



# **Eliminating corruption by prohibiting public servants from conducting business with the State**

**Presented by Mr Ben Mthembu, Chairperson of the  
Public Service Commission  
to the APAC Annual Conference 2013  
Date: 30 September 2013**



# PRESENTATION OVERVIEW

- Introduction
- The need for ethics and integrity in Public Service governance
- What do conflicts of interest entail?
- Creating a framework for ethical behaviour
- Managing conflicts of interest through the Financial Disclosure Framework
- Electronic system of disclosures
- Matters emanating from managing the FDF
- Prohibiting public servants from conducting business with the State
- Conclusion



# Introduction

- The Public Service Commission (PSC) has since its establishment in terms of the Public Service Commission Act, 1997, been at the forefront in promoting ethical governance and integrity in the Public Service.
- The PSC draws its mandate from section 196, read with section 195 of the Constitution which places specific emphasis on the promotion of professional ethics in the Public Service.
- This presentation will outline some of the initiatives of the PSC in promoting integrity and managing conflicts of interest.
- The PSC's view with regard to the prohibition of public servants doing business with the Public Service will be discussed against the background of the initiatives already in place.

# The need for ethics and integrity in Public Service governance – 1

- A key characteristic of a developmental state is its commitment to **accountability** and its ability to operate in a **transparent** manner.
- It requires that public servants and their actions be held answerable to the public for the achievement of service delivery objectives and proper utilization of resources.
- However, public service delivery is hampered by corrupt and unethical practices.
- **Corruption distorts public spending.** Distortions arise in three ways: from shaping the official priorities of government, by deflecting allocated resources away from their original purpose, and by undermining the tax base of government.
- Time and money wasted through corrupt activities come at the expense of productive activities.

# The need for ethics and integrity in Public Service governance – 1

- Public sector efficiency becomes compromised because corruption superimposes informal practices over the proper rules and procedures of government.
- Legislation, systems, rules and guidelines are important to set a framework within which unethical and corrupt behaviour can be minimised and eradicated.
- The PSC has been at the forefront in developing such systems and frameworks.
  - A prominent system that has been put in place by the PSC is the **National Anti-Corruption Hotline** which provides 24 hours, 7 days a week access to whistle-blowers to report corrupt practices.
  - This presentation will, however, specifically focus on initiatives by the PSC to manage potential conflicts of interest and prevent actual conflicts of interest.





# What do conflicts of interest entail?

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

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

- Potential conflicts of interest must be managed to ensure that **actual conflicts of interest** do not occur (i.e. a public servant sitting on a bid committee and influence panel members to take a decision in favour of a company in which he/she has shares or ownership).
- The danger for actual conflicts of interest to occur when public servants do business with the Public Service is self evident.

# Creating a framework for ethical behaviour

- The PSC in pursuance of its mandate to promote professional ethics, first of all in 1997 developed a **Code of Conduct for Public Servants**.
- The Code which is contained as Chapter 2 in the Public Service Regulations provides amongst others for the following in relation to conflicts of interest:

An employee-

- ✓ does not engage in any transaction or action that is in conflict with or infringes on the execution of her or his official duties;
- ✓ will recuse herself or himself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee;
- ✓ does not use her or his official position to obtain private gifts or benefits for herself or himself during the performance of her or his official duties nor does she or he accept any gifts or benefits when offered as these may be construed as bribes; and
- ✓ does not, without approval, undertake remunerative work outside her or his official duties or use office equipment for such work.

# Managing conflicts of interest through the Financial Disclosure Framework - 1

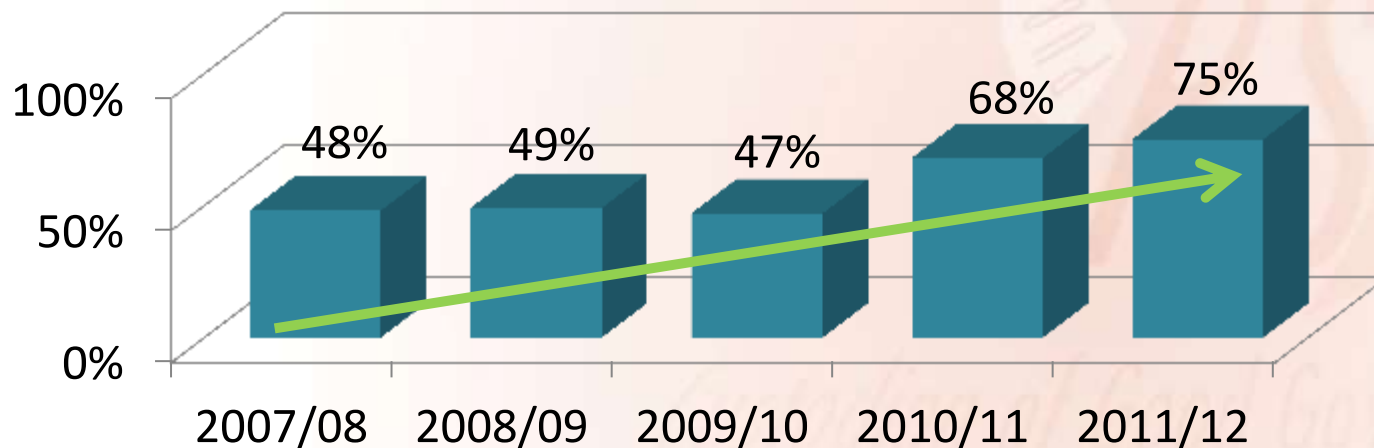
- The PSC has since 1999 realized the importance of **managing the potential conflicts of interest** of public servants and subsequently developed the **Financial Disclosure Framework**.
- The Framework is aimed at promoting the perception of integrity in government by preventing conflicts of interest before they occur.
- The Minister for Public Service and Administration (MPSA) during March 2000 approved that the Framework be incorporated as Chapter 3 of the **Public Service Regulations** (PSR).
- The MPSA is legislatively empowered to issue directives regarding the employment conditions of members of the Senior Management Service (SMS).
- All members of the SMS are **required to disclose** to their respective Ministers or Executive Authorities (EAs), particulars of all their registrable interests not later than 30 April each year.





# Managing conflicts of interest through the Financial Disclosure Framework - 2

- The PSR further requires EAs to submit copies of the forms on which designated employees disclosed their financial interests, **to the PSC** by no later than 31 May of each year.
- During the initial years, the focus of the PSC's work on the Framework was on **monitoring compliance** with the requirement to submit financial disclosure forms. Compliance has steadily increased, although only 100% compliance will be acceptable



# Managing conflicts of interest through the Financial Disclosure Framework - 3

- Since 2006, the PSC expanded its focus to include the **scrutiny** of the disclosures to identify **potential and actual** conflicts of interest in departments and to advise Executive Authorities accordingly.
- Initially the scrutiny process involved a sample of 30% of the forms received. Since 2012 the PSC scrutinizes all forms received. The scrutiny process involves the verification of information relating to **directorships and partnerships** on the Companies and Intellectual Property Commission (CIPS) database.
- The **Deeds Registry** database is also consulted to verify whether a particular senior manager disclosed all his/her properties.
- The nature of activities relating to **consultancies and retainerships** as well as work performed by an SMS member outside of the Public Service, are used to formulate an opinion on the prevalence of potential or actual conflicts of interest.

# Managing conflicts of interest through the Financial Disclosure Framework – 4

- All the activities that an SMS member is involved in are assessed against the **official activities** of the particular SMS member.
- **Departmental Supplier databases** will also be consulted to assess whether a SMS member does business with his/her employer.

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

# Electronic system of disclosures



- An electronic system of disclosures (called **eDisclosure**) for the Public Service has been introduced for implementation with effect from 1 April 2014.
- The eDisclosure System is an electronic register for the **capturing and management** of financial disclosures.
- The system will **counteract bureaucratic challenges** presented by the existing paper based system.
- The system will **link** with other government **data bases** for purposes of verification of disclosures.
- **Monitoring of compliance** will be enhanced and **swift feedback** to EAs on transgressions will be facilitated.
- It will therefore **improve efficiency** in terms of time, human resources utilisation and **compliance**.

# Matters emanating from managing the FDF

- Through the years of managing the Framework the PSC has also identified the need to extend its application to **other categories of staff**.
- This has already resulted in a conflicts of interest declaration process being implemented for officials involved in **supply chain decision processes**.
- The question that may rightly be asked is whether it is appropriate for a public servant to conduct business, not only with his/her department, but with the public service **as collective employer as a whole**? This in fact entails an employee receiving a salary from his/her employer for full time service and doing business in a private capacity with the same employer – a **clear case of actual conflict of interest**.
- The PSC has based on its knowledge and research recommended to Cabinet that there should be a prohibition on public servants conducting business with the public service.



# Prohibiting public servants from doing business with the Public Service - 1

- The National Development Plan has recommended that rules restricting the business interests of public servants be made more **specific and clear**. It recommended a study to investigate expanding the existing regulations and improving the institutional processes and capacity to manage the rules.
- In December 2012 Cabinet approved a recommendation by the PSC to **prohibit public servants from doing business with Government**.
- In order to give effect to the approval by Cabinet legislative amendments are required.
- The Minister for Public Service and Administration is in the process of legislative initiatives that will affect all three spheres of Government through the **Public Administration Management Bill**.

# Prohibiting public servants from doing business with the Public Service - 2

- Section 35 of the Public Administration Management Bill provides, amongst others, as follows:

- “(2) Notwithstanding anything contained in any other law, with effect from the date of commencement of this section an employee may not—*
- (a) conduct business with the State;*
  - (b) hold an equity interest in an entity conducting business with the State; or*
  - (c) be a director of a public or private company conducting business with the State.*
- (3) An employee must, in the prescribed manner, disclose to the relevant head of institution any financial interest that the employee and any family member of the employee has in an entity conducting business with the State.*
- (4) An employee must make a disclosure referred to in subsection (3) forthwith on becoming aware of the interest concerned, or when it is brought to his or her attention, and thereafter at the prescribed intervals.”*

# Prohibiting public servants from doing business with the Public Service - 3

- (5) An employee must disclose any interest referred to in subsection (3) that exists at the commencement of this section in the prescribed manner within three months after such commencement.*
- (6) .....*
- (7) The failure to comply with subsection (4) or (5) constitutes—  
(a) a fair ground for dismissal; and  
(b) an offence.*
- (8) A person convicted of an offence under subsection (7)(b) is liable to a fine or imprisonment for a period not exceeding one year, or both.”*

- The seriousness with which the matter is being approached (making non-compliance an offence and introduction of the sanction of a fine or imprisonment) is supported by the PSC.

# Conclusion

- There may be legal challenges related to the constitutionality of the prohibition.
- However, the Bill of Rights provides that “*Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law*”.
- The Public Service Act is the legislation that regulates the general public service profession.
- The PSC believes that public servants, particularly senior managers are adequately remunerated and that as Franz Fanon said, “*double sources of income*” in Africa have led to “*opportunism, the multiplication of privilege and corruption*” because of the limited amount of available national wealth in post-colonial Africa.
- No prohibition will be placed on public servants doing business **outside the ambit of the State, subject** to the approval of the relevant EA after satisfying him/herself that such business will not impede on the public servant’s ability to perform his/her official duties.
- Prohibition will be a significant step towards limiting corrupt practices in the Public Service.



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PSC Website: [www.psc.gov.za](http://www.psc.gov.za)

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