- *Departments did not always apply the prescripts of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) (PPPFA) when evaluating quotations that exceeded R30 000.*
- *In certain instances departments did not invite competitive bids for procurement where the value of the goods or services exceeded R200 000, in accordance with the regulations, and had awarded the contracts to employee-related entities.*
- *There are inconsistencies between departments in rectifying these problems. In some instances departments charged employees with misconduct and discharged them or issued final warnings, while others indicated that disciplinary steps could not be taken as employees were not aware that they should have obtained approval to perform other remunerative work. A consistent approach, which includes awareness, training, disciplining and legal action as well as the blacklisting of entities, should be encouraged.*

The above reasoning, which is echoed by the PSC, is the reasoning the Auditor-General identified in the procurement process in terms of senior managers that received tenders from government. As indicated, in many instances officials involved, did not disclose the companies and/or their financial interests. This is a clear indication that the government's supply chain management process is being treated with disdain. Therefore the PSC is of the view that an electronic supply chain management process be introduced to eliminate the concerns as raised by the Auditor-General.

Moreover, the PSC is of the view that whilst it is incumbent of senior managers to disclose conflicts of interest and to recuse themselves from processes which would result in actual conflicts of interest, there is a need for Heads of Department and Executive Authorities to proactively identify and manage conflicts of interest. Failure to do so may result in corrupt practices and tarnish the integrity of the Public Service.

2.8 NON-DISCLOSURE OF DIRECTORSHIPS/PARTNERSHIPS IN PRIVATE COMPANIES AND CLOSE CORPORATIONS

Senior managers must, in terms of the Framework disclose all directorships/partnerships in private companies and closed corporations. In the past, analysis of financial disclosures by the PSC was limited to the disclosures made by senior managers on their disclosure forms. The PSC was concerned that senior managers may not make full disclosures and therefore decided to identify non-disclosure of directorships/partnerships in private companies and close corporations. In order to do so, the PSC firstly obtained a name list from PERSAL to identify all the senior managers in the departments as per the sample. After obtaining this name list the PSC, as a second step,

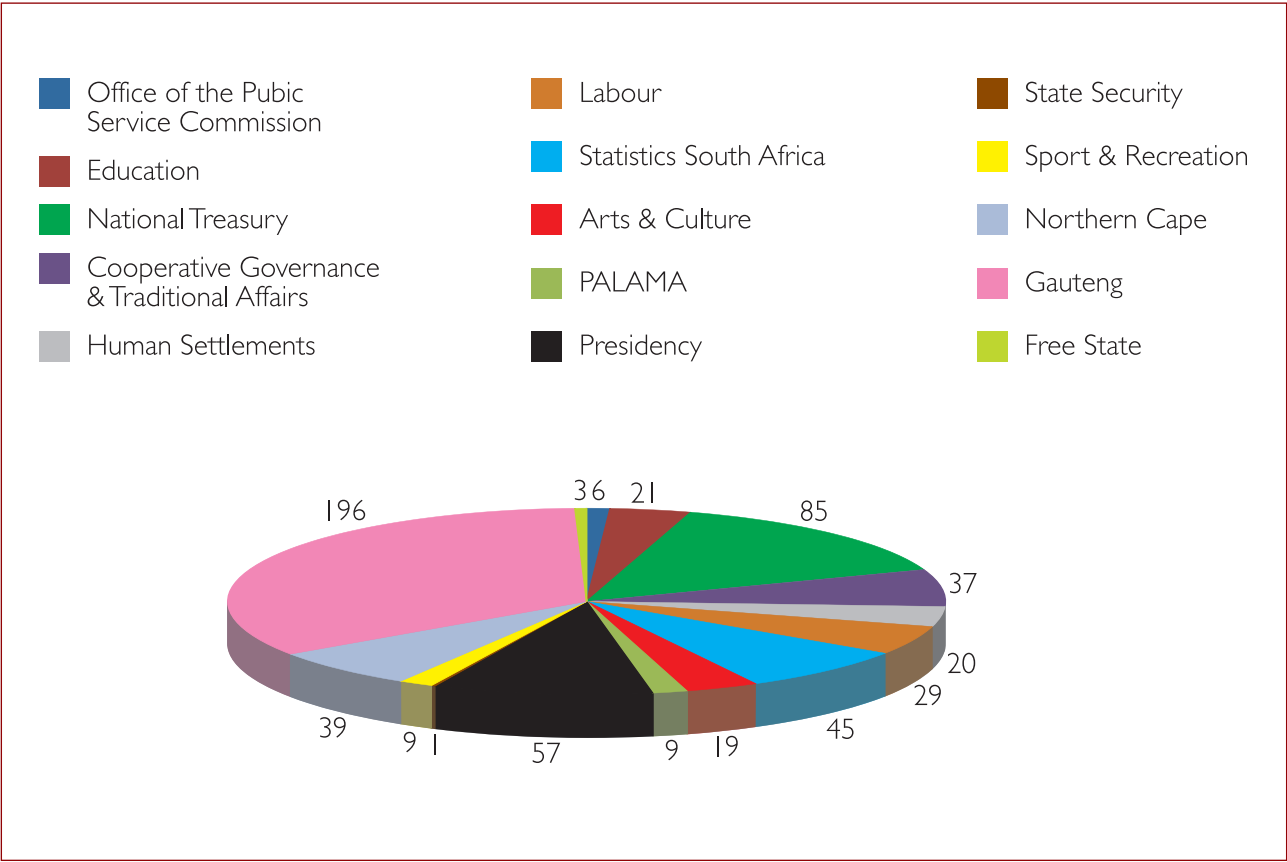
20 Ibid.





extracted the information on senior managers who have been registered as having partnerships in companies and close corporations on the CIPRO database. This information was compared to the information as disclosed by the senior managers on their financial disclosure forms for the period 1 April 2008 to 31 March 2009. These disclosure forms were then scrutinised to identify instances of non-disclosure of directorships/partnerships in private companies and close corporations. **Figure 3** illustrates the number of SMS members in national departments and provinces that did not disclose their interests in companies and closed corporations.

Figure 3: Number of officials who did not disclose Directorships and Partnerships in Private Companies/Close Corporations



As indicated in **Figure 3** the PSC found that five-hundred-and seventy-six (576) SMS members within the sample did not disclose their interests in some companies or close corporations.

In total, 238 senior managers from provincial departments did not disclose their interests in private companies or close corporations. The highest number of such senior managers are employed by the Gauteng Province (196) and followed by the Northern Cape (39). The non-disclosure of these interests by managers is in contravention of the Public Service Regulations, and such managers should be charged with misconduct.

The PSC's scrutiny of the disclosure forms found that in many cases the companies that were not disclosed by SMS members, actually pose a potential conflict of interest. The extent to which potential conflicts of interests were identified in this regard is reflected in **Table 5**.





Table 5: Non-disclosure of Private Companies and Close Corporations and related incidences of potential conflicts of interest

DEPARTMENT/PROVINCE	NUMBER OF NON-DISCLOSURES	CASES OF POTENTIAL CONFLICTS OF INTEREST LINKED TO NON-DISCLOSURES
Office of the Public Service Commission	6	4
Education	21	9
National Treasury	85	37
Cooperative Governance & Traditional Affairs	37	20
Human Settlements	20	13
Labour	29	16
Statistics South Africa	45	20
Arts & Culture	19	7
PALAMA	9	4
Presidency	57	21
State Security	1	0
Sport & Recreation	9	3
Northern Cape	39	2
Gauteng	196	157
Free State	3	0
TOTAL	576	313

As reflected in **Table 5**, it was found that of the 576 senior managers that did not disclose their interests in companies and close corporations, 313 (54%) may have potential conflicts of interest. In the Department of State Security only one senior manager did not disclose his/her directorship/partnership in private companies and close corporations. However, this case does not pose a potential conflict of interest to the Department.

In the Northern Cape Province two (2) out of the thirty-nine (39) senior managers that did not disclose their interests in private companies may have potential conflicts of interest. Similarly in the Gauteng Province 157 out of the 196 senior managers that did not disclose their interests in private companies may be experiencing a conflict of interest. This points to the dangers involved in not making full disclosures. Departments and Executive Authorities will not be aware of the involvement of these officials in the companies that they did not disclose and will therefore not be in a position to identify and manage potential conflicts of interest. Hence, where there are non-disclosures, the transgressing SMS member should be charged with misconduct.



The PSC is concerned about the high rate of non-disclosure of private companies and close corporations and randomly enquired the reason or reasons for the non-disclosures. In many instances it was found that, SMS members were not aware that they should disclose dormant companies or companies from which they have not received remuneration. It was also found that officials were not aware that they should disclose non-profit making entities. The PSC wants to reiterate that the aim of the Framework is to promote integrity in the Public Service and to prevent conflicts of interest and thus, the reasons for non-disclosure are not acceptable.

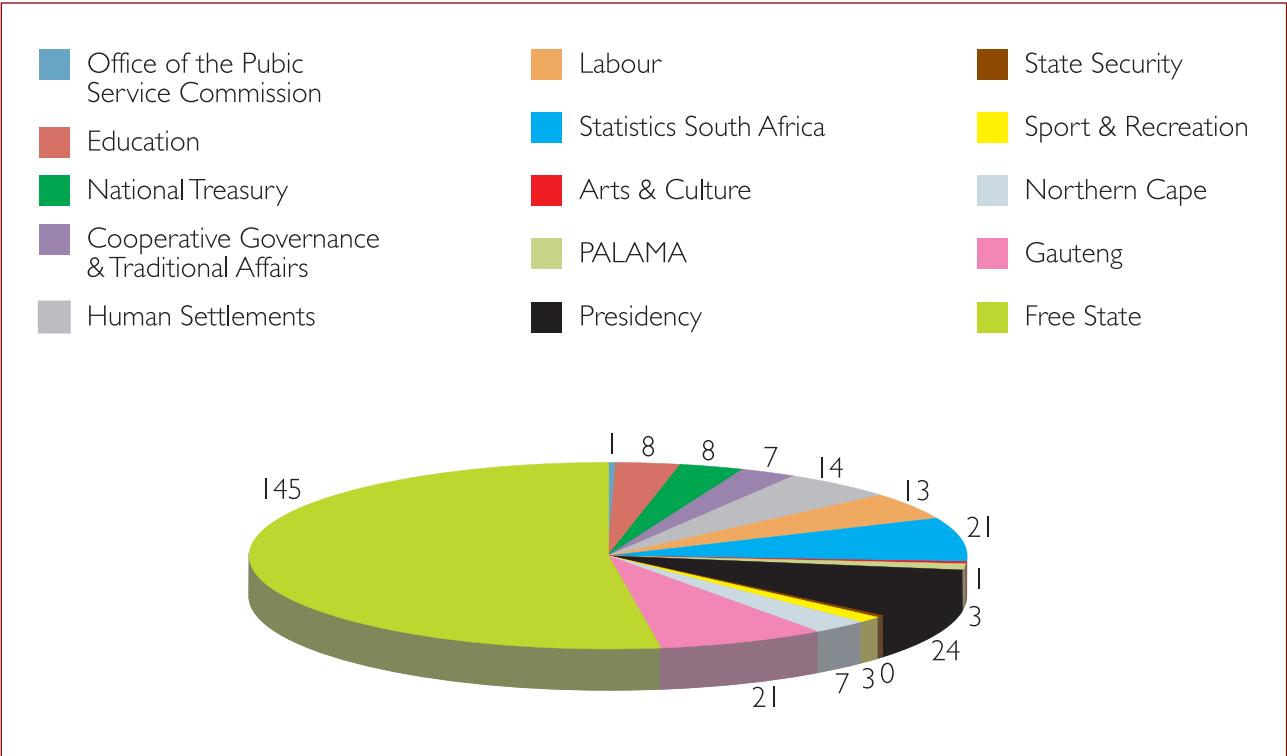
2.9 SCRUTINY OF PROPERTIES

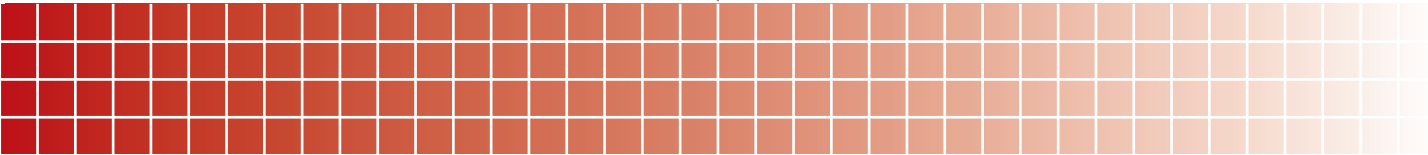
Disclosure of properties is an important aspect of the Financial Disclosure Framework as it forms a key element in, amongst others, the conducting of lifestyle audits of members of the SMS where this is deemed necessary. The Deeds Registration Office of the Department of Rural Development and Land Reform has a system called the Aktex Information System (AKTEX). On this system, the Deeds Office registers all properties as acquired by South Africans. In order to verify the properties as disclosed by SMS members on their disclosure forms the PSC decided to do a search of properties as registered on the AKTEX of the Deeds Registration Office. This search enabled the PSC to:

- Verify all properties as disclosed by a member of the SMS;
- Obtain clarification on whether or not a member of the SMS has neglected to disclose a property. Such an official should then be charged with misconduct as provided for in paragraph H(b) of Chapter 3 of the Public Service Regulations;
- Provide the relevant Executive Authority with the information at its disposal, who may then take disciplinary steps against a member of the SMS who has failed to disclose a property.

The number of SMS members that formed part of the sample that did not disclose their properties is reflected in Figure 4.

Figure 4: Number of officials who did not disclose their properties





As indicated in **Figure 4**, the PSC found that two hundred-and-seventy-six (276) SMS members did not disclose their properties. The registration dates of the properties were checked and it was found that registration occurred well before the date on which the disclosures were due. The following three national departments had the highest incidence of non-disclosures of properties.

The Presidency	24 cases
Statistics South Africa	21 cases
Department of Human Settlements	18 cases

A total of 21 senior managers in the Gauteng Province did not disclose all of their properties. This is in contravention of Chapter 3, Section C1 of the Public Service Regulations which clearly provides that: “Every designated employee shall, not later than 30 April of each year, disclose to the relevant Executive Authority, on the form determined for this purpose by the Commission, particulars of **all** her or his registrable interests”. This provision was not upheld by 276 members of the SMS and therefore they should be charged with misconduct.

2.10 CONCLUSION

The fact that 21% of senior managers that formed part of the sample may have potential conflicts of interest between their private interests and their official responsibilities illustrates the importance of proactively identifying and managing potential conflicts of interest. It is trusted that this finding will underscore the importance of managing conflicts of interest to departments and Executive Authorities.

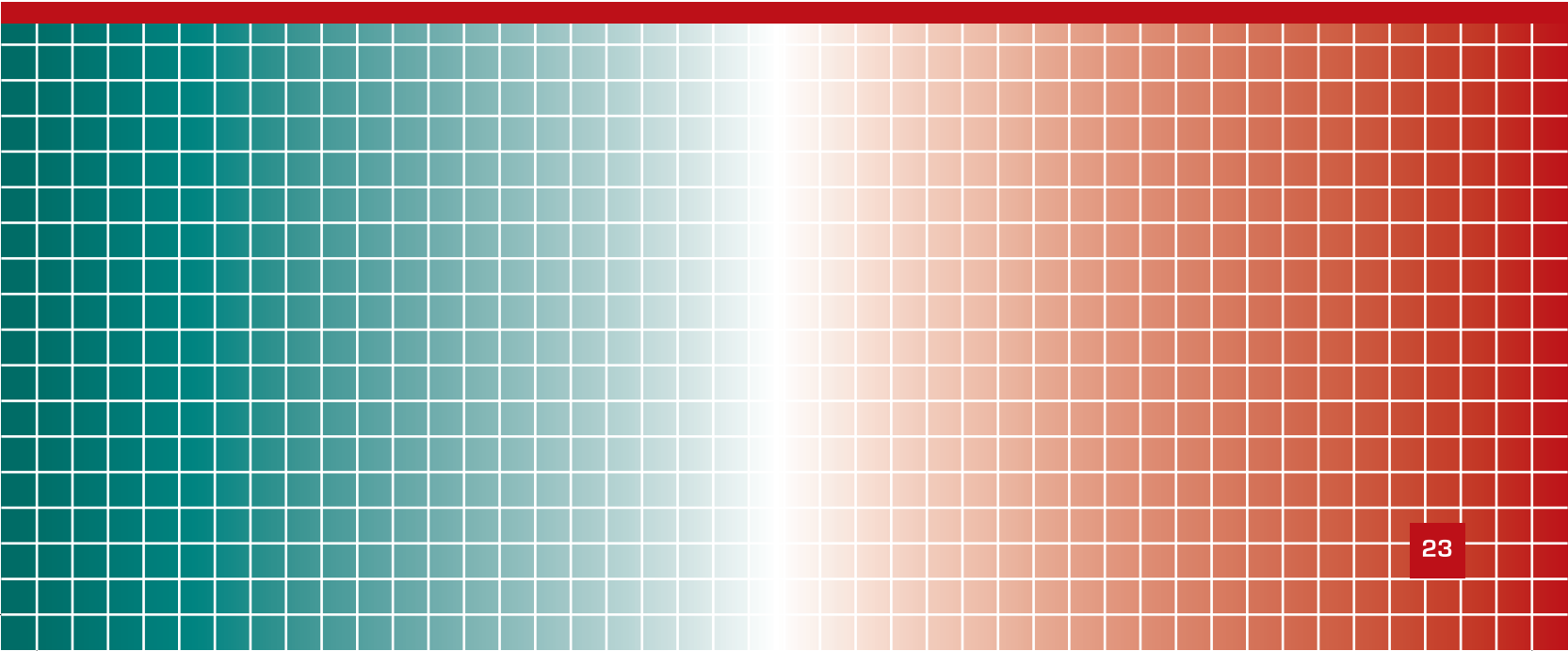
It is of concern to the PSC that 576 members of the SMS, whose disclosure forms were scrutinised, did not disclose their partnerships/directorships in private companies and close corporations. Many of the companies that were not disclosed actually pose potential conflicts of interest, thereby illustrating the need for compliance to the Framework. The PSC is, therefore, of the view that the management of conflicts of interest at departmental level is of utmost importance and must therefore be prioritised.

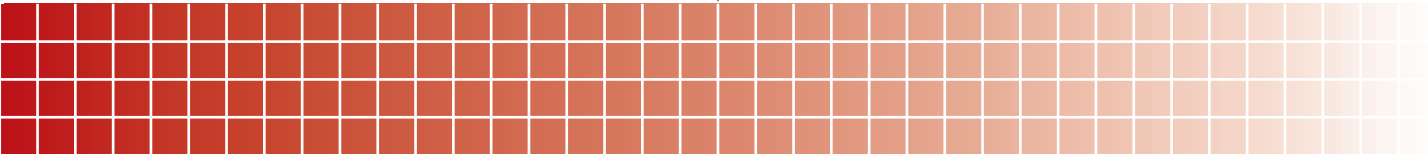




Chapter Three

Financial Disclosures of National and Provincial Heads of Department and Assessment of Gifts Received by Senior Managers





3.1 INTRODUCTION

This chapter deals with the assessment of the disclosure forms of Heads of Department (HoDs).The assessment was done separately so as to clearly identify the number of HoDs that are involved in activities that may cause a potential conflict of interest. Moreover, the chapter also deals with assessment of gifts received by SMS members. Importantly, the chapter points out the dangers attached to the receipt of gifts.

3.2 ASSESSMENT OF THE DISCLOSURES OF HEADS OF DEPARTMENT

The scrutiny of the disclosures of the HoDs was done on the same basis as was the case with SMS members reported earlier. For this purpose the PSC assessed the disclosures based on information on the disclosure forms, the CIPRO database and the Deeds Register. In this regard the following information was assessed:

- If the HoD declared all directorships/partnerships in close corporations and companies.
- If such directorships/partnerships pose potential conflicts of interest based on similarities between the functions HoDs are responsible for.
- If such HoDs share interests in the same companies/close corporations with HoDs of other departments. In such cases there is a potential conflict of interest as decisions could be made that favour one another.
- If HoDs hold more than three directorships/partnerships in companies/close corporations. In such an instance his/her ability to devote his/her full attention to his/her official duties could be questioned.
- If all properties of the HoD have been disclosed.

A breakdown of the PSC's assessment is provided in **Table 6** below:

Table 6: A breakdown of findings in respect of HoDs

NAME OF PROVINCE	NUMBER OF HoDs ASSESSED	NUMBER OF DISCLOSURES RECEIVED	NUMBER OF POTENTIAL CONFLICTS OF INTEREST			NON-DISCLOSURE OF PROPERTIES
			LINK BETWEEN OFFICIAL RESPONSIBILITIES AND PRIVATE COMPANY	IDENTIFICATION BY NUMBER OF COMPANIES	OFFICIALS SHARING COMPANIES	
National Departments	39	26	12	11	0	11
Eastern Cape	13	11	4	4	2	4
Free State	12	5	3	3	3	4
Gauteng	13	12	4	3	0	1
Limpopo	11	9	3	5	2	1
KwaZulu-Natal	15	14	3	4	4	2
Mpumalanga	13	11	5	5	0	2
Northern Cape	12	12	2	0	0	0
North West	11	11	6	5	0	1
Western Cape	11	11	2	1	0	0
TOTAL	150	122	44	41	11	26



The PSC found, in terms of its assessment of the disclosures of HoDs, that 44 HoDs may have potential conflicts of interests linked to the work of their departments. Forty-one (41) HoDs are involved in too many companies and 11 HoDs share companies with their counterparts in other departments.

In cases where HoDs are involved in private companies and where the activities of the companies are linked to the work of the departments, they risk the danger of taking decisions that would favour their companies. Where HoDs share companies with their counterparts, the possibility is that these HoDs could make decisions that favour one another. On the other hand, the involvement of HoDs in too many companies (three or more) puts their ability to devote full attention to their official duties into question. This is based on the fact that Section 30 of the *Public Service Act, 1994* (as amended) stipulates that: “every officer shall place the whole of his or her time at the disposal of the State”. The view is that should an official be involved in three or more companies he/she would not, in all probability, have the time to devote his/her full attention to the requirements of the State in terms of his/her official responsibilities.

It was further found that 26 HoDs did not disclose their properties. This is in direct contravention of the Framework and calls for disciplinary action in terms of the Disciplinary Code and Procedures of the SMS Handbook.

The PSC is of the view that HoDs, as the leaders in their departments should set the example with regard to the Framework. HoDs have the power to disburse public funds and to authorise programmes. As Accounting Officers they are also exposed to privileged and sensitive information. Therefore their actions should be accompanied by greater transparency and accountability. There will also be an expectation of greater ethical leadership on HoDs. The PSC is of the view that HoDs should express such expectation through concrete ethical actions in the daily performance of their duties.

The PSC is of the view that most of the business interests held by HoDs are problematic for a department. They are more or less similar to those held by other SMS members. In those instances where the PSC has identified potential conflicts of interest, the business interest should be managed in such a way that it does not become an actual conflict of interest. In fact, section G.3 of Chapter 3 of the Public Service Regulations provides that an “Executive Authority shall consult with the employee and take appropriate steps including the granting of a waiver in respect of a future conflict of interest”. This is in line with the original view of the PSC that officials should not be ashamed to acknowledge their activities that could be construed as potential conflicts of interest. Therefore, HoDs need to carefully manage their potential conflicts of interest with the view that it does not become an actual conflict of interest.

3.3 REPORTING ON GIFTS RECEIVED BY SENIOR MANAGERS

The PSC in its Report on the Management of Gifts in the Public Service, published in 2008 reported as follows:

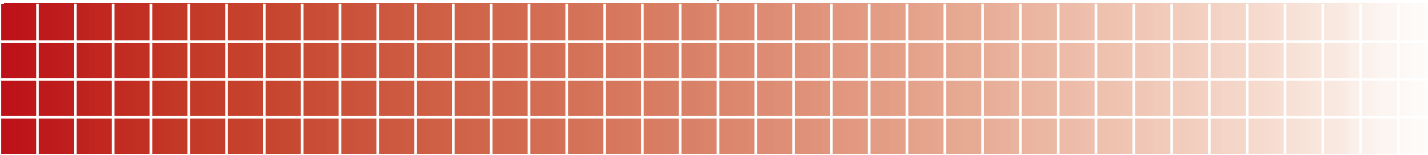
“The issue of gifts in South Africa is an emotive one because South Africa is characterized by diverse communities with diverse cultures. Because of such diversity the effect of acceptance and non-acceptance of gifts is not as clear. Most western Public Services have a total ban on gifts and gratuities except in exceptional cases.

*However, even in countries where there are clear regulations on what constitutes gifts, officials are sometimes placed in awkward situations and have to accept a gift, despite the policy ban”.*²¹

In the South African Public Service measures or regulations are in place to regulate the receipt of gifts. The Regulations on the Financial Disclosure Framework prescribe that members of the SMS must disclose gifts with

21 Republic of South Africa. Public Service Commission. Report on the Management of Gifts in the Public Service, 2008.





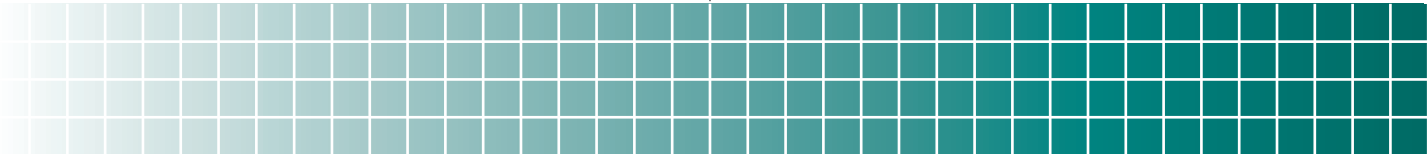
a value of R350.00 or more. The Code of Conduct for the Public Service stresses that a public servant should not use his/her position to obtain private gifts or benefits. It further emphasizes that the acceptance of any gifts or item of monetary value from any person or entity may only be done with the express written approval of the Head of Department.²² It is from this perspective that the PSC assessed the receipt of gifts by senior managers as disclosed in their financial disclosure forms.

Table 7 below indicates the nominal value of gifts received by SMS members who constitute the 30% sample of this research during the period under review.

Table 7: Nominal value of gifts received per department from the 30% sample of all the SMS members

NATIONAL / PROVINCIAL DEPARTMENT	NUMBER OF SMS MEMBERS	NUMBER OF OFFICIALS THAT HAVE DISCLOSED GIFTS	NOMINAL VALUE OF GIFTS RECEIVED	PERCENTAGE OF OFFICIALS WHO RECEIVED GIFTS
Office of the Public Service Commission	42	10	R30 268.00	24%
Education	104	12	R8 850.00	12%
National Treasury	257	14	R100 330.00	5%
Cooperative Governance & Traditional Affairs	121	24	R61 095.00	20%
Human Settlements	74	0	R0.00	0%
Labour	77	11	R8 890.00	14%
Statistics South Africa	187	4	R3 650.00	2%
Arts & Culture	46	0	R0.00	0%
PALAMA	43	1	R150.00	2%
Presidency	81	3	R6 100.00	4%
State security	3	0	R0.00	0%
Sport & Recreation	24	0	R0.00	0%
TOTAL	1 059	79	R219 333.00	7%
Northern Cape	196	7	R1 160.00	4%
Gauteng	992	11	R516 157.00	1%
Free State	381	4	R3 450.00	1%
TOTAL	1 569	22	R520 767.00	-
GRAND TOTAL	2 626	101	R740 100.00	-

²² Section C.5.3 of the Code of Conduct for the Public Service.



From **Table 7**, it can be deduced that the nominal value of all the gifts disclosed by SMS members whose financial disclosures were assessed is R740 100. Of this total R219 333.00 is from the 12 national departments and R520 767 is from three provinces. The highest value of gifts received in respect of national departments is from the Department of Cooperative Governance & Traditional Affairs (R61 095.00). The nominal value of gifts received by SMS members in this department constitutes 29% of the total value of gifts received by SMS members in national departments and 8% of the entire sample.

The province with the highest value of gifts received is Gauteng with a total value of R516 157.00. This constitutes 99% the nominal value of all gifts received by SMS members from the sampled provincial governments and 70% of the entire sample including national departments. SMS members from four (4) national departments indicated that they did not receive any gifts during the period under review. These are from the Departments of Human Settlements, Arts & Culture, State Security and Sport & Recreation. It is not clear, however, whether the nil return is as a result of officials not having received any gifts at all (which should be commended), or whether the gifts received were not disclosed in the respective gift registers. The fact that SMS members can receive gifts of such high values points to the possibility of lack of proper controls. Where there is lack of proper controls with regard to the receipt of gifts, it is possible that corruption would flourish.

As mentioned earlier the Code of Conduct for the Public Service places a prohibition on the receipt of gifts in the Public Service. However, irrespective of the prohibition by the Code of Conduct it is a fact of life that public servants are constantly being showered with gifts, sometimes even without the public servant having the opportunity of refusal, e.g. gifts delivered by courier. This is evident (as indicated in **Table 7**) from the nominal value of gifts received for this reporting period. The amount involved in relation to the sample of only 30% of SMS members is staggering. If this is extrapolated to 100% then it means that it is possible that the value of gifts received by SMS members could be approximately R 2 200 000.00.

The PSC would like to underscore the point that the receipt of gifts by public servants may weaken the citizens' trust in the Public Service, as well as destroying the fiber of integrity and good corporate governance within the Public Service. Moreover, it may compromise the idea of having an ethically sound Public Service as espoused by our Constitution and which the PSC seeks to promote. Departments should therefore invent programmes and activities to minimise opportunities for the receipt of gifts and hence, for corruption to occur. Such programmes and activities may include creating awareness of government policies regarding the receipt of gifts.

3.4 CONCLUSION

The assessment of the disclosures of HoDs is not much different from those of the senior managers in their departments. Cases of potential conflicts of interest were pointed out and it was indicated that the management thereof is important before they become actual conflicts of interest. However, the primary difference between senior managers and HoDs is that HoDs as Accounting Officer's have the power to disburse public funds and authorise programmes which, in the public eye, makes them more susceptible to corruption. Therefore, the management of cases of potential conflicts of interest pertaining to HoDs should receive high priority by Executive Authorities.

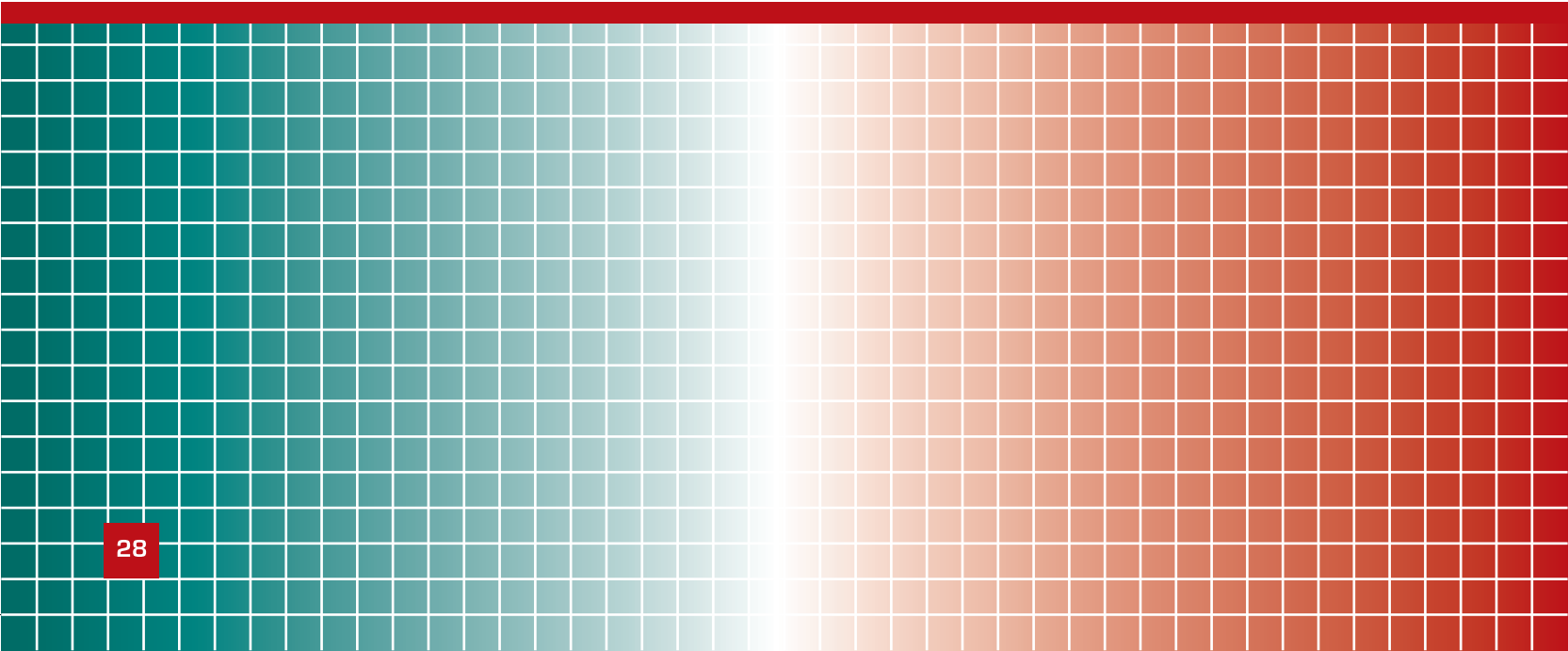
The assessment of gifts was also reported on in this chapter. It was pointed out that gifts to the value of R 740 100.00 were received by a sample of 30% of all senior managers. This is a major concern to the PSC as the receipt of gifts by public officials has the potential of weakening the citizens' trust in the Public Service.





Chapter Four

Summary of Findings and Recommendations





4.1 INTRODUCTION

Throughout this report it is evident that the disclosure of financial interests should be regarded as part of a larger effort to regulate conflicts of interest in the Public Service. While it is a crucial tool for preventing and controlling abuse of public office, it cannot deal with the full range of conflicts of interest situations in the Public Service. However, disclosures have assisted in raising awareness among citizens and public officials about the need to be more certain in their conduct, especially with those who have links with the private sector: Public officials should take note that their links with the private sector should be managed in such a way so as to avoid potential conflicts of interest. Efforts at effective prevention must include timeous submission of disclosure forms and early scrutiny to provide advice on the management of conflicts of interest. The PSC is of the opinion that should potential conflicts of interest occur, it is imperative to manage them in such a way that they do not become actual conflicts of interest.

While the Executive Authority should encourage the proper and timeous submission of the disclosure forms, the responsibility for accurate disclosure remains that of the SMS member. Throughout this report the PSC has raised various concerns regarding compliance with the timely submission of financial disclosures as well as the non-disclosure by some senior managers of all their financial interests.

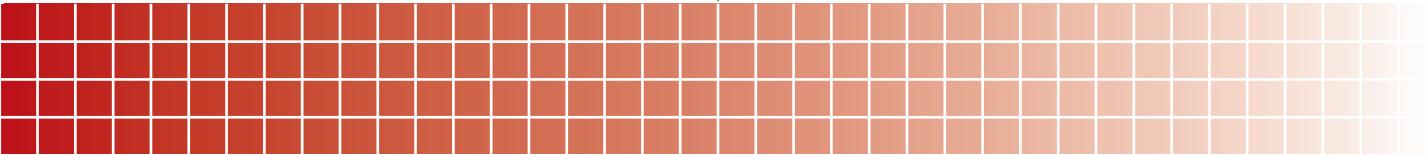
A summary of the key findings of the PSC highlighting such concerns are presented in this Chapter. Recommendations are also made in this Chapter with a view to improve the management of conflicts of interest through the Financial Disclosure Framework.

4.2 SUMMARY OF FINDINGS

In this research study the PSC made numerous findings pertaining to the submission of the disclosure forms and the identification of potential conflicts of interest. The major findings of the PSC were that:

- The PSC found that 542 (21%) senior managers out of the sample of members of the SMS (2 628) may have potential conflicts of interest between their private interests and their official duties i.e. 228 from national departments and 314 from provincial departments.
- The PSC found that 576 (22%) senior managers out of the sample of 2 628 did not disclose their directorships/partnerships in private companies and close corporations. This figure includes 338 senior managers from national departments and 238 from provincial departments. This amounts to a transgression of the regulatory requirements and impacts negatively on the ability of departments, Executive Authorities and the PSC to identify and manage potential conflicts of interest.
- The PSC also found that 276 senior managers did not disclose their properties as required in terms of Chapter 3 of the Public Service Regulations. Of these, 103 were from national departments and 173 from provincial departments. The disclosure of properties, as assets, forms an integral part of the Financial Disclosure Framework and action should be taken against senior managers who do not comply in this regard.
- Out of the sample of 30% the PSC found that 101 senior managers received gifts to the value of R740 100,00.





With regard to the assessment that was conducted in respect of Heads of Department the following findings were made:

- Of a total number of 150 Heads of Department assessed, only 122 submitted their financial disclosure forms. The forms of 28 were outstanding at the time of compiling this report.
- The assessment revealed that the financial interests of fifty (50) i.e. 33% of the HODs, presents a potential conflict of interests to their departments.
- Forty-eight (48), i.e. 32% of HoDs did not disclose their directorships and or partnerships in private companies/close corporations.
- Twenty-six (26) HoDs did not disclose their properties.

4.3 RECOMMENDATIONS

Since the inception of the Framework all departments have been kept up to date by means of official correspondence regarding the submission of the disclosure forms. A Fact Sheet on the submission of the disclosure forms has also been forwarded to departments and Executive Authorities during September 2009. All Executive Authorities and members of the SMS should therefore be aware that financial disclosure forms need to be submitted to the PSC by 31 May of each year. Based on the findings of this report the PSC has deemed it appropriate to make the following recommendations on the following issues to improve the management of the Framework:

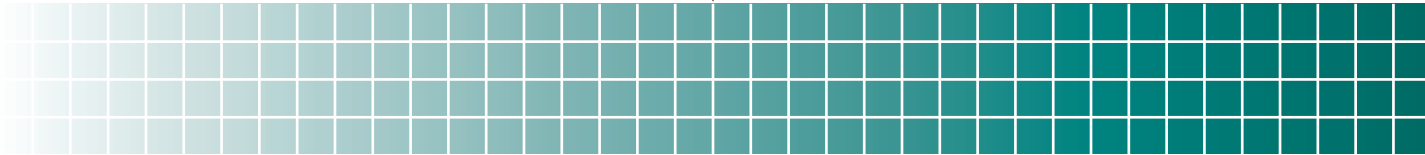
- Charging members of the SMS with misconduct.
- Disclosure of private companies and close corporations.
- Prohibition on the receipt of gifts.
- Addressing the management of conflicts of interest.
- Strengthening Conflicts of Interests Regulations.
- Conduct lifestyle audits.
- Interaction by Portfolio Committees.

4.3.1 Charging Members of the SMS with Misconduct

The PSC has on numerous occasions advised and reminded Executive Authorities of the requirement that all senior managers in their departments must comply with the Framework by submitting the financial disclosures. It appears that such reminders are not followed up by Executive Authorities in all instances and members of the SMS may easily become complacent with regard to the submission of the disclosure forms. Chapter 3, Section H of the Public Service Regulations clearly stipulates that any designated official who fails to disclose her/his financial interests, or willfully provides incorrect or misleading details, is guilty of misconduct.

It is therefore recommended that Executive Authorities should ensure that transgressing Heads of Department and other members of the SMS are charged with misconduct for failing to disclose their financial interests in terms of the Disciplinary Code and Procedures, as contained in the SMS Handbook for not complying with the Financial Disclosure Framework. The Executive Authorities should also inform the PSC of any steps taken in this regard and if no steps were taken state the reasons thereof. The PSC should, on the other hand, take steps against Executive Authorities who fail to submit copies of the disclosure forms of SMS members in their departments, to the PSC.





4.3.2 Disclosure of Private Companies, Close Corporations and Properties

A total of 576 members of the SMS failed to disclose their directorships/partnerships in private companies and close corporations, while 276 did not disclose their properties. This is in contravention with Chapter 3 of the Public Service Regulations and it is recommended that Executive Authorities charge transgressing Heads of Department and ensure that other members of the SMS are charged with misconduct for failing to disclose their registrable interests by instructing their Heads of Department to do so. It is further recommended that members of the SMS 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 disclosed. Instances where such managers have been charged with misconduct must also be reported to the PSC.

4.3.3 Prohibition on Soliciting and Acceptance of Gifts

The provision in the Public Service Regulations that SMS members must disclose gifts with a value of R350.00 or more, has the effect of defeating the purpose of fighting corruption as it does not outlaw the receipt of gifts provided that certain conditions have been met.²³ It is often difficult to determine whether a private gift or benefit was obtained in a manner that cannot be construed as abuse of one's position in the Public Service. It is, therefore, recommended that public servants should be prohibited from directly or indirectly soliciting or accepting private gifts or benefits, irrespective of the value thereof.

The prohibition on the acceptance of gifts, however, should not affect those tokens of appreciation that are offered within the normal standards of courtesy such as conference packages or promotional material that are offered at professional functions and events. There would also be instances where a public servant may not be able to decline a token of appreciation because this might be construed as culturally offensive. In such instances, the gifts must be declared and registered in the departmental gift register.

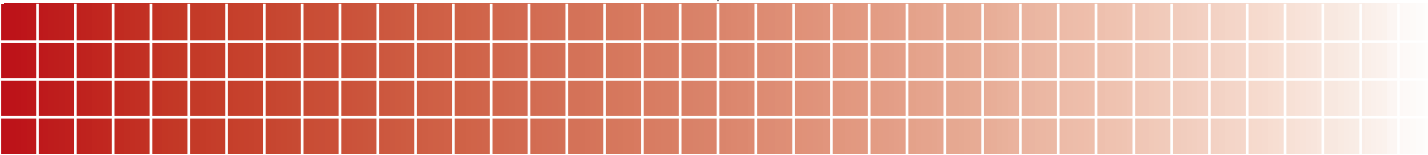
4.3.4 Addressing the Management of Conflicts of Interest

In the PSC's report on the "Management of Conflicts of Interest in the Public Service" it was mentioned that *"effective management of conflicts of interest is based on the ability to identify specific conflicts of interest and managing them while they remain potential conflicts. Effective management also depends on staff and senior managers being aware of the Public Service's approach to conflicts of interest and their responsibilities towards managing conflicts of interest"*.²⁴ The PSC therefore recommends that in managing conflicts of interest at departmental level, departments should consider strategies in dealing with persons who have been identified, through the disclosure of their financial interests, as having a potential conflict of interest. In this regard the following could be considered:

- *"Re-assigning the duties of the official if this can be effected in the interest of the state.*
- *If it is not possible to re-assign the duties of the official, the feasibility of a transfer to another component if in the interest of the state should be considered.*
- *If the re-assignment of duties or a transfer is not possible consideration should be given to request the official to resign from the private interest that is causing the conflict of interest"*.²⁵

23 Page 29.
24 Republic of South Africa, Public Service Commission, Report on the Management of Conflicts of Interest in the Public Service, 2006.
25 Ibid.





4.3.5 Strengthening Conflicts of Interest Regulations

Through this overview the PSC has come to realise that there is a gap in the regulations regarding the participation of SMS members in government contracts. It came to light in this overview that SMS members have companies which regularly interact with government departments by obtaining contracts. However, there is no provision that regulates such interaction. The Institute for Security Studies²⁶, in its research found that “at local level, restrictions on elected officials tendering for municipal contracts is controlled in terms of the *Municipal Finance Management Act*²⁷. At the national and provincial level, however, the *Public Finance Management Act*²⁸ fails to regulate the same activity”. The PSC, therefore, recommends that the *Public Finance Management Act* should be amended to provide for the regulation of private companies linked to public officials and doing business with government.

4.3.6 Conducting of Lifestyle Audits

Due to the continuing reluctance of SMS members to submit their financial disclosures, the PSC is of the opinion that the management of conflicts of interests could further be strengthened by conducting lifestyle audits. This implies that if an Executive Authority or the PSC is of the opinion that there has been incomplete disclosure of financial interests by a senior manager, it may embark on a lifestyle audit. Here it must be emphasised that such a lifestyle audit would not question an official's right to wealth, but rather, how such wealth has been acquired. This recommendation of lifestyle audits should be regarded as one of the strategies that could add value to the management of conflicts of interest and the combating of corruption in the Public Service.

4.3.7 Monitoring by Portfolio Committees

The PSC recommends that given their Legislative and Parliamentary oversight role, Portfolio Committees should call departments and Executive Authorities to account where there has been non-compliance as well as low levels of compliance to the Financial Disclosure Framework.

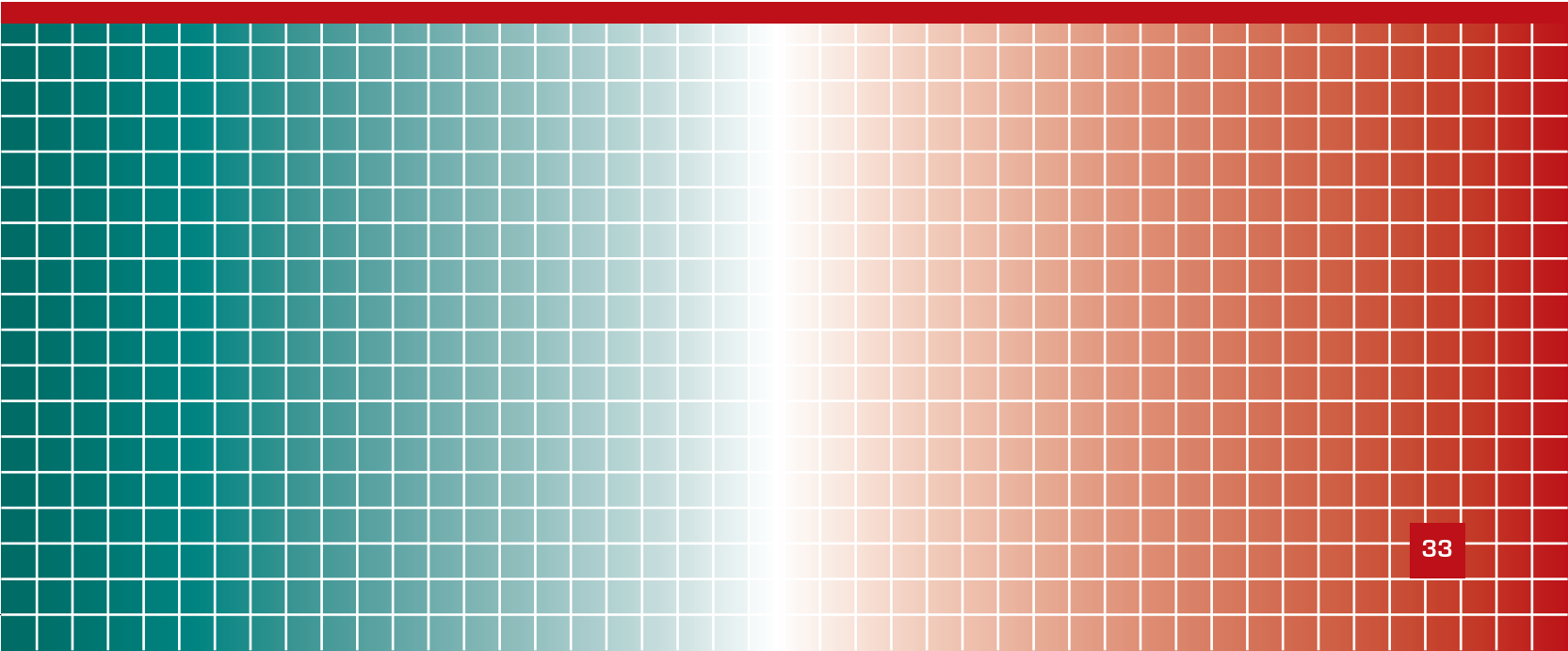
26 Institute for Security Studies: *Financial Disclosure Requirements in South Africa 2004-2008*.
27 Act No. 56 of 2003.
28 Republic of South Africa. *Public Finance Management Act, 1999 (Act No. 1 of 1999)*.





Chapter Five

Conclusion





The management of potential conflicts of interest forms an integral part in the Public Service's initiatives to become integrity driven. Through the identification and management of potential conflicts of interest honest public servants are kept honest and professional ethics is promoted within the workplace. Compliance with the Framework should therefore not be seen purely as a mandatory requirement but as an ethical obligation of each and every senior manager.

Moreover, a disclosure framework should be regarded as part of a larger effort to regulate conflicts of interest situations in the Public Service. While it is a crucial tool for preventing and controlling abuse of office by public servants, it cannot deal with the full range of conflicts of interest situations that emerge at departmental level. However, the Framework has assisted in raising awareness among public servants for the need to be transparent and accountable in the execution of their official duties.

