Assessment of the Implementation of Policy Framework on the Appointment of Ministerial Staff in National and Provincial Departments

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Custodian of Good Governance

Foreword

The Public Service Commission (PSC) is pleased to present the Report on the Assessment of the Implementation of the Policy Framework on the Appointment of Ministerial staff in National and Provincial Departments. The Public Service depends on the knowledge, skills and competencies of its employees to render quality service to the citizens of South Africa. Therefore, it becomes crucial that the recruitment and selection processes are beyond reproach and aid in identifying the best candidates for the job.

Given that the responsibility to recruit and select competent employees into the Public Service is vested in Executive Authorities within a framework of national norms and standards determined by the Minister for Public Service and Administration through the Public Service Act, 1994 as amended and the Public Service Regulations, 2001 as amended, it is important and expected of Executive Authorities to ensure that they also comply with the policy framework when selecting people to serve in their offices.

This study has focused on the human resource management practices for people employed in Offices of Ministers / Members of Executive Councils. While this was the main objective of the study; the study went beyond the brief and drew in data on critical aspects such as management of functions and relations within Ministries.

The PSC is of the view that this report will serve as a base in finding lasting solutions to the challenges experienced in capacitating Offices of Executive Authorities with competent staff. Special thanks go to all the Executive Authorities, Premiers, Members of Executive Councils, Directors-General and Heads of Department who took time to participate in the study.

PUBLIC SERVICE COMMISSION

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LIST OF ACRONYMS

EA   Executive Authority (means Minister/Premier/MEC for purposes of this study).
MEC   Member of Executive Council
DG   Director-General
HoD   Head of Department
PSA   Public Service Act
PSC   Public Service Commission
PSR   Public Service Regulations
DPSA   Department of Public Service and Administration

Ministries (refers to the Private Offices of Ministers, Premiers and MECs for purposes of this study)

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EXECUTIVE SUMMARY

1   INTRODUCTION

The Public Service Commission embarked on a study to assess the implementation of the Policy Framework on the Appointment of Ministerial Staff in National and Provincial Departments. Key challenges in this area include the fact that there is limited compliance with the Public Service Act, 1994, as amended, and the Regulations, 2001, as amended, the Ministerial Handbook, the Senior Management Services Handbook and Human Resource Management prescripts when appointing Ministerial Staff. Also, the practice through which those employed in Ministries on contract are redeployed to permanent positions in departments has been a source of concern for a long time. The working relations between Departments and Ministries have created, in many instances, serious challenges when not managed properly. This report therefore seeks to elaborate on the challenges that hinder the effective and efficient management of the career incidents of Ministerial staff and recommends viable solutions.

2   OBJECTIVES

The objectives of the assessment were to:

a) Assess compliance with policy frameworks on the appointment of Ministerial Staff.
b) Establish whether there are appropriate recruitment and selection processes in place.
c) Assess whether departments have defined core competencies needed to serve in the EAs' Offices and whether there is congruence with the core competencies of departments.
d) Assess whether persons with appropriate competencies and skills are appointed and redeployed appropriately to departments when the need arises.
e) Assess whether there are training and development plans for persons serving EAs in order to enhance competencies.

3   SCOPE

The study covered all national and provincial government departments. However, only fourteen national and thirty two provincial departments were sampled to be interviewed.

4   METHODOLOGY

The methodology adopted in the gathering of data was as follows:

a) A questionnaire was developed to gather data and distributed to Ministries and departments to complete and return to the Public Service Commission.
b) Interviews with Executive Authorities (Ministers/Premiers/MECs), Directors-General (DGs)/Heads of Departments (HoDs) with the assistance of Senior Human Resource officials of the sampled departments were conducted.

5   FINDINGS

5.1   Interpretation of Chapter 8 of the Ministerial Handbook

The study revealed that Chapter 8 of the Ministerial Handbook has, in most cases, been interpreted as the recruitment and selection policy for use by Executive Authorities to employ staff in their offices. In some Ministries/Departments

the Handbook is the only source document used although there are some who have used it in conjunction with the relevant public service recruitment and selection prescripts.

5.2   Recruitment and Selection Policy and Procedures

Departmental recruitment and selection policies and procedures are not used when recruiting, selecting and appointing employees who support Executive Authorities. There is a general perception within Ministries that departmental policies do not apply in the Ministries.

5.3   Capacity in the offices of Executive Authorities

5.3.1   Chief of Staff

In most departments the recruitment, selection and appointment of the Chief of Staff is not in line with the SMS Handbook. This means that there is no adherence to the processes that need to be followed to recruit and select senior managers in the Public Service. The minimum skills required for the position, that is, management, administrative, liaison and interpersonal relations are not met, resulting in poor functioning of the Ministry.

5.3.2   Deputy Directors to Lower Levels

These levels are affected by the processes followed at the top levels. The competencies required are not tested and no due process is followed in most instances.

5.3.3   Special Advisors

A trend was noticed where Special Advisors gradually take over responsibilities or run parallel with the responsibilities of HoDs in managing departments. This creates confusion among staff in the department as officials are expected to account to the special advisor on certain aspects whereas they know that they are accountable to the HoD. This practice also leads to serious tension between the offices of Ministers and HoDs.

5.3.4   Performance Management and Development System

There are inconsistences in the management of performance in different Ministries. Performance management is not taken seriously in many instances leading to failure in identifying and addressing under-performance.

5.3.5   Organisational Structure and Job Profiles

The Ministerial Handbook provides the standard structure for Ministries with some room for variance. However, there are inconsistencies between the structures of Ministries. Some Ministries have more staff in their employ than others. There is also no clarity in cases where departments are amalgamated. Structures remained the same, whilst more than one portfolio has been merged.

5.4   Departmental Core Competency

There is a misunderstanding about what the core competencies required in Ministerial Offices should be. Individual employee skills are being used to define the core competencies by some departments. As a result they focus on improving individual employee skills which at times have no impact on performance. Consideration should be given to measuring departmental effectiveness as a whole as opposed to individual employee performance.

Some departments also have no skills inventory for the Ministerial employees. Training plans do not cover staff in Ministerial offices and in those instances where Ministerial staff avail themselves to attend training the trend is that only those employees who are not coming from the political environment show interest in being trained.

5.5   Redeployment Process

There is non-compliance with prescripts in terms of transferring employees from one component to the other. There were examples in some provinces where a political decision is taken to transfer contract employees to permanent positions within departments irrespective of whether there is a vacant funded post or not. The challenge is compounded when incompetent employees get transferred to the department on a permanent basis. This kind of transfer has a negative impact on the performance of the component and ultimately of the department.

5.6   Other Challenges

The following are some of the challenges highlighted during the interaction with the participants which were not the initial focus of the study.

5.6.1   Relationship between Ministries and Departments

The Ministries and Departments are not immune from conflict. The first driver of conflict is around the appointment of the EA staff. The DG/HoD as an accounting officer is expected to provide advice to the EA on compliance to all legislation pertaining to appointments and in some cases such advice is not well received. The second driver of the conflict relates to the powers that the EAs are entrusted with in terms of the Public Service Act, which in some departments are delegated to the DG and in some are not.

Another challenge was around the relations between Deputy Ministers and Ministers which need to be addressed. There is no uniformity in the delegation of responsibilities from the Ministers to the Deputy Ministers across departments. Also the issue of special advisors for Deputy Ministers needs to be addressed, as at the moment Deputy Ministers have no access to advisors appointed for the Ministry, and only the Ministers get to utilise them.

5.6.2   Reshuffling of Ministers

The reshuffling of Ministers in some departments has resulted in turnaround strategies and restructuring processes which are not informed by changes in the mandate of the department but rather on perceptions regarding the department's performance. The impact of these processes is instability in departments. When restructuring processes take place, institutional memory and continuity in the Ministries is not considered and in certain instances all the staff in the Ministries get changed.

5.6.3   Job security

Ministries experience difficulty in finding competent and qualified candidates due to the fact that there is no job security and prospective candidates are not prepared to gamble with their careers.

5.6.4   Tools of trade

There is inconsistency in the application of rules related to the tools of trade. Also there is non-compliance with the transport policies of departments.

6.   RECOMMENDATIONS

Based on the findings of the study, the following recommendations are made.

6.1.   The DPSA should develop a focused policy framework that will regulate the employment practices of persons who provide support and serve in EAs' offices.

6.2.   All SMS levels in Ministries irrespective of the method of recruitment (headhunting or advertising) must be subjected to proper selection processes (i.e. interviews and competency assessment) and for any identified competency gap, a developmental plan must be put in place to address the gap. This plan must be developed in consultation with the person concerned and be managed by the Director-General or Head of Department.

6.3.   As the Director-General or Head of Department has to provide "primary advisory" support to the EA due to the resources (e.g. research experts, etc.) he/she manages in the department, an administrative reporting line to the Director-General or Head of Department must be enforced for the Chief of Staff.

6.4.   Compulsory induction, orientation/training on the functions performed in Ministries, the relationship between the Ministry and the department, the protocols of being a sessional employee and the benefits thereof and how to support the Minister with political responsibilities should be conducted with staff working in the EAs' offices, either at departmental level or coordinated by the National School of Government (NSG) or the DPSA. The current and/or previous competent and experienced Chief of Staff should be part of the training team and assist in this regard.

6.5.   There should be a dedicated course for Chiefs of Staff and a forum to share experiences and to professionalise this strategic role. There should be a way of career-pathing experienced Chiefs of Staff.

6.6.   A Legislation based Compliance Framework for Ministries should be developed by the DPSA.

6.7.   The DPSA should review the organisational structures of Ministries according to the size and responsibility of the Ministry.

6.8.   Uniform job profiles and descriptions should be enforced for Chiefs of Staff across the Public Service. Key competencies and minimum qualifications for the position of Chief of Staff must be well-defined. This will help to guide the selection and appointment process and Ministers must be informed of and adhere to this guide. Uniform job profiles should be developed for the rest of the staff in EAs' offices.

6.9.   80% of the positions in Ministries should be permanent and be part of organograms of departments.

6.10.   An orientation and support programme for Cabinet Ministers/Premiers/Members of Executive Council (MECs) and Directors-General/Heads of Department should be developed and it must be compulsory for new EAs and DGs/HoDs to attend at the beginning of every term of government and when a need arises due to reshuffling. There must be a separate session for EAs and DGs first and thereafter a joint session. Also the advisors need to have an orientation programme.

6.11.   There should be a probation period for staff appointed in Ministries and that period should take into consideration the nature of Ministries and the limited time available to follow the probation period regulations that are cumbersome to release a person who is not performing or fitting in the culture of the Ministry.

6.12.   The DPSA should continue to give guidance and assistance in the development and implementation of turnaround strategies and restructuring processes.

6.13.   The DPSA should develop a database of employees with working experience in Ministries who could not be absorbed by departments for purposes of redeployment.

6.14.   The DPSA should enforce the developed benchmark job descriptions and evaluations for posts in EAs' offices to ensure consistency throughout the Public Service.

7   CONCLUSION

The legislative framework, policies and processes for recruitment, selection, appointment and development of employees for Executive Authorities are critical in ensuring that performance and quality of service is achieved. This report has attempted to outline viable solutions in response to the findings. It is important that the recommendations made in this report are taken forward to assist the Public Service Leadership to perform.

Chapter One

Introduction

1.1 BACKGROUND

Since the dawn of democracy, government has put in place transformational legislation in the field of Human Resource Management. For the last several years, human resources decisions have been largely shaped by the need to redress imbalances of the past and service delivery. Hence one of the values and principles governing public administration enshrined in the Constitution of the Republic of South Africa, 1996, states that public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation. It is imperative to note that for service delivery to improve and for transformation to advance, appointments in the Public Service should be above reproach at all levels. Policy frameworks that are applicable to the selection and appointment of people that work in the Public Service must be implemented diligently so that when they are subjected to scrutiny, they pass the test of fairness, transparency and compliance with labour legislation. Ultimately the overall quality of public service and its performance is fundamental to the welfare of the people of South Africa.

It is against this background that the study on the Assessment of the implementation of the Policy Framework on the Appointment of Ministerial Staff in the Public Service has been undertaken. The assumption is made that when the right people, with the right skills are appointed to serve Executive Authorities (EAs) in the Public Service, the EAs would be able to deliver on the mandate of the government effectively and efficiently in their respective portfolios. Also the offices of EAs will be able to comply with government wide legislation and policy frameworks; the relations between the Ministry and the department would be smooth as there will be a common understanding of the expected deliverables by the Ministry and the Department. Above all, this will culminate in effective service delivery.

In the main, the study sought to ascertain the systematic challenges which hamper the management of the EAs' offices and thus impact negatively on the operations of the department and service delivery. In turn, the Public Service Commission (PSC) intends to make recommendations to address the challenges identified. The study's initial focus was on the Human Resource Management practices followed in relation to employees appointed to serve EAs. However during the interaction with participants, the relationship and interface between Ministers, Deputy Ministers and departments emerged as a major challenge. Hence, the PSC also reports on these matters. It should be noted that the PSC in the past conducted studies on the *"Strategic Issues emanating from the Evaluation of Heads of Department"* and *"Effect of Turnover rate of Heads of Department on the Performance of Departments and its implications for the Public Service with findings and recommendations".* The persistence of the challenges between Ministries and departments could be viewed as an indication that the recommendations made in the above-mentioned reports have not been implemented or were inadequate to resolve challenges which are more complex and systemic.

1.2 OBJECTIVES OF THE ASSESSMENT

The objectives of the assessment were to:

a) Assess compliance with policy frameworks on the appointment of Ministerial Staff.
b) Establish whether there are appropriate recruitment and selection processes in place.
c) Assess whether the departments have defined core competencies needed to serve in the EAs' Offices and whether there is congruence with the core competencies of departments.
d) Assess whether persons with appropriate competencies and skills are appointed and redeployed appropriately to departments when the need arises.
e) Assess whether there are training and development plans for persons serving EAs in order to enhance competencies.

1.3 SCOPE OF THE ASSESSMENT

The data collection process was divided into two phases. Phase one, which comprised of data collection through questionnaires covered all government departments, nationally and provincially. In phase two, additional information

was gathered through interviews from forty six national and provincial departments. **Table 1** provides a list of the fourteen national departments that were sampled for the phase two interviews.

Table 1: National Government

Department	Minister's Questionnaire completed and returned to PSC		Interviews conducted			
			Minister		DG	
	YES	NO	YES	NO	YES	NO
1) Arts and Culture	X		X		X	
2) Basic Education	X		X		X	
3) Cooperative Governance and Traditional Affairs		X		X		X
4) Correctional Services	X		X		X	
5) Home Affairs	X		X			X
6) Human Settlement		X		X	X	
7) Public Works		X	X			X
8) Social Development		X		X		X
9) South African Police Services (Secretariat of Police)		X		X	X	
10) Science and Technology	X		X		X	
11) Sport and Recreation South Africa		X		X		X
12) Transport	X		X		X	
13) Water Affairs		X		X		X
14) Women, Children & People with Disabilities	X			X		X

As illustrated in **Table 2** below, a total of thirty two provincial departments were sampled for participation in the phase two interviews. A minimum of three and maximum of five departments were sampled per province, depending on availability. The Office of the Premier was sampled in all Provinces.

Table 2: Provincial Government

Department	Premier's/MEC's Questionnaire completed and returned to PSC		Interviews conducted			
			Premier/MEC		HoD	
	YES	NO	YES	NO	YES	NO
Eastern Cape						
1) Office of the Premier		X		X		X
2) Roads and Public Works	X			X		X
3) Human Settlements	X			X		X
4) Finance and Provincial Planning	X			X		X
Free State						
5) Office of the Premier		X	X		X	
6) Sport, Arts and Culture	X		X		X	
7) Provincial Treasury	X		X		X	
8) Social Development	X		X		X	
Gauteng						
9) Office of the Premier		X		X		X
10) Roads and Public Transport	X			X		X
11) Basic Education		X		X		X
12) Local Government and Housing		X		X		X
13) Health	X		X		X	

Department	Premier's/MEC's Questionnaire completed and returned to PSC		Interviews conducted			
			Premier/MEC		HoD	
	YES	NO	YES	NO	YES	NO
KwaZulu-Natal						
14) Office of the Premier		X		X		X
15) Provincial Treasury		X		X		X
16) Health		X		X		X
Limpopo						
17) Office of the Premier		X		X		X
18) Economic Development, Environment and Tourism		X	X		X	
19) Cooperative Governance, Human Settlements and Traditional Affairs	X			X		X
Mpumalanga						
20) Office of the Premier		X		X		X
21) Agriculture, Rural Development and Land Administration	X		X		X	
22) Finance	X			X		X
North West						
23) Office of the Premier		X		X		X
24) Agriculture, Conservation, Environment and Rural Development		X		X		X
25) Human Settlement		X		X		X
Northern Cape						
26) Office of the Premier	X			X		X
27) Finance, Economic Affairs and Tourism	X		X			X
28) Roads and Public Works	X			X		X
29) Education	X			X		X
Western Cape						
30) Office of the Premier	X		X		X	
31) Cultural Affairs and Sport	X			X		X
32) Social Development	X			X		X

For the phase one data collection process, each department had to complete and return to PSC two sets of questionnaires, one for the Executive Authority (i.e. Ministers, Premiers and Members of Executive Councils) and the other one for the DG/HoD. A total number of 62 and 44 completed questionnaires were received from the EAs and the DGs/HoDs respectively by the PSC.

Of the 62 completed questionnaires by EAs, 8 were from national ministries and 54 were from provincial ministries and premiers in the nine provinces. Of the 44 completed questionnaires by DGs/HoDs, 10 were from national Directors-General and 34 were from provincial Heads of Department in the nine provinces.

1.4 METHODOLOGY

The methodology adopted in gathering data was as follows:

a) A questionnaire was developed to gather data and distributed to Ministries and departments to complete and return to the Public Service Commission.
b) Interviews with Executive Authorities (Ministers/Premiers/MECs), Directors-General (DGs)/Heads of Department (HoDs) with the assistance of Senior Human Resource officials of the sampled departments were conducted.

1.5 LIMITATIONS TO THE STUDY

The focus of the study was on EAs and DGs/HoDs. The main reason for this was that the study deals with the appointment of persons who serve in EAs' offices and EAs have powers in terms of the Public Service Act, 1994, as amended, for appointments while the DGs/HoDs have to implement policy frameworks associated with appointments in departments including the staff for EAs. The unavailability and the busy schedules of EAs and DGs/HoDs imposed a major time risk to the study.

Noting that all the participants had busy schedules, in most cases it was virtually impossible to find diary appointments, and efforts were made to manage this risk. The following steps were taken to address the risk;

• Ensured timeous and effective communication with all the EAs and DGs/HoDs offices;
• Stated clearly the objectives of the project and the desired output; and
• Requested the Chiefs of Staff and heads in the offices of DGs/HoDs to explain in more detail the study and encourage their principals to participate.

The validation of information received through the questionnaire was limited to the sampled departments whose EAs and DGs/HoDs were available for one-on-one interviews. This means that the ability to validate data through interviews was lost for the remainder of the questionnaires which were received and not sampled for the interviews. As a result there is a noted disjuncture when comparing validated information and information that could not be validated.

1.6 STRUCTURE OF THE REPORT

The report is structured as follows:

Chapter 2: Presents the legislative and regulatory framework.
Chapter 3: Presents the findings and analysis thereof.
Chapter 4: Outlines recommendations and conclusion.

Legislative and Regulatory Framework

2.1 INTRODUCTION

In order to effectively manage the recruitment, selection and appointment practices in the Public Service, departments ought to comply with the legislative and regulatory framework that guides the processes. This chapter provides an analysis of the legislative and regulatory framework relating to the recruitment, selection and appointment practices and each of these documents directs the actions of the EA or his/her delegate when it comes to recruitment, selection and appointment practices in a department. In this study the term "department" is used and includes the offices of EAs as the legislation does not separate a "department" from the "office" of the Executive Authority. The framework also forms the legal foundation for Human Resource Management practices in the Public Service.

2.2 LEGISLATIVE AND REGULATORY FRAMEWORK

The legislative provisions regulating recruitment, selection and appointment of persons in the Public Service are:

2.2.1 Public Service Act, 1994, as amended [1]

The Public Service Act, 1994, as amended is the key legislation that provides for the organisation and administration of the Public Service in the Republic of South Africa and regulates the conditions of employment, terms of office, discipline, retirement and discharge of members of the public service, and matters connected therewith.

Section 8A and section 9 of the Act stipulates mechanisms for obtaining services of persons and appointment in the Public Service.

"**8A. Mechanisms for obtaining services of persons**

Services of persons may be obtained in terms of this Act by means of -

(a) appointments in terms of section 9, including appointments of heads of department in terms of section 12;
(b) appointments in terms of section 12A on grounds of policy considerations; or
(c) deployments in the form of -

(i) transfers in terms of section 14, including transfers of heads of department in terms of section 12(3);
(ii) secondments in terms of section 15; and
(iii) assignments in terms of section 32.

9. Appointments in public service

An Executive Authority may appoint any person in his or her department in accordance with this Act and in such manner and on such conditions as may be prescribed".

The implications of section 8A and 9 above are that, Executive Authorities as Political Heads of Departments have been given administrative powers to appoint any person in their departments as long as their actions are in accordance with these sections of the Public Service Act (PSA), 1994, as amended. Since the offices of EAs are part of departments, and employees in EAs' offices are appointed in terms of this Act, they are not excluded from any provisions in this Act. It must be noted that the focus of this study was on staff appointed in EAs offices in terms of section 9 and 12A. Employees who are appointed in terms of section 9 in the office of the EA are administrative employees who can be appointed permanently or temporarily (i.e. on contract for a specified period). Employees who are appointed in terms of section 12A in the office of the EAs are employees appointed on the grounds of policy considerations.

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1 Republic of South Africa, Public Service Act, 1994, as amended.

Section 10 of the Act stipulates the qualifications for appointment in the Public Service.

"**10. Qualifications for appointment**

(1)   No person shall be appointed permanently, whether on probation or not, to any post on the establishment in a department unless he or she-

(a) is a South African citizen or permanent resident; and
(b) is a fit and proper person".

The implications of this section are that, any appointment made as per section 9 of this Act must meet the requirement of section 10. Section 11 (2) (b) of this Act attempts to clarify the notion of "fit and proper person". It stipulates that:

"**11. Appointments and filling of posts**

1) In the making of appointments and the filling of posts in the Public Service due regard shall be to equality and the other democratic values and principles enshrined in the Constitution.
2) In the making of any appointment in terms of section 9 in the Public Service-

a) all persons who applied and qualify for the appointment concerned shall be considered; and
b) *the evaluation of persons shall be based on training, skills, competence, knowledge and the need to redress, in accordance with the Employment Equity Act, 1998 (Act 55 of 1998), the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender and disability".*

Also the Public Service Regulations (PSR), 2001, as amended, unpack the meaning of "fit and proper person" by way of giving clear criteria under which a person could be selected and appointed.

The employees who are appointed in terms of section 12A in the offices of EAs are employees appointed on the grounds of policy considerations. The category of employees that falls under section 12A is the Special Advisors to the EAs. Section 12A stipulates that:

"**12A. Appointment of persons on grounds of policy considerations**

1) Subject to this section, such Executive Authorities as the Cabinet may determine may appoint one or more persons under a contract, whether in a full-time or part-time capacity-

a) to advise the Executive Authority on the exercise or performance of the Executive Authority's powers and duties;
b) to advise the Executive Authority on the development of policy that will promote the relevant department's objectives; or
c) to perform such other tasks as may be appropriate in respect of the exercise or performance of the Executive Authority's powers and duties.

2) The maximum number of persons that may be appointed by an Executive Authority under this section and the upper limits of the remuneration and other conditions of service of such persons shall be determined by the Cabinet in the national sphere of government.

3) The special contract contemplated in subsection (1) shall include any term and condition agreed upon between the relevant Executive Authority and the person concerned, including -

   a) The contractual period, which period shall not exceed the term of office of the Executive Authority;
   b) The particular duties for which the person concerned is appointed; and
   c) The remuneration and other conditions of service of the person concerned."

What is clear from this section is that, Special Advisors provide advisory services to EAs in the areas mentioned in section12A (1) (a) to (c). There is no relationship of authority between Special Advisors and Heads of Department endorsed. This means that any input the Special Advisor makes must be directed to the EA. Nowhere is it confirmed that the Special Advisor must run with the administration and management of the department.

2.2.2 Public Service Regulations (PSR), 2001, as amended [2]

The Public Service Regulations (PSR), 2001, as amended, are meant to make necessary or appropriate provisions in relation to a range of matters for the purpose of giving effect to the provisions of the Public Service Act (PSA), 1994, as amended. PSR, 2001, as amended, shall be read in conjunction with the PSA, 1994, as amended.

The legislative framework governing the filling of posts in offices of Executive Authorities and Deputy Ministers was amended. The Public Service Regulations (PSR), 2001, chapter 1/Part VII/C was amended to insert Regulation C.1B (Government Notice R. 937 of 2 October 2009). In accordance with the inserted Regulation C.1B -

C.1B.1 An Executing Authority may only fill vacancies in the office of an Executing Authority or a Deputy Minister by means of-

   (a)   an appointment in terms of section 9 for-

      (i) the term of office of the incumbent Executing Authority or Deputy Minister which will terminate at the end of the first month after the month in which the term of that Executing Authority or Deputy Minister terminates for any reason; or
      (ii) a period not exceeding three years;

   (b)   a transfer in terms of section 14 of the Act, provided that the employment status of the transferred employees as permanent or temporary, as the case may be, shall remain unaffected by the transfer.

C.1B.2 Subject to the appointment criteria set out in regulation 1/VII/D.5 (b) to (e), an Executing Authority may fill a post in the office of the Executing Authority, or a Deputy Minister in that Executing Authority's portfolio, in terms of regulation 1/VII/C.1B.1 without complying with regulation 1/VII/C.2.3 and C.2.4.

C.1B.3   Regulation 1/VII/C.1B.1 shall not be construed as preventing the secondment in terms of section 15 of the Act or regulation B.4.1, or an assignment in terms of section 32 of the Act, of a person to perform the functions of a post in the office of an Executing Authority or a Deputy Minister.

These regulations explain clearly that the term of appointment of persons appointed in offices of EAs or Deputy Ministers in terms of section 9 of the PSA, 1994, as amended, could be linked to the EA's or Deputy Minister's term or a period not exceeding three years. In the first instance, this means, if the EA or Deputy Minister is in office for five years, the person appointed to serve him/her will be employed for five years. In the event that the EA or Deputy Minister is excused from his/her duties during the government term, then the person linked to the EA or Deputy Minister should be excused from his/her duties.

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2 Republic of South Africa, Public Service Regulations, 2001, as amended.

In the second instance of a period not exceeding three years, the regulations makes it possible for the EA or Deputy Minister to make a call to appoint a person on a fixed contract of three years or less. This person will not be affected by the EA's term of office. If the EA or Deputy Minister vacates his/her office before the three years lapses, that person shall remain in the employ of the department, be it retained by the new EA or Deputy Minister or redeployed in the department until the contract comes to an end.

Provision C.1B.1 (b) of the regulations also allows for the EA or Deputy Minister to transfer a person in terms of section 14 of the PSA, 1994, as amended.

Section 14 of the PSA, 1994, as amended, stipulates that:

"14. Transfers within Public Service

(1)   Subject to subsections (2), (3) and (4), any employee of a department may be transferred -

    a) Within the department, by its Executive Authority;
    b) To another department by the Executive Authorities of the two relevant departments.

(2)   Such transfer shall be made in such manner and on such conditions as may be prescribed.

(3)   An employee may be transferred under subsection (1) only if -

    a) The employee requests the transfer or consents to the transfer; or
    b) In the absence of such request or consent, the transfer is in the public interest.

(4)   Before employees may be transferred in terms of subsection (3)(b) as a result of a determination regarding an allocation, abortion or transfer of a function, contemplated in section 3(4)(b) or (c) or 3A(b), consultation shall take place in the applicable bargaining council established in terms of the Labour Relations Act for the public service as a whole or for a particular sector in the public service.

(5)(a) The transfer of an employee in terms of subsection (1) who is on probation shall remain subject to probation as prescribed.
    (b) Any regulation so prescribed shall take due regard of the respective functions before and after the transfer to avoid detriment to the employee concerned.

(6)   An employee who has been transferred to a post with -
    a) A lower salary than his or her salary before the transfer shall not upon such transfer suffer any reduction in salary, except if he or she requested the transfer or he or she consented to the reduction; or
    b) A higher salary than his or her salary before the transfer shall not by reason only of that transfer be entitled to the higher salary".

By implications of section 14 of the PSA, 1994, as amended, EAs can transfer an employee from one department to another, either by consent of that person or in the public interest. When transfer in respect of public interest, consultation should take place in the bargaining council as prescribed by the Labour Relations Act. If an employee is on probation by the time of transfer, the probation must continue. If a person is being transferred to a lower salary position, he or she must retain his original and current salary unless he or she is the one who requested the transfer or consented to the reduction. If a person is being transferred to a higher salary position, he/she cannot be entitled to a higher salary by transfer reasons only. This means there must be other substantial reasons in place to allow that person to be given a higher salary than he or she earned before transfer.

Provision C.1B.2 of the regulations clearly excuse the EA or Deputy Minister from advertising an SMS position in his/her office, but put a condition to subject to the appointment criteria as set out in regulation 1/VII/D.5(b) to (e). These appointment criteria are as follows:

> "D5   (b) the training, skills, competence and knowledge necessary to meet the inherent requirements of the post;
>   (c) The needs of the department for developing human resources.
>   (d) The representativeness of the component where the post is located; and
>   (e) The department's affirmative action programme."

It must be noted that the EA is allowed to headhunt for a position, make his or her own selection and appointment as long as the appointment criteria as stipulated in the regulations is adhered to by the EA. This means flexibility is only applicable to advertisement of positions in the EAs offices and not the selection and appointment processes. The implications of these regulations are that, even if the EA has used headhunting as a method of recruiting, the appointment criteria as set out in regulation 1/VII/D.5 (b) to (e) has to be complied with. Therefore, headhunted candidate should be subjected to selection processes to assess his/her suitability for the position in the EA's office. Even though the EA has the ultimate decision of who to appoint in the EA's office, that has to be in line with the appointment criteria as set out in the regulations. It should be noted though that the prevailing legislation only provides for headhunting in respect of SMS positions. The offices of EAs also have posts on salary levels below SMS; there is therefore insufficient guidance to implement Regulation C.1B.1 with respect to posts below the SMS level.

Provision C.1B.3 of the regulations also allows for secondment of employees in terms of section 15 of the PSA, 1994, as amended or regulation B.4.1, or assignment in terms of section 32 of the PSA, 1994, as amended.

2.2.3 Ministerial Handbook, 2007,

A Ministerial Handbook that was approved by Cabinet in February 2007 is a guideline for benefits and privileges, to which Members and their families are entitled, in the execution of their duties. The guideline with regard to administrative and support services, and the benefits, privileges associated with occupying these offices, provide assistance in ensuring good governance in line with the Code of Ethics. The handbook also seeks to sensitise members on the security measures that have to be observed in co-operation with the National Intelligence Agency and Safety and Security Services.

Executive Authorities are guided by the Ministerial Handbook, 2007, in terms of core staff that they can appoint and conditions of employment are that, appointments can be done either:

a) On a <u>contract linked to the political term of office of the Executing Authority or Deputy Minister</u> concerned, as envisaged in section 12A (3)(a)of the Public Service Act and conditions laid down by Cabinet; or

b) As <u>full-time public servants</u>, provided that they utilise the <u>job evaluation system</u> and ensure that there are <u>sufficient funds</u> available on the approved budget of the relevant department for the creation of post(s).

c) The Executive Authority <u>may second personnel</u> from components within the department. The advantage of secondment is that staff members could return to their original components on the approved establishment without any burden to the department.

d) The core staff will be <u>determined</u> by the relevant Executive Authority, who <u>may decide on</u> the creation and grading of posts as identified in their structure, based on <u>proven needs</u> and provided that <u>sufficient funds</u> are available in terms of the medium-term expenditure framework (MTEF) of the relevant department. Regulations B.2 and F.1 of Part III, Chapter 1 of the Public Service Regulations, 2001 are applicable; and

The organisational structure of a private office in support of a Member shall be determined after consultation with the Minister for Public Service and Administration in terms of Public Service Regulations, 2001 B.2 (a) and B.2A.

Chapter 8 of the Ministerial Handbook gives guidance on the administrative and support services for Ministers and Deputy Ministers where applicable. Paragraph 1 of the chapter provides a guide on the core staff that EAs can appoint in their offices (i.e. the structure in the offices of the EAs) and the conditions of employment with focus on the type of appointment (i.e. permanent, contract, secondment) and the duration of the appointment (i.e. number of years linked to the political term of office of the EA). Paragraph 2 of the chapter explains in brief the responsibilities of the Chief of Staff of the Ministry/Premier's office. However, Chapter 8 is not explicit that the Public Service Regulatory Framework applies to employees appointed core staff to EAs.

The Ministerial Handbook, as a guide, is not supposed to contradict the Public Service Act, Public Service Regulations and other pieces of primary and secondary legislation. The Ministerial Handbook cannot be implemented independent of the applicable prescripts, hence key sections of the handbook make specific reference to the Public Service Act, Regulations and the MTEF. It is therefore concluded that the PSA, 1994, as amended, and the PSR, 2001, as amended are the primary and secondary legislation that should be used by EAs, in conjunction with the Ministerial Handbook, to regulate the processes of selection and appointment of EAs' support staff.

Chapter Three

Findings

3.1 INTRODUCTION

The analysis of the findings is structured in two-parts; the analysis of the interaction, that is, one-on-one meetings with the EAs and DGs/HoDs (qualitative analysis) and the analysis of the completed questionnaires received (quantitative analysis) by the PSC. However, an observation has been made that the information gathered through the interaction with EAs and DGs/HoDs does not correlate with the information that comes from the questionnaires. The reason for non-correlation is that some of the questionnaires were completed by departments that were not sampled for one-on-one interviews hence the information was not validated. The likelihood of the questionnaires being completed by EAs and/or DGs/HoDs themselves is not assured. It must be noted that the responses from the questionnaires depict a picture of legislation, policy and procedural compliance in the areas of focus of the study; and the level of compliance reported in the questionnaires might not be a true reflection of what is really happening in departments. However, the one-on-one interviews with EAs and DGs/HoDs provide deeper insight due to intense probing conducted during interviews.

A thorough analysis of the interaction with EAs and DGs/HoDs and completed questionnaires was conducted and the PSC identified the findings below. It must be noted that the finding under 3.2 refers to the Ministerial Handbook which is a guideline that seem to be shaping the thinking and actions of many EAs when it comes to recruitment, selection and appointment of the EAs' support staff.

3.2 INTERPRETATION OF CHAPTER 8 OF THE MINISTERIAL HANDBOOK

Clarification of the Ministerial Handbook as a guideline for benefits and privileges, to which Ministers and their families are entitled, in the execution of their duties, has been discussed in chapter 2 of the report The study, however, confirmed that there is a perception in the Public Service that Chapter 8 of the Ministerial Handbook is the guiding document on the recruitment and selection process for appointing staff to serve EAs. As a result of this perception, a trend emerged in Ministries, of not following proper recruitment and selection processes when appointing staff in the EAs' offices. It should be noted that Chapter 8 of the Ministerial Handbook, 2007, is not a recruitment and selection policy and procedure document for use in the EAs offices. The question therefore becomes; what then regulates the processes of selection and appointment of EAs' support staff? The answer is simple, it is the Public Service Act, 1994 and the Public Service Regulations, 2001, as both amended. The department is then expected to develop and approve a recruitment and selection (R&S) policy and procedure for implementation. The R&S policy sets out how to ensure, as far as possible, that the best people are recruited on merit and that the recruitment process is free from bias and discrimination. This policy ought to be in line and give effect to the provisions of the legislation, i.e. PSA, 1994, and PSR, 2001, as both amended.

3.3 RECRUITMENT AND SELECTION POLICY AND PROCEDURES

Recruitment is the process of finding, attracting and identifying suitably qualified candidates for vacancies within a department. A department should have a proper number and mix of employees with the required knowledge, skills and abilities to be able to reach its goals. The department's recruitment policy should reflect diversity issues and provide guidelines for the person who is recruiting. The ultimate goal of a department should be to have a workforce that possesses a unique knowledge base, while promoting the principles of affirmative action. This is echoed in the values and principles governing public administration that the employment and personnel management practices should be based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation. The recruitment methods should be designed to ensure that people understand the true nature of the job for which they are applying if quality standards are to be upheld in the department. **Figure I** below shows in percentages the use of policy frameworks for recruitment, selection and appointment of EAs' employees by the sampled departments.
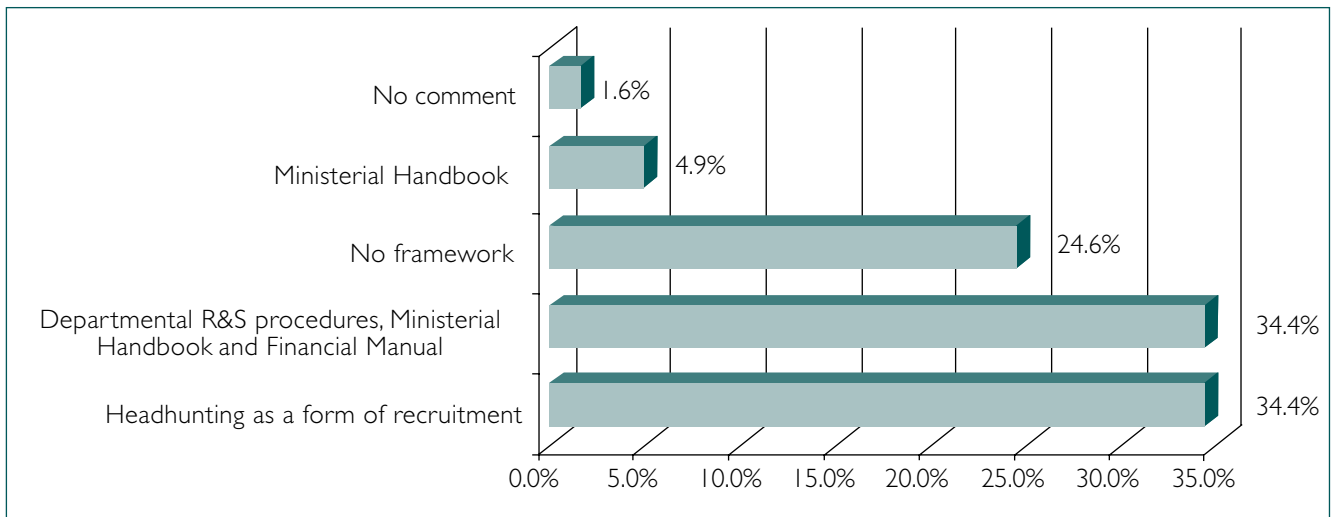
Figure 1: Utilisation of recruitment, selection and appointment framework and prevailing form of recruitment

The study revealed that most of the departments have recruitment and selection (R&S) policies and procedures in place as a framework that guides the recruitment, selection and appointment processes. Those departments that do not have a departmental policy make use of the regulations and guidelines from the DPSA. **Figure 1** illustrates that 34, 4% of sampled departments indicated that the departmental recruitment and selection procedures, Ministerial Handbook and Financial Manuals are utilised when staffing the EAs' offices. It should be noted that 24, 6% of sampled departments do not use any framework for the recruitment processes for EAs' offices.

There is a general perception among most of the people who work closely with EAs that departmental policies and procedures need not apply to staff in the EAs' offices. The EAs' offices are regarded as special offices since EAs are Political Heads of Departments and therefore only EAs' instructions are seen as legal and binding to officials who work in those offices. The implications of not following the proper recruitment and selection processes for employees in EAs' offices are that departments might appoint people whose suitability for positions has not been tested. The risk is that incompetent people may be appointed while compliance with transformational legislation might be compromised and ultimately service delivery will be affected. It should be noted that nowhere in the legislative framework that governs employment practices in the Public Service is it stipulated that the Recruitment and Selection processes should not be followed and headhunted candidates should not be subjected to the appointment criteria as set out in the Regulations. Since the inconsistent nature of the recruitment and selection process makes the system susceptible to corruption and malpractices, thorough procedures are necessary to minimise subjectivity.

3.4 CAPACITY IN THE EXECUTIVE AUTHORITIES' OFFICES

Filling critical roles/positions with competent and committed people provides a performance advantage that is essential for success of the Ministry and the department. The manner in which candidates are recruited and selected for appointment in Ministries and even in departments becomes critical.

3.4.1 Chief of Staff

As stipulated in the Ministerial Handbook, 2007, the Chief of Staff in the Ministry/Premier's office is in charge of the overall management of a Minister's or a Premier's office. Therefore, any person who aspires to be or is appointed in this position should possess the minimum, essential management, administrative, liaison and interpersonal relations competencies and/or a reasonable understanding of the political climate of the country. The emphasis though should be on the former as this position is more of a management and administrative nature. The study revealed that the

position of Chief of Staff has been left to chance in some departments. This means that no attention has been given to it in terms of ensuring that competence is assessed and as a result the quality of persons occupying the Chief of Staff positions has been inadequate in some instances.

The implications of this are felt in the non-compliance with government wide legislation, lack of proper advice on administrative matters, non-delivery of services to communities and dishonoring critical engagements that contribute to the department's work and government at large. The Chief of Staff position is at a Senior Management Services (SMS) level, and therefore the selection processes should not be different from those utilised to select a Chief Director (CD) for a line function in a department. This means that candidates should be assessed/interviewed and should, undergo a competency assessment in line with the requirements for all SMS posts as per directive from the Department of Public Service and Administration (DPSA). If there are developmental gaps identified during the competency assessment, a plan to address those developmental gaps should be developed and implemented within the first six months in the position so that the person can start performing at a level expected by the end of the first year in the position. It must be noted that even Directors-General and/or Heads of Department undergo a stringent selection process before they are appointed to such positions.

The question was raised by some respondents as to why there is a need for all these stringent processes for a position in a "political" office. The response given is that the Chief of Staff is one of the key people that are appointed to support the EA administratively and ensure coordination so that the EA is able to deliver on the mandate of the department. The Chief of Staff is the key person to manage reputational, operational, regulatory and financial risk in the EA's office. The Chief of Staff is the entry point in the EA's office, is the liaison person between the EA and all stakeholders (internal and external) and has to support the EA in complying with all the applicable government wide legislation and administrative issues that fall within the EA's responsibility (e.g. Heads of Department (HoDs) evaluations, financial disclosures, etc.). Since EAs have administrative responsibilities entrusted to them by the Public Service Act, a competent Chief of Staff is ideal. The same requirements are applicable to the Head of Office in the Deputy Ministers and MECs offices as they are also appointed in a Director position which is an SMS level. In a nutshell, all SMS positions within Ministries/Premiers/MECs offices must be subjected to a proper selection process applicable to SMS positions in the Public Service. This might improve the administrative and coordinating processes in the office of the Minister.

3.4.2 Deputy Director to Lower Levels

The Chief of Staff is responsible for managing all the resources (Human, Financial and Assets) in the EA's office. The manner in which this function is executed will therefore impact on the quality of work produced by staff in lower levels in terms of output or service delivery. The effects of a non-functioning Ministry are felt by departments. Directors-General end up addressing challenges that could have been avoided had processes been followed correctly.

3.4.3 Special Advisors

The position of Special Advisors is regulated clearly and sufficiently in the Act and Regulations and Special Advisory dispensation was approved to give effect to legislation. In the dispensation, clause 6 and 7, it is clearly stated that the role of Special Advisers is "to act in an advisory capacity to advise an EA on, or perform other tasks in respect of, the exercise or performance of the EA's powers and duties, or to advise the EA on the development of policy that will promote the objectives of the relevant department, there shall be no relationship of authority between the Special Advisor and the Head of Department concerned". The Special Advisor shall direct his/her inputs to the EA and refrain from interfering in the administration and management of the department, which in terms of the Public Service Regulations, 2001, as amended, is the function and responsibility of the Director-General.

However, the study revealed that the recruitment, selection and management of Special Advisors pose a challenge in EAs offices and departments. There is an emerging trend that Special Advisors seem to take the responsibility of

Directors-General in the management of departments. In some cases it was found that it is the EAs that are responsible for creating the situation of Special Advisors running the department, and in some instances the Special Advisors misrepresent their mandates. The implication of the casual management of Special Advisors is felt more within a department as it creates confusion among staff in the department when they have to account to the Special Advisor instead of the Director-General. This has to be managed as it also creates tensions between the two offices (Ministry and DG's offices) which have a negative impact on the delivery of services and accountability. There are two people who have the legal authority in the department, the EA and the DG/HoD. It must be noted that there is one Accounting Officer (AO) for a department, that is, the Director-General in terms of the Public Finance Management Act (PFMA).

The EAs and Special Advisors should be clear on these roles and respect the responsibility entrusted to Directors-General/Heads of Department, particularly since EAs select and appoint their DGs/HoDs. If there are issues of performance that result in EAs opting to use their Special Advisors as de facto Accounting Officers whilst the Accounting Officers are in their positions and not transferred to other components within departments, EAs should be advised on mechanisms in the SMS Handbook to deal with issues of performance management. If trust is a factor, the Minister could request the Chief of Staff to participate in the governance and management structures of the department, as this enables the Ministry to have access to departmental discussions and to deal with suspicions, ultimately building trust in the department. It is understood that Ministries are political offices; therefore trust becomes more important for some EAs than competency. However, there is a need to balance trust and competency. It is advisable that the EAs should not be hands-on on the day-to-day operations but should provide strategic political oversight. Finally, EAs should put together advisory services which include subject specialists who understand the mandate of each department whilst having an understanding of the strategic imperatives of the political sphere.

3.5 PERFORMANCE MANAGEMENT AND DEVELOPMENT SYSTEM (PMDS)

The study revealed that there is no consistent management of performance in Ministries across the Public Service. Because performance management is not taken seriously in the EAs offices, underperformance is not identified in time. Where PMDS is implemented in a Ministry, the final decisions relating to the outcomes of performance assessments that are taken by the department at times, disadvantage the staff in the Ministry due to the lack of insight of what is done in the Ministry. Also the Ministerial Staff are not always capacitated to be able to work across the entire department and public service after leaving the Ministry. Issues relating to discipline management are also a challenge in Ministries. There is frequently no management of working time and resources (cars and cellphones) allocated to the employees working in the Ministries. Also there are no progressive disciplinary steps or the management of poor performance in respect of employees not performing their duties.

3.6 ORGANISATIONAL STRUCTURE AND JOB PROFILES

The study revealed an inconsistency in organisational structures across Ministries. Some Ministries have more staff and Special Advisors than what is proposed in the Ministerial Handbook. The inconsistencies give an impression that some Ministers are superior or more favored than others and this creates subtle tensions. Also the amalgamated departments in the provinces experience challenges in terms of workload as they have to report to more than one department at national level. However, there is no provision for extra staff in such EAs' offices. Also in some Ministries there are no job descriptions and lines of reporting are blurred in others.

3.7 DEPARTMENTAL CORE COMPETENCY

The concept of core competencies is one that is misunderstood. In many instances it is confused with the individual employee's skills requirements, rather than core competency that cuts across. It is important for departments to

understand the concept and identify the requisite core competencies, so that it could have competent teams in Ministries who can support implementation of departmental strategies and thus contribute towards the achievement of goals.

3.7.1 Departmental Level

The department as a whole is expected to perform; therefore it needs to assess what it does on an ongoing basis. As illustrated in **Figure 2**, Cullen Coates & Associates, 2008, explain core competencies as a combination of required skills, necessary information, appropriate performance measures and the appropriate culture that the department requires to achieve its goals. It must be noted that departmental core competencies are not just skills.
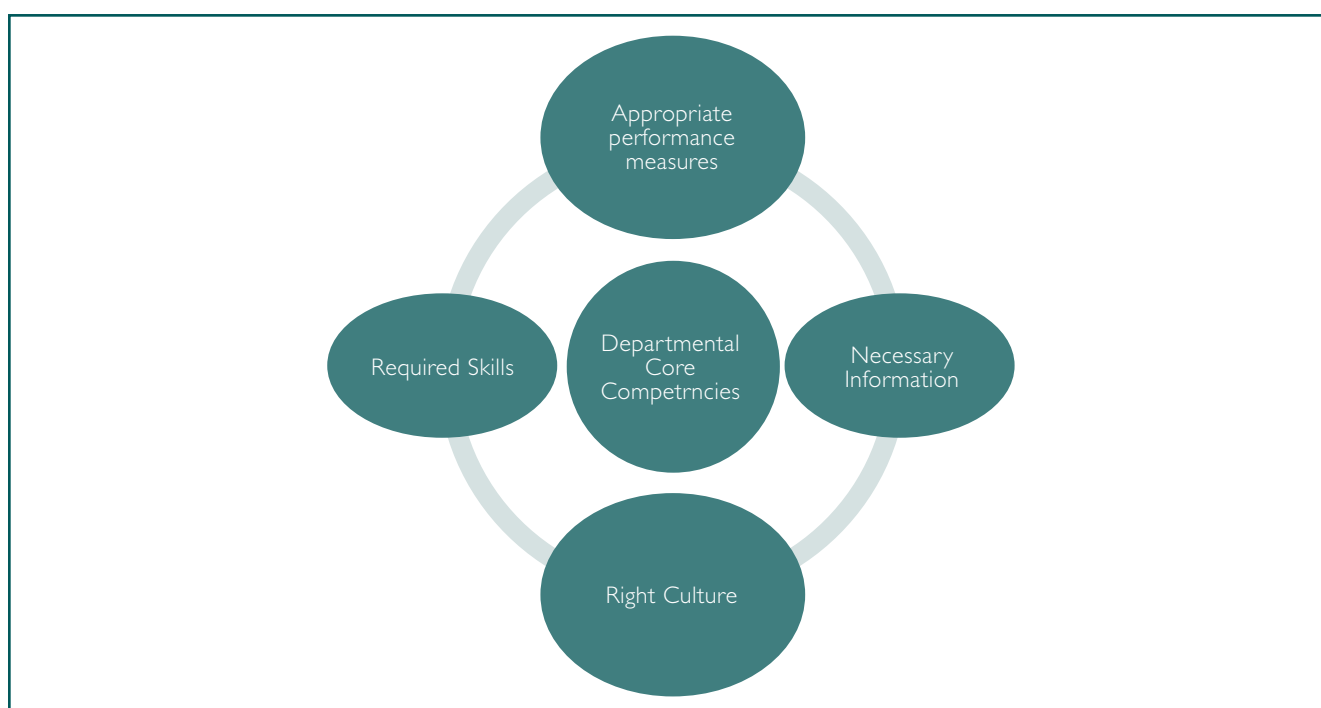

Figure 2: Departmental core competencies (Cullen Coates & Associates, 2008)

The study revealed that the focus has been on the individual employee's skills being defined as the core competencies for departments. There is no identification of the kind of skills required by each Ministry in order to perform effectively. The implication of this is that the resources of the department get channeled in one area, that is, improving employee skills with the hope that overall performance in the department will improve. This is a common phenomenon within government departments. Departments get surprised when performance has not improved and yet they have spent their entire skills development budget. It is therefore important that departments balance developmental efforts by also focusing on other areas such as appropriate performance measures, necessary information on developmental needs and right culture to deliver on their strategic goals. Caution must be made though that it is not an easy task; departments would need a competent Human Resource component and management that is conversant with measuring departmental effectiveness as a whole as opposed to individual employee performance.

Also it is very important that appropriate support in identifying and addressing the competency gaps of employees be provided to Ministries. If the gaps are not attended it will impact on the quality of strategic guidance, political oversight and the achievement of planned targets and goals. It is the responsibility of entire management of the department to determine the department's core competencies and the combination of employees, skills, processes, systems, partnerships and institutional structures required to achieve and sustain departmental effectiveness.

3.7.2 Individual Employee Level

An individual employee is expected to perform and meet set targets. For an employee to perform optimally they need to have the requisite skills and if not, they must be capacitated in line with the skills identified as part of the departmental core competencies. The study revealed that the majority of departments have no skills inventory for the EA's staff. Also most staff in EAs' offices do not request to attend training. In fact there is a distinction. There are two types of employees in the EAs' offices, that is, those employees who are recruited from the political environment like the Minister and those who are not from it, but have an interest to work in the EAs' offices. In most Ministries the people from the political environment tend to be in the majority.

The observation is that it is mainly those employees that do not come from the political environment that have an interest in skills development and therefore will request and attend training. The other group mostly shows no interest in skills development. The study has also revealed that induction and orientation in the EAs' offices is not dealt with adequately. The role of the Chief of Staff in the EA's offices becomes critical in this regard to ensure that all employees working in the EAs' offices possess appropriate skills to function in those offices. Any gaps should be identified and addressed as a matter of urgency to avoid undermining the effectiveness of an office.
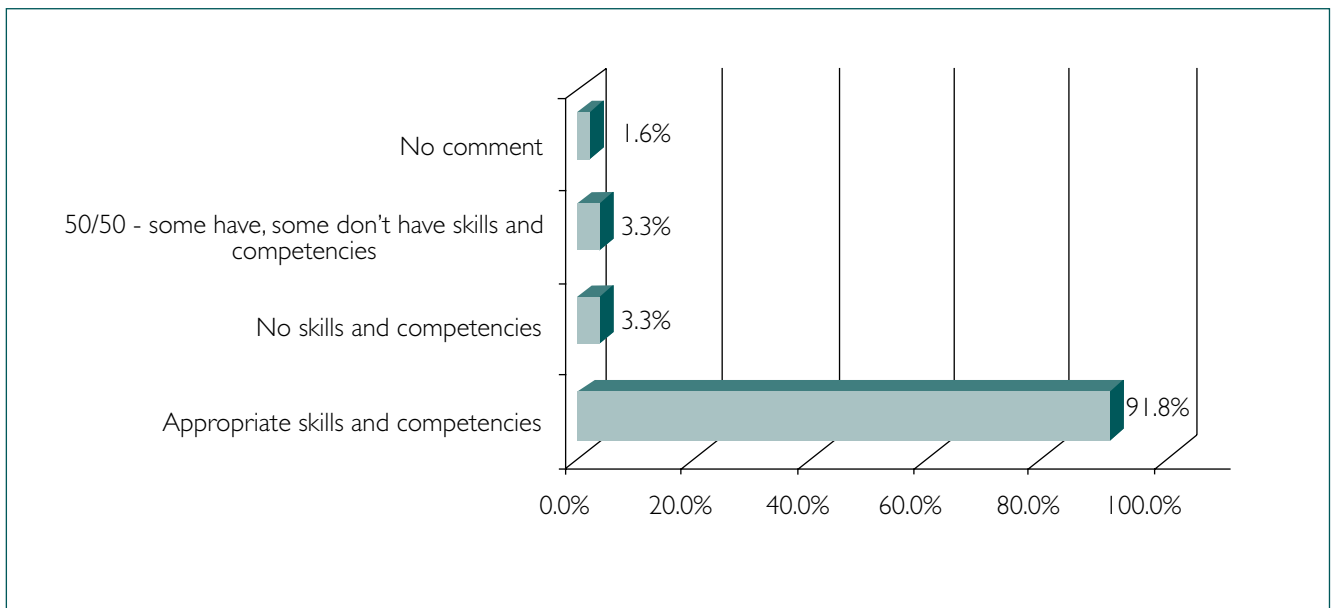

Figure 3: EAs employees have appropriate competencies and Skills

The information drawn from the questionnaires, as captured in **Figure 3**, depicts a picture that all is well in terms of competencies and skills of EAs' employees; whereas the one on one interaction with EAs and DGs/HoDs gave a different and deeper insight on availability of adequate skills in the offices of EAs. Caution must be made though, that, the contrast is as a result of the sampled instead of the full validation of the questionnaires. With the level of challenges in the administration of the EA's office, it could be accepted that the insight from the EAs and DGs/HoDs is more accurate than the information provided through the questionnaire.

3.8 REDEPLOYMENT PROCESS

Section 14 of the Public Service Regulations, 2001, as amended, is clear on the process to follow when transferring staff within a department. **Figure 4** below shows the level of compliance to regulations in terms of transferring EAs employees to departments. 77, 1% of the sampled departments indicated that departmental transfer policy is not used when transferring Ministry employees to departments. 21, 3% of the sampled departments are complying with the transfer procedures as per departmental policies and regulations.
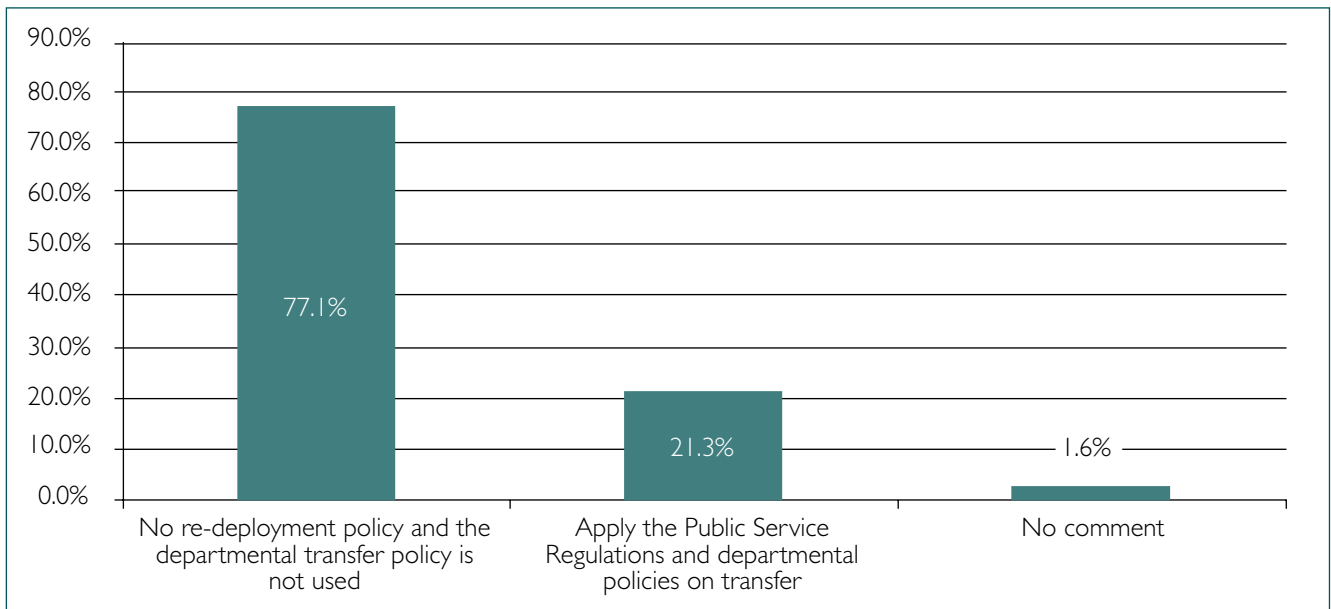
Figure 4: Re-deployment/transfer policy applied for EAs support employees

The study revealed that in some provinces, political decisions were taken to permanently absorb Ministerial Staff even though they were on contract for a certain period. It seems that the meaning of the word contract is not understood by some of the departments. People appointed on a contract must not have expectations that they will be or are permanent. There has been a tendency in some Ministries where people with inadequate skills are appointed without following the appropriate recruitment and selection processes, and they are later transferred to permanent posts within departments. In some instances there is lack of rationale for the transfer of Ministerial Staff to departments. This practice is not supported by the PSA and Regulations. Such decisions impact on the budgets of departments, as there are no plans to absorb such staff in the department. Also the transfer of inadequately skilled employees to departments impacts on service delivery and affects staff morale.

A concern was also raised that Ministry staff are often remunerated on higher salary notches which are not commensurate with the skills and knowledge of employees who are at the equivalent level in departments. The issue of the payment of sessional allowances needs attention, as it creates challenges when transferring employees to departments as employees complain about forfeiting it when being transferred to departments. There is no consistency across Ministries in terms of the conditions of service of staff and how those conditions should be dealt with when an employee is transferred from Ministry to department. A sessional allowance cannot be incorporated to boost a salary of a redeployed official. It is only claimed when sessional duty is undertaken.

3.9 OTHER CHALLENGES

During the interactions with participants, some challenges were raised which were not the focus of the study initially but are critical to highlight. The study revealed the following as challenges:

3.9.1 Relationship between Ministries and Departments

The study revealed that Ministries and departments are not immune from conflict. However, the manner in which conflict is addressed determines how the relations in the two offices will evolve. The first trigger of conflict is around the appointment of the EAs staff. The DGs/HoDs as the Accounting Officers (AOs) are expected to provide advice to EAs in compliance with legislation and regulatory frameworks; however, in some cases such advice is not well

received. The second trigger of conflict relates to the powers that EAs are entrusted with as per the Public Service Act, which in some departments are delegated to DGs and in some are not. The disregard for advice given by the Accounting Officers leads to tension between the two principals which strains the working relations and ultimately issues of trust are brought to the fore. In addition, disregarding the DGs'/HoDs' advice on administrative issues, departments will be subjected to regulatory and compliance risks and at the end Accounting Officers have to take responsibility.

The absence of orientation programmes for newly appointed Members of Cabinet and Provincial Executives is a challenge as most new Ministers have inadequate guidance regarding activities pertaining to administration, and the impact of the political activities on administration, except the limited information that is contained in the Ministerial Handbook. The lack of a clear understanding of the roles of EAs and DGs in departments creates unnecessary tension between the two heads and has led to a high turnover rate of DGs in some departments. The turnover rate of DGs creates a gap in Ministries and departments. In the study on the "Effect of Turnover rate of Heads of Departments on the Performance of Departments and its implications for the Public Service" by the PSC, a recommendation was made to address the DGs high turnover rate. The interventions seem to have been inadequate or not implemented adequately.

There are tensions between Ministers and Deputy Ministers in national offices around the management of Ministries. There is also no uniformity in the delegation of responsibilities to Deputy Ministers across departments. The absence of a legal basis for delegation of responsibilities from Ministers to Deputy Ministers makes it difficult to enforce uniformity. It should be noted that there is one Ministry, which has a Minister and a Deputy Minister; and therefore the Minister is the head of the Ministry. It can be argued that in those Ministries where Deputy Ministers are given full responsibility, the advisors that are appointed for that Ministry should provide advisory services to both the Minister and the Deputy Minister as the office is one (i.e. one Ministry). However, the use of Special Advisors by Deputy Ministers for specific tasks should be by arrangement with the Minister concerned. There is a need for clarity and consistency on this issue as opposed to current ad hoc practices.

3.9.2 Reshuffling of Ministers

The study revealed that frequently changing EAs can destabilise departments as most new EAs want to implement a turnaround strategy. These turnaround strategies are followed by restructuring processes which are not informed by changes in the mandates of departments.

3.9.3 Job security

The study revealed that EAs are experiencing difficulty in finding competent and qualified people, as most of them are in permanent jobs and are not prepared to take a position in Ministries because of the lack of job security. The study also revealed that there are Ministries that appoint employees on contract and subject them to a probation period. The challenge arises when the performance of an employee is not managed during the probation period; it makes it difficult for the Ministry to release the employee from their duties. As a result some Ministries end-up having to retain employees who do not fit with the required work culture and whose performance is not up to par. In some Ministries such employees are redeployed to departments. This, however does not really assist or address the challenge. There should be a consideration of levels 1-12 not being tied to the term of office of EAs for job security purposes.

3.9.4 Tools of Trade

The study revealed that there is inconsistency in the application of rules related to the tools of trade that employees in Ministries are supposed to receive. There is no standardisation in departments. The study also revealed non-compliance with transport policies in some departments regarding the traveling of EAs' support staff. This area of travelling and subsistence should be properly managed by the Chief of Staff as it has budget implications and may raise audit queries. Therefore, uniformity in the rules that govern the operations of the Ministries should be enforced.

Chapter Four

Recommendations and Conclusion

4.1 RECOMMENDATIONS

In response to the findings that are elaborated in **Chapter 3**, this chapter outlines the recommendations and conclusion of the study.

4.1.1   The DPSA should develop a focused policy framework that will regulate the employment practices of persons who provide support and serve in EAs' offices.

4.1.2   All SMS levels in Ministries irrespective of the method of recruitment (headhunting or advertising) must be subjected to proper selection processes (i.e. interviews and competency assessment) and for any identified competency gap, a developmental plan must be put in place to address the gap. This plan must be developed in consultation with the person concerned and be managed by the Director-General or Head of Department.

4.1.3   As the Director-General or Head of Department has to provide "primary advisory" support to the EA due to the resources (e.g. research experts, etc.) he/she manages in the department, an administrative reporting line to the Director-General or Head of Department must be enforced for the Chief of Staff.

4.1.4   Compulsory induction, orientation/training on the functions performed in Ministries, the relationship between the Ministry and the department, the protocols of being a sessional employee and the benefits thereof and how to support the Minister with political responsibilities should be conducted with staff working in the EAs' offices, either at departmental level or coordinated by the National School of Government (NSG) or the DPSA. The current and/or previous competent and experienced Chief of Staff should be part of the training team and assist in this regard.

4.1.5   There should be a dedicated course for Chiefs of Staff and a forum to share experiences and to professionalise this strategic role. There should be a way of career-pathing experienced Chiefs of Staff.

4.1.6   A Legislative based Compliance Framework for Ministries should be developed by the DPSA. This can be included in the Ministerial Handbook.

4.1.7   The DPSA should review the organisational structures of Ministries according to the size and responsibility of the Ministry.

4.1.8   Uniform job profiles and descriptions should be enforced for Chiefs of Staff across the public service. Key competencies and minimum qualifications for the position of Chief of Staff must be well-defined. This will help to guide the selection and appointment process and Ministers must be informed of and adhere to this guide. Uniform job profiles should be developed for the rest of the staff in EAs' offices.

4.1.9   80% of the positions in Ministries should be permanent and be part of organograms of departments.

4.1.10 An orientation and support programme for Cabinet Ministers/Premiers/Members of Executive Council (MECs) and Directors-General/Heads of Department should be developed and it must be compulsory for new EAs and DGs/HoDs to attend at the beginning of every term of government and when a need arises due to reshuffling. There must be a separate session for EAs and DGs first and thereafter a joint session. Also the advisors need to have an orientation programme.

4.1.11 There should be a probation period for staff appointed in Ministries and that period should take into consideration the nature of Ministries and the limited time available to follow the probation period regulations that are cumbersome to release a person who is not performing or fitting in the culture of the Ministry.

4.1.12 The DPSA should continue to give guidance and assistance in the development and implementation of turnaround strategies and restructuring processes.

4.1.13 The DPSA should develop a database of employees with working experience in Ministries who could not be absorbed by departments for purposes of redeployment.

4.1.14 The DPSA should enforce the developed benchmark job descriptions and evaluations for posts in EAs' offices to ensure consistency throughout the Public Service.

4.2 CONCLUSION

The legislative framework, policies and processes for recruitment, selection, appointment and development of employees for Executive Authorities are critical in ensuring that performance and quality of service is achieved. This report has attempted to outline viable solutions in response to the findings. It is important that the recommendations made in this report are taken forward to assist the Public Service Leadership to perform.

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Annexure A

Questionnaire

Questionnaire

Assessment of the implementation of the Policy Framework on the appointment of the Ministerial Staff in the Public Service

The purpose of this questionnaire is to obtain information for the study on the Assessment of the implementation of the Policy Framework on the Appointment of Ministerial Staff. Your honest opinion and observation in responding to questions in this questionnaire will be highly appreciated

Name of official		**Department**		
		Sphere	National	Provincial
Designation	**MINISTER**	**(Please tick below which Province)**		
Contact details of the official	Tel			
	Fax	Northern Cape	KwaZulu - Natal	Mpumalanga
	Cell			
	Email			
Date of the interview		Western Cape	Free State	Limpopo
Name of Interviewer		Gauteng	Eastern Cape	North West

1. In the Office of the Minister do you have employees with the appropriate skills and competencies to carry out the mandate of the Executing Authority (EA's) effectively and efficiently?
2. Does the Office of the Ministry have a training and development budget or does it fall under the departmental Human Resource Development programme?
3. What training and developmental initiatives have been put in place to ensure that the employees in the Minister's Office are fully skilled and competent to carry out their duties diligently and efficiently?
4. If an employee under-performs are there mechanisms in the framework that allows for the development of the employee in the areas of weakness and if there is no such plan how is the under-performance addressed?
5. When recruiting and appointing staff in the Ministry are the departmental recruitment and selection policies utilized as stipulated in the framework or are other methods of recruitment followed. If so can the Office provide the PSC with the preferred method used?
6. Do the current recruitment and selection policy/ processes of the department if utilised; adequately recruit the relevant employee/s?
7. If the answer to question 6 above is no, please indicate which sections/areas should be amended in the recruitment and selection policy/ process?

8. Are the staffs under the EA appointed in a permanent or temporary capacity?

9. In the event that the employees are appointed permanently, what plans or processes are in place for these employees to be absorbed into the department or to ensure alternative employment when the term of office of a Minister comes to an end?

10. In the event that the employee is employed on a temporary capacity for the term of office of the EA, would the skills and competencies that they gain in a Minister's office hold them in good stead to become gainfully employed outside the Public Service, if the department is unable to accommodate them within the organization?

11. Are there exit interviews conducted for employees when their service has to be terminated specifically if they cannot be absorbed into the establishment of the department?

12. Does the Minister's Office have a re-deployment policy in place and used in conjunction with the recruitment and selection policy of the department to ensure that employees who have the necessary qualifications and skills required by the department are correctly placed after the EA's term of office?

13. Does the department absorb Ministerial staffs that has been hand-picked and were not subjected to the selection process to work in the Minister's Office?

14. Does the Minister's Office receive adequate support from the department in relations to staffing processes?

15. What advice can you provide to improve the processes of recruitment and selection, skills development and retention for employees in the Minister's office?

Notes

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