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REPUBLIC OF SOUTH AFRICA



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Department:
Public Service and Administration
REPUBLIC OF SOUTH AFRICA

Principles of Public Administration and Financial Management Delegations

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Abbreviations

AO	Accounting Officer
DO	Delegated Official
DPSA	Department of Public Service and Administration
DG	Director-General
DDG	Deputy Director-General
EA	Executive Authority
HoD	Head of Department and includes reference to any Accounting Officer
HR	Human Resources
MEC	Member of the Executive Council
PAJA	Promotion of Administrative Justice Act, Act 3 of 2000
PF	Principal Functionary
PFMA	Public Finance Management Act, 1999 as amended
PSA	Public Service Act, 1994, as amended by Act 30 of 2007
PSR	Public Service Regulations, 2001 as amended

Glossary of Terms

In this document, unless the context otherwise indicates:

“Administrative action” means actions/acts that implement or give effect to a policy, a piece of legislation or an adjudicative decision.

“Administrator” means any organ of state or any natural or juristic person taking administrative action; see section 1 of PAJA.

“Collective agreement” means an agreement referred to in section 5(4) of the PSA.

“Constitution” means the Constitution of the Republic of South Africa, 1996.

“Department” means a national Department, a national Government Component, the Office of a Premier, a provincial department, or a provincial government component listed in Schedules 1, 2 or 3 of the PSA.

“Duty” means the responsibility of conduct, function or performance that arises from an expressed or implied legislative provision or contract, or by virtue of holding an office or position.

“Executive Authority”, in relation to –

- (a) The Presidency or a national government component within the President's portfolio, means the President;
- (b) A national department or national government component within a Cabinet portfolio, means the Minister responsible for such portfolio;
- (c) The Office of the Commission, means the Chairperson of the Commission;
- (d) The Office of a Premier or a provincial government component within a Premier's portfolio, means the Premier of that province; and
- (e) A provincial department or a provincial government component within an Executive Council portfolio, means the member of the Executive Council responsible for such portfolio.

“Function” means a task, actions or activities that have to be planned and undertaken in pursuance of a government objective, outcome or output.

“Head of Department” means the incumbent of a post mentioned in column 2 of Schedule 1, 2 or 3 of the PSA and includes heads of national departments, heads of offices of Premiers, heads of provincial departments, heads of national government components and heads of provincial government components.

“Limitation” means a restriction being imposed on the performance of a particular function.

Glossary of Terms

“Power” means an instrument transferring or vesting legal authorisation; the ability conferred on a person by law to determine and alter the rights, duties, liabilities and other legal relations of others.

Chapter 1: Introduction

Background

1. This document provides principles to guide the development of public administration and financial management delegations authorised and exercised in terms of the PSA and the PFMA. The concepts and principles set out in the document equally apply to delegations authorised in terms of line function sector legislation.
2. The government of the Republic of South Africa has identified the need to modernise the public service. Key to this requirement is the government's programme of action to promote an efficient, effective and development-oriented public service in order to ensure improved service delivery to citizens and the attainment of desired results and outcomes. The system of delegation has a profound effect on strategic planning and decision-making and emphasises both the budgetary and financial management implications and implementation plans for undertaking and managing service delivery.
3. In view of this, it is a requirement that the functionality of the systems of delegations, including the procedures and processes, must be result and performance driven and must contribute to effectiveness and efficiency with no delays in service delivery. The drafting of this Principles document has therefore been initiated in consequence of the President's concern that there must be a correlation between the delegation of authority and service delivery. This concern is driven by the Governance and Administration Cluster through the President's Outcomes-based approach, which focuses on "efficient, effective and a development-oriented public service". The purpose of this document is therefore to provide principles to guide the development of effective and efficient delegations.
4. The delegation principles were developed in response to government's programme of action which required the Department of Public Service and Administration and the National Treasury to –
 - 4.1 Conduct a review of human resource management and financial delegations in terms of the PSA and the PFMA; and
 - 4.2 Develop a principles document and templates for effective financial, human resource and administrative delegations.
5. Government's policy-making organs formulate policy, which is mainly the task of the highest ranking political officials in government – Cabinet Ministers at national level and members of the Executive Council at provincial level.
6. Legislative organs give effect to policy by enacting legislation through the legislative procedures prescribed by the Constitution. Once legislation has been enacted, it is left to the public administration to implement and administer the policy that has been translated into legislation. The public service must in terms of its constitutional duty "loyally execute the lawful policies of the government of the day".¹

¹ Section 197(1) of the Constitution.

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7. The vast range of responsibilities borne by the modern state often results in legislation which simply encapsulates broad principles and overarching policy, simultaneously empowering the administration to make detailed rules needed for effective regulation. The Constitution does not prohibit Parliament from delegating subordinate regulatory authority to other statutory bodies (e.g., Competition Commission and the Commission for Conciliation, Mediation and Arbitration).
8. Administrative action is the operational side of the state. Policies, laws and judgments are not self-executing; they have to be put into operation by the administrators responsible for administering them. A notable characteristic of the modern state is the prevalence of discretionary powers vested in administrators (including officials) through the process of delegating powers to these authorities. Public service officials are routinely given power by statutes, not only to make their own rules (delegated legislation) and to exercise discretionary powers, but increasingly to flesh out statutes by making additional policy; that is, by developing specific policies under the umbrella of the more general policy laid out in legislation. In many cases, public administrators cannot give effect to the legislation without making policy, and it is not necessarily easy to tell the difference between “executive” policy-making and “administrative” policy-making.
9. Delegation is built upon a two-way relationship between “delegator” and “delegatee”. Thus, the style and substance of delegation will need to differ depending upon the changing capabilities and needs of each party, as well as the specific circumstances.

Administrative Decentralisation

10. The decentralisation of human resource and financial management functions and delegations of authority within the public service has been forming part of global trends in public administration since the mid-1980s.

International Trends

11. Different types of public service reforms undertaken in various countries point towards a broad trend of decentralising, or devolving, human resource and financial management functions to lower levels of government. The following broad objectives in the public service reforms have been initiated:
 - 11.1 Decentralisation and devolution of decision-making authority within government.
 - 11.2 Clarifying the boundaries between policy-making and administrative functions in government.
 - 11.3 Increased efficiency through delegation of financial, human resource and administrative resources to managers.
 - 11.4 Enhanced service quality through the delegation of powers closer to citizens.
 - 11.5 Improved accountability and reduced opportunities for corruption.
 - 11.6 More emphasis on outcomes-based results accompanied by rigorous performance monitoring and evaluation systems.

South African Context

12. Administrative decentralisation in terms of public management and financial delegations in South Africa arose from the comprehensive reorganisation of the state that occurred after the transition to democracy in 1994.
13. With the dawn of the democratic era in 1994, the country undertook what amounted to both political and administrative decentralisation. The Constitution enshrines the separation of powers and outlines the duties of the executive, legislative and judicial arms of government. It also makes provision for executive government in the national, provincial and local spheres. Section 40(1) of the Constitution states that “government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated”. The “distinctive” element indicates that each sphere exists in its own right, is the final decision-maker on a defined range of functions and is accountable for its decisions.
14. A major shift in relationship between governing institutions and society is evident in the pre- and post-1994 periods. A rights-based society is recognised in the Constitution, which replaced the authoritarian and coercive state-society relationship of the apartheid state. The Bill of Rights in the Constitution contains an extensive list of civil and political rights of citizens. Chapter 9 of the Constitution makes provision for institutions to support constitutional democracy and reorient the way in which state structures engage with citizens by establishing a citizen-centred and accountable relationship and by providing citizens with opportunities for inputs into policy-making beyond participating in elections. The democratic values and principles enshrined in the Constitution and the basic values and principles governing public administration set out in chapter 9 of the Constitution provide the framework within which the public administration and delegation principles are governed.
15. Public sector reform since 1994 has been characterised by the following distinctive phases and themes:
 - 15.1 Phase 1: 1994 to 1999
 - (a) Rationalisation, legislative reform and policy development;
 - (b) Restructuring of state institutions;
 - (c) Decentralisation of public administration and financial management; and
 - (d) Government and independent review reports on capacity deficits.
 - 15.2 Phase 2: 1999 to 2004
 - (a) Implementing policy;
 - (b) Integrating the system of government;
 - (c) Strengthening intergovernmental relations; and
 - (d) Establishing the government cluster system.
 - 15.3 Phase 3: 2004 to 2009
 - (a) Accelerated implementation;
 - (b) Improving the functionality of government;
 - (c) Improving an integrated unity of service delivery to citizens;

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- (d) Capacity assessments of government institutions; and
- (e) Integration of systems.

15.4 Phase 4: 2010 to 2014

- (a) Macro-organisation of the state and improving government's planning, performance monitoring and evaluation capacity;
- (b) Deepening integrated service delivery and e-enablement;
- (c) Policy review of provincial and local government functionality;
- (d) Improved modernisation of the state;
- (e) Outcomes-based approach to service delivery; and
- (f) Promoting an efficient, effective and development-oriented public service that requires effective and efficient delegations.

Chapter 2: Definitions and Concepts of Delegation

1. The word delegation is derived from Latin; delegate means “to send from”. That means when delegating, you are sending the work “from” you “to” someone else.

Definitions

2. The following definitions are provided to standardise delegation terminology:
 - 2.1 “**Delegation**” means the allocation of a power conferred or a duty imposed on a Principal Functionary to a Delegated Official. To delegate means to entrust a power or duty to somebody else – an agent of the original holder of the power.
 - 2.2 “**Principal Functionary (PF)**” means any person upon whom a power is conferred or a duty is imposed through an empowering provision in terms of which an administrative action is taken – the authority with original powers. The PF, in whom the power or duty is vested, remains accountable for the execution of the delegation.
 - 2.3 “**Delegated Official (DO)**” means any person to whom power has been delegated or who has been authorised to perform a duty in terms of a formal delegation. This includes:
 - (a) An official who lawfully acts in the capacity of the DO.²
 - (b) The holder of a post or occupation to whom a power has been delegated.

Origin of Delegated Powers and Duties

3. “Original legislation” is legislation enacted by Parliament or a provincial legislature in accordance with constitutional powers. In exercising this power, these bodies exercise original power, which is subject to constitutional review, but not subject to review for just administrative action.
4. The exercise of any administrative power, duty or function, which includes the exercise of delegated powers and duties, is inevitably linked to decision-making. The presence of a discretionary power is determined from the language of the statute and is often reflected by the use of the words “shall” or “may”. The word “shall” is peremptory, which generally means that the administrator **must** do or not do something, whereas the word “may” is directory and the administrator thus **has a choice** whether to do or not do something. The word “must” indicates a mandatory provision.
5. The exercise of a power is not mandatory (**may** exercise a power), whereas authorisation to perform a duty is a legal obligation and mandatory (**must** perform the duty).
6. It is a principle of our law that where a power is entrusted to a person to exercise his or her own individual judgement and discretion, he or she is not allowed to delegate such power unless he or she has been **expressly empowered to do so** by an empowering

² See sections 10(2) and 10(6) of the Interpretation Act, 1957 as amended.

provision. PAJA clearly states that an administrative action may be reviewed if the administrator who took it “acted under a delegation of power which was not authorized by the empowering provision”.³

7. According to the definition in section 1 of PAJA, an empowering provision means “a law, a rule of common law, customary law, or an agreement, instrument or other document in terms of which an administrative action was purportedly taken”. Appendix A provides examples of instruments that specify empowering provisions in terms of which delegated powers are exercised. Appendix A highlights the following instruments:
 - 7.1 Delegation instruments that expressly authorise the delegation of powers and duties in terms of legislation, namely:
 - (a) Original legislation; and
 - (b) Subordinate legislation.
 - 7.2 Non-delegation instruments, where legislation or subordinate legislation does not expressly authorise the delegation of powers and duties, but support and elucidate the above-mentioned delegation instruments.

Delegation Concepts

8. The following elements explain key delegation concepts of delegation philosophy. The delegation concepts form the building blocks for cascading delegations between the different performer levels in head, regional, and district offices.
 - 8.1 **The authority of the PF to exercise decision-making, with the requisite accountability, is delegated** to the DO to make appropriate decisions, to use and allocate the resources efficiently, and to act or dispose of matters at his or her own particular level without having to refer the matter to a higher authority for a decision. However, if such delegated authority is inappropriately exercised, the PF may withdraw it. Authority comprises the rights inherent in a position to accept work and direct work to subordinates, to give commands and orders and to get things done. The top level management has the greatest authority. Authority always flows from top to bottom and explains how a superior gets work done by his or her subordinate by clearly setting conditions or explaining what is expected of him or her and how he or she should go about it. Authority should be accompanied by an equal amount of responsibility. Delegating the authority to someone else does not imply abdicating accountability. Accountability still rests with the PF, who has the highest authority.
 - 8.2 **Responsibility** is the duty of the DO to complete the task assigned to him or her. A person who is given the responsibility has the obligation to perform, accomplish and report on the tasks assigned to him or her. Responsibility without adequate authority leads to discontent and dissatisfaction for the person with delegated authority. Responsibility flows from bottom to top. Lower-level and middle-level management holds more responsibility. The person held responsible for exercising a power or performing a duty is answerable for it.
 - 8.3 **Accountability** – means being answerable for the end result and giving explanations for any variance between the actual performance and the expectations or conditions set.

³ Section 6(2)(a)(ii).

Chapter 2: Definitions and Concepts of Delegation

Accountability cannot be delegated. The top level management is most accountable. Accountability cannot be escaped, as it arises from responsibility. The PF in whom a power is vested or on whom a duty is imposed remains accountable for the outcome of the delegated power or duty.

- 8.4 The **efficient and effective** achievement of departmental outputs and outcomes requires the division of work and commensurate delegations between performer levels⁴ in head, regional, and district offices. Delegation is a driver for efficiency and effectiveness:
- (a) **Efficiency** – exploring how productively inputs are translated into outputs. An efficient operation maximises the level of output for a given set of inputs, or it minimises the inputs required to produce a given level of output. The focus is operational to convert inputs such as human, financial and productive resources through tasks, operating procedures, organisational processes and projects into outputs. The focus is on input, process and output indicators.
 - (b) **Effectiveness** – exploring how well the outputs of an institution achieve the desired outcomes. The focus is strategic to ensure that outcomes have the desired impact, realise the mandate and strategic objectives of the institution and meet the expectations of clients or citizens. The focus is on outcome, impact and value indicators.
- 8.5 **Control over and guidance on delegated authority** – in view of the accountability requirements, the PF must retain a measure of control over the exercise of discretionary power by the DO and provide the DO with adequate conditions and guidelines for the exercise of the power. The purpose of control measures or guidelines is to –
- (a) Impose limits and constraints on the discretionary power to act;
 - (b) Clarify the performance standards for delegated authority; and
 - (c) Confirm formalities to be observed. A common example would be that reports on specific matters related to the power delegated have to be compiled and submitted on a regular basis to a higher official or institution. Other measures include the inspection or auditing of documents.
9. The following factors also influence the development and cascading of delegations between the different performer levels in an organisation:
- 9.1 **Complexity** – informs the degree to which activities can be decomposed from key functions to a basic level in terms of vertical, horizontal and spatial dimensions –
- (a) Vertical differentiation: the number of hierarchical levels depicting the authority of the performer levels;
 - (b) Horizontal differentiation: the degree of specialisation between divisions based on the nature of key functions and major tasks performed, required skills and education, and orientation of employees; and
 - (c) Spatial differentiation: the location of the offices geographically into tiers, for example head, regional, district, and circuit offices and institutions.

⁴ Performer levels are the levels of management that describe the job of a manager in terms of complexity, responsibility, time application, value attached to the job, skills required and difficulty dimensions.

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- 9.2 **Formalisation** – the degree to which jobs are standardised for uniform output –
- (a) High formalisation: minimum discretion as to how the job should be done, what should be done and when the job should be done. Job is performed according to prescripts; and
 - (b) Low formalisation: non-programmed jobs, great deal of freedom to apply discretion on condition that outputs are met by employee.
- 9.3 **Centralisation** – the degree to which decision-making is concentrated at a single point in the organisation or top management level in the organisation, based on the evaluation of internal and external risks which have an impact on outcomes delivery and accountability.
- 9.4 **Decentralisation** – lower-level managers at tiers are given discretion to make decisions which have an impact on local outputs and service delivery.
- 9.5 **Departmentalisation** – grouping of activities or functions performed by organisational units, for example branch, division, or directorate based on the service delivery model, business process flow, specific services, product lines, citizen segmentation and geographical location.
- 9.6 **Matrix arrangements** – incorporating dual or parallel reporting lines (bold or dotted), authority, decision-making and communication channels.
- 9.7 **Organisational growth or decline** – life cycle of the organisation and level of maturity, for example embryonic, developmental, mature, declining.
- 9.8 **Technology** – information and communication technologies that modify work processes.
- 9.9 **Organisational variables** –
- (a) Span of control, number of subordinates that a manager can efficiently and effectively direct and control;
 - (b) Chain of command, relationship of authority between supervisor and subordinate; and
 - (c) Power structure, organisational groupings, organisational culture, planning and coordination.

Purpose and Advantages of Delegation

10. In practice, delegation has the following primary purposes:
- 10.1 To achieve results through the actions of others. This entails the division of decision-making authority between the different performer levels in a department. This division is necessary, since administrators and officials very often simply cannot cope with all their administrative functions;
 - 10.2 To give practical effect to decentralisation of departmental administrative actions in order to implement regulatory frameworks and render services as close as possible to the point of service delivery;
 - 10.3 To develop the competencies, commitment, decision-making experience and new skills of officials; and
 - 10.4 To free up one's time to devote attention to more important tasks.

Chapter 2: Definitions and Concepts of Delegation

11. The advantages that stem from a delegations approach which mirrors decentralisation of administrative functions may include the following:
 - 11.1 The workload of EAs, HoDs and other managers is reduced, enabling them to devote more attention to strategic issues;
 - 11.2 The speed, quality and flexibility of decision-making improve because the decisions are closer to the work at hand and time does not have to be allowed for referring the matter to a higher authority;
 - 11.3 Improved initiative and job satisfaction amongst middle- and junior-level managers, as they are made to feel part of the effort to manage the department and that they are being prepared to assume greater responsibilities;
 - 11.4 Employees are encouraged to exercise judgement and accept responsibility, which increases their self-confidence and willingness to take initiative;
 - 11.5 Capacity development of support services practitioners and line officials; and
 - 11.6 Building institutional memory at various levels in the department.

Delegation Challenges

12. Research conducted by the DPSA and National Treasury on the status of delegations identified the following conditions and challenges:
 - 12.1 Powers and duties are sometimes overcentralised, to the detriment of service delivery –
 - (a) National and provincial HoDs approve the appointment of level 12 positions in 65 per cent and 56 per cent of instances, respectively. There is room to delegate level 12 and lower-level appointments to branch heads; and
 - (b) Financial delegations in terms of the PFMA are cascaded down to levels lower than HoD in 45 per cent of instances. There is room to improve financial delegations by delegating to lower levels in the organisation.
 - 12.2 Political leadership is a key element in promoting efficient and effective delegations to managers at the point of service delivery.
 - 12.3 Delegation formats are inconsistent and incomplete and should also include regional and district tiers. In terms of quality criteria, such as appropriately authorised, signed, and dated delegations and limitations or conditions set, there is room for improvement –
 - (a) Public administration delegations meet all quality criteria in 23 per cent of national and 20 per cent of provincial departments; and
 - (b) Financial delegations meet all quality criteria in 59 per cent of national and 41 per cent of provincial departments.
 - 12.4 Inconsistencies were found in delegations between the different performer levels in departments.
 - 12.5 An amendment to the Public Service Regulations is required to standardise delegations and promote compliance with prescripts.
 - 12.6 Many of the delegations are outdated and in some instances signed by predecessors.

Chapter 2: Definitions and Concepts of Delegation

13. Personal and managerial factors may inhibit delegation:
 - 13.1 The higher the degree of accountability that legislation demands, the greater the tendency to centralise activities and the greater the reluctance to delegate to officials lower in the hierarchy.
 - 13.2 Senior managers fear that subordinates have insufficient capacity to carry out the tasks to be delegated.
 - 13.3 Senior managers fear that their performance evaluation could suffer if officials fail to carry out the tasks delegated to them.

14. Senior managers sometimes inherit organisations, or parts thereof, that were designed by others. It is possible that the design of the organisation itself inhibits effective delegation. Organisational impediments to delegation may include:
 - 14.1 Delegation is not effective if the nature of the duty or task, accompanying authority and reporting requirements are not clearly explained and the functionary responsible identified.
 - 14.2 When senior managers fail to delegate, there is a strong likelihood that the responsibility for the execution of the task or duty will eventually be passed to others in the organisation, which creates additional staff, reporting, performance evaluation and communication burdens.
 - 14.3 In the absence of clear delegation templates or with poorly developed job descriptions, staff members at all levels of the organisational hierarchy may not have a clear understanding of what is expected of them.

15. Effective use of delegation calls for changes in mindset, assumptions and behaviours that may be difficult for new and veteran delegators alike.⁵
 - 15.1 Especially in professional organisations, leaders and managers are accustomed to contributing to projects individually. Thus, they are used to maintaining close control over work content, pace, quality and presentation in order to “get it right”. In contrast, delegation requires a certain amount of “letting go” of control over the work, which may be unpleasant, especially when the delegator finds the work to be a source of motivation and satisfaction.
 - 15.2 When new, a manager may not feel that he or she knows the work well enough to delegate it. However, this tendency to avoid delegation may become a habit over time, trapping the manager in a deliberate cycle of underdelegation.
 - 15.3 Delegators generally delegate work and expect outputs that meet their expectations, yet they do not communicate their expectations clearly or provide key information and guidance.
 - 15.4 Sometimes, managers who wish to be liked by employees avoid delegating duties in order not to “impose” on subordinates.
 - 15.5 Managers may become envious of a subordinate’s ability instead of giving credit where it is due and working to develop a deputy or potential replacement.

⁵ Centre for Applied Research @2001, CFAR, RES7:020102, p 2.

Chapter 2: Definitions and Concepts of Delegation

15.6 Managers are sometimes more comfortable “doing” than “managing”, which are fundamentally different jobs.

Chapter 3: Legal Framework

1. The authoritative powers, duties and obligations of administrators are laid down in the Constitution, PAJA and the specific empowering provisions in legislation that governs a particular functional area or sector of the public service.

The Constitution and PAJA

2. A general power of delegation is found in section 238 of the Constitution. In terms of this section, an executive organ of state in any sphere of government may delegate any power or function to another executive organ, provided the delegation is consistent with the original legislation. This qualification laid down by the Constitution supports the legal rule that a **“discretionary power may not be delegated to another body or person, in the absence of express or implied statutory authority”**.
3. Section 7(2) of the Constitution imposes a general constitutional duty on the state to respect, protect, promote and fulfil the rights set out in the Bill of Rights. The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state. As a result, all administrators and other organs of state are bound by this constitutional duty.⁶ Over and above this general constitutional duty, the specific powers and duties of administrators are laid down in empowering statutes or empowering provisions in terms of those statutes. Procedural duties relating to procedural fairness and the provision of reasons for decisions, which all administrators must adhere to, are laid down in PAJA. These provisions in PAJA and the empowering statute are prescriptive, which means that administrators must apply them.

Just Administrative Action

4. PAJA, which animates the constitutional right to just administrative action, has as its main objective the regulation or control of administrative powers. The preamble to PAJA clearly states that the purpose of the Act is to impose a duty on the state to give effect to the rights of just administrative action; to promote an efficient administration and good governance, and to create a culture of accountability, openness and transparency in the public administration or in the exercise of a public power or the performance of a public function. So, on the one hand, there is the need for efficient administration and good governance, and on the other, there are the rights of the individual who is a party to the unequal administrative law relationship.
5. The Bill of Rights in the Constitution confers several rights on citizens and imposes several duties on administrators. These include the right to access to information held by government, the right to have disputes settled by a court or other independent forum (such as an administrative tribunal), and the enforcement of rights by the courts. Most important of all is the right to just administrative action in section 33 of the Constitution, namely:

⁶ Section 8(1) of the Constitution.

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“33.(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

(3) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.”

6. Should an administrator fail to comply with the requirements of administrative legality laid down in PAJA (the requirements of lawfulness, procedural fairness and reasonableness), the action may be challenged by relying on the grounds for judicial review. It is then the function of the courts to determine whether the action in question, which may include an action taken in terms of a delegation, is valid or not. The judicial control of administrative action remains the most important method of controlling administrative action, since the courts give a final and binding ruling on administrative disputes and enquiries.

Statutory Grounds for Judicial Review of Administrative Action

7. The grounds for review of administrative action by the courts are set out in section 6(2) of PAJA. This section provides that a court or tribunal has the power to judicially review an administrative action if –

- 7.1 The administrator who took it –

- (a) was not authorised to do so by the empowering provision;
- (b) acted under a delegation of power which was not authorised by the empowering provision; or
- (c) was biased or reasonably suspected of bias;

- 7.2 A mandatory and material procedure or condition prescribed by an empowering provision was not complied with;

- 7.3 The action was procedurally unfair;

- 7.4 The action was materially influenced by an error of law;

- 7.5 The action was taken –

- (a) for a reason not authorised by the empowering provision;
- (b) for an ulterior purpose or motive;
- (c) because irrelevant considerations were taken into account or relevant considerations were not considered;
- (d) because of the unauthorised or unwarranted dictates of another person or body;
- (e) in bad faith; or
- (f) arbitrarily or capriciously;

- 7.6 The action itself –

- (a) contravenes a law or is not authorised by the empowering provision; or

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- (b) is not rationally connected to –
 - (i) the purpose for which it was taken;
 - (ii) the purpose of the empowering provision;
 - (iii) the information before the administrator; or
 - (iv) the reasons given for it by the administrator;
- 7.7 The action concerned consists of a failure to take a decision;
- 7.8 The exercise of the power or the performance of the function authorised by the empowering provision in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have exercised the power or performed the function in this way; or
- 7.9 The action is otherwise unconstitutional, or unlawful.

- 8. It is a principle of our law that where a power is entrusted to a person to exercise his or her own individual judgement and discretion, he or she is not allowed to delegate such power unless expressly **empowered to do so** by the empowering provision. PAJA clearly states that an administrative action may be reviewed if the administrator who took it “acted under a delegation of power which was not authorized by the empowering provision”.⁷

- 9. According to the definition in section 1 of PAJA, an empowering provision means “a law, a rule of common law, customary law, or an agreement, instrument or other documents in terms of which an administrative action is purportedly taken”. Appendix A provides examples of instruments that specify empowering provisions in terms of which delegated powers are exercised.

PAJA Compliance Checklist

- 10. It is incumbent on decision-makers and all those involved in the process of decision-making to ensure that administrative action is lawful, reasonable and procedurally fair. This does not only refer to decisions taken in terms of PAJA, but to all administrative actions taken in departments. To ensure that departments comply, it is prudent that all submissions where a decision needs to be taken in terms of a delegation must include –
 - 10.1 A paragraph to confirm that the delegated decision is compliant with PAJA. Such paragraph in the submission may read as follows under the heading PAJA COMPLIANCE: “All the requirements to take a lawful, reasonable and procedurally fair administrative action have been complied with and no grounds exist for the review of the action.”
 - 10.2 A PAJA checklist must be duly completed and signed by the DO who exercises discretionary power in terms of a delegation of powers and duties. An example of the checklist that must be attached to the submission is set out in appendix B.

⁷ Section 6(2)(a)(ii).

Prerogative of the Executive and Administrative Powers

11. It has always been difficult to draw a clear distinction between the powers of the executive branch of government and the administration. It has been said that the main task of the executive branch of government is the formulation of policy and the task of the state administration is the implementation of policy. **PAJA applies to the actions of administrators and organs of state that are involved in implementing legislation and implementing policy.**
12. The Cabinet, which is the supreme executive body, does not fall within the ambit of the term “state administration” or “public administration” and the principles of administrative law do not apply to the functions of the higher level in its task of formulating policy. **PAJA clearly stipulates that the executive powers of the national and provincial executive are excluded from the definition of “administrative action” in the Act and are consequently not subject to the principles of just administrative action.** These powers of the executive are, however, subject to constitutional review for legality.
13. The traditional prerogative powers of the President, known as “acts of state”, have now received constitutional recognition in section 84. The majority of these powers are excluded from the ambit of “administrative action” defined in PAJA. However, these powers are subject to constitutional review for legality and, furthermore, the exercise of all administrative power is subject to the prescriptive provisions laid down in PAJA to ensure administrative legality and good governance.

Delegations by the Executive Authority in terms of the Constitution

14. The executive authority of the Republic is vested in the President.⁸ The President, together with the other members of the Cabinet, exercises the executive authority by⁹ –
 - 14.1 Implementing national legislation except where the Constitution or an Act of Parliament provides otherwise;
 - 14.2 Developing and implementing national policy;
 - 14.3 Coordinating the functions of state departments and administrations;
 - 14.4 Preparing and initiating legislation; and
 - 14.5 Performing any other executive function provided for in the Constitution or in national legislation.
 - 14.6 A similar provision exists with regard to the Premier and executive councils of the provinces.¹⁰
15. The aforementioned section provides that the Cabinet has to be consulted in the exercise and performance by the President of some of his or her powers and functions under the Constitution and all powers in terms of legislation. For practical purposes, the President cannot be expected to consult with the entire Cabinet on every decision he or she takes.

⁸ Section 85(1) of the Constitution.

⁹ Section 85(2) of the Constitution.

¹⁰ Section 125 of the Constitution.

16. Section 238 of the Constitution provides that an executive organ of state¹¹ in any sphere of government may –
 - 16.1 Delegate any power or function that is to be exercised or performed in terms of legislation to any other executive organ of state, provided the delegation is consistent with the legislation in terms of which the power is exercised or the function is performed; or
 - 16.2 Exercise any power or perform any function for any other executive organ of state on an agency or delegation basis.
17. It is submitted that Cabinet could delegate its consultation function or constitutional powers in terms of the aforementioned section, with reference to any particular power or function of the President, to any Minister or Ministers.

Assignment of Functions, Powers and Duties

18. An exception to the general principle that powers have to be exercised by those to whom they are delegated in terms of enabling legislation is where powers are lawfully assigned or transferred to another authority. **The assignment or transfer of a function is not delegation.**
19. An assignment or transfer of powers differs from a delegation of powers. An assignment of powers is the full transfer of authority, the duty to exercise such authority and the responsibility for such exercise from one public authority to another. Delegation impacts on the productivity of time spent, but does not “free up” the delegator in the same way as assigning work to another.
20. The Constitution¹² provides for a transfer by the President of the administration of any legislation which was entrusted to a specific Cabinet member to another Cabinet member, as well as for a transfer of powers or functions from one Cabinet member to another. The President, in other words, has the power to reorganise administrative departments and to reallocate portfolios among Ministers. In spite of the fact that legislation may provide that a function, power or duty is to be exercised by a specific Minister, the President may determine that such function, power or duty is to be exercised by another Cabinet member. This transfer of powers takes place by proclamation. A similar provision exists with regard to the Premier and executive council of a province.¹³
21. A temporary assignment of powers or functions (by the President to a Cabinet member) is provided for in the event that another Cabinet member is absent from office or is

¹¹ "Organ of state" means (section 239) –

- a) any department of state or administration in the national, provincial or local sphere of government; or
- b) any other functionary or institution -
 - (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer.

¹² Section 97 of the Constitution.

¹³ Section 137 of the Constitution.

unable to exercise a specific power or function.¹⁴ A similar provision exists with regard to the Premier and executive council of a province.¹⁵

22. A Cabinet member may furthermore assign powers or functions that are exercised or performed by him or her in terms of an Act of Parliament to a member of the executive council of a province.¹⁶ An assignment may take place only if an agreement to this effect exists between the relevant Cabinet member and the executive council member. The Act of Parliament which authorises the exercise or performance of powers or functions may furthermore not prohibit such assignment and the assignment can only be made effective through proclamation by the President. The Constitution contains a similar provision authorising the assignment of powers or functions by a member of the executive council of a province to a municipal council.¹⁷

Public Service Act

23. In terms of section 42A of the PSA:

23.1 An EA may¹⁸ –

- (a) Delegate to the HoD any power conferred on the EA by this Act; or
- (b) Authorise that head to perform any duty imposed on the EA by this Act.

23.2 The HoD may¹⁹ –

- (a) Delegate to any employee of the department any power –
 - (i) Conferred on that head by this Act; or
 - (ii) Delegated to that head in terms of section 42A(4); or
- (b) Authorise that employee to perform any duty –
 - (i) Imposed on that head by this Act; or
 - (ii) Which that head is authorised to perform in terms of section 42A(4).

24. The PSA and PSR provide for the following **conditions**:

24.1 An EA shall provide the HoD with appropriate powers and authority to enable an HoD to manage his or her department effectively (PSR 1/II/A).

24.2 An HoD shall empower employees in the department by means of appropriate delegations and authorisations, where necessary (PSR 1/II/A).

24.3 Any person to whom a power has been delegated or who has been authorised to perform a duty under this section shall exercise that power or perform that duty **subject to the conditions the person who made the delegation** or granted the authorisation considers appropriate (section 42A(6) and PSR 1/II/B.1).

¹⁴ Section 98 of the Constitution.

¹⁵ Section 138 of the Constitution.

¹⁶ Section 99 of the Constitution.

¹⁷ Section 126 of the Constitution.

¹⁸ Section 42A(4).

¹⁹ Section 42A(5).

Chapter 3: Legal Framework

- 24.4 Any delegation of a power or authorisation to perform a duty (section 42A(7) and PSR 1/II/B.3) –
- (a) Shall be in writing;
 - (b) Does not prevent the person who made the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and
 - (c) May at any time be withdrawn in writing by that person.
- 24.5 An EA shall record a delegation or an authorisation in writing and may incorporate it in an employment contract for an HoD, as provided in regulation 1/VII/B.2.1 (PSR 1/II/B.2).
- 24.6 An EA may not require or permit an HoD or any other employee to engage in an activity or take a decision in breach of the PSR (PSR 1/II/C.2).
- 24.7 An EA and an HoD shall ensure that prior Treasury approval exists for any decision that involves expenditure from revenue (PSR 1/II/C.5).
- 24.8 Where a possible conflict of interest arises in the making of any decision **relating to employment**, the EA or an employee to whom any power or duty has been delegated or assigned shall perform the act or make the decision only after considering a recommendation by an independent panel consisting of at least two persons (PSR1/II/D.1).
- 24.9 Where the EA or the employee to whom a power or duty has been delegated or assigned deviates from the panel's recommendations as provided for in PSR1/II/D.1, the EA or employee shall record the reasons for the deviation in writing (PSR1/II/D.2).
25. Neither the PSA nor the PFMA specifies criteria that would justify withdrawing delegations. As a general guideline, a delegation may be withdrawn under the following circumstances and on the following conditions:
- 25.1 A possible conflict of interest arises in the making of any decision relating to the delegated power or duty.
 - 25.2 The delegated power or duty is not being exercised in a manner consistent with the particular statute or regulations.
 - 25.3 The DO does not demonstrate the required competence (knowledge, skills, and experience) and commitment to perform delegated powers or duties.
 - 25.4 A delegation may not be withdrawn unless prior direction and guidance have failed, or delegation limitations and conditions have been revised.
 - 25.5 Written reasons for the **withdrawal** must be provided.
26. To ensure that public administration delegation formats are standardised across the public service, it is suggested that the PSR be amended by including the following formulation as a new regulation:
- 26.1 An HoD shall keep a delegation template at the appropriate performer levels in terms of section 42A of the Act in the format directed by the Minister and submit a copy of the completed delegations template to the Minister annually by 30 April or when amended.

26.2 Any person to whom a power has been delegated or who has been authorised to perform a duty in terms of section 42A of the Act shall keep a register of delegation decisions in the format directed by the Minister.

Public Finance Management Act

27. The AO of a department, trading entity or constitutional institution may²⁰ –

27.1 In writing delegate any of the powers entrusted or delegated to the AO in terms of this Act to an official in that department, trading entity or constitutional institution; or

27.2 Instruct any official in that department, trading entity or constitutional institution to perform any of the duties assigned to the AO in terms of this Act.

28. The PFMA provides for the following conditions:

28.1 The delegation must be in writing.²¹

28.2 A delegation or instruction to an official²² –

- (a) Is subject to any limitations and conditions prescribed in terms of this Act or as the relevant Treasury may impose;
- (b) Is subject to any limitations and conditions the AO may impose;
- (c) May either be to a specific individual or to the holder of a specific post in the relevant department, trading entity or constitutional institution; and
- (d) Does not divest the AO of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

28.3 The AO may confirm, vary or revoke any decision taken by an official as a result of a delegation or instruction in terms of subsection 44.1, subject to any rights that may have become vested as a consequence of the decision.

29. The PFMA or Financial Regulations do not specify criteria that would justify varying or revoking a delegation or instruction. The circumstances in or the conditions under which this may occur are similar to those set out in paragraph 25 above.

²⁰ Section 44(1).

²¹ Section 44(1)(a).

²² Section 44(2).

Chapter 4: Clarification of Roles and Responsibilities

Executive Authorities and Heads of Departments

1. The executive/administrative interface is determined by the context set by the constitutional arrangements and culture of each society. In most government systems, a culture of professionalism is fostered regardless of the appointment process for senior officials. In some systems it is not so important to have a formally apolitical public service because there are other checks on political power, such as a very strong legislature, a well-developed system of statutory and judicial limitations on political power, or a strong underlying culture which supports nonpartisan professionalism.
2. The constitutional context provides that the President, together with the other members of the Cabinet, exercises the executive authority by²³ –
 - 2.1 Implementing national legislation, except where the Constitution or an Act of Parliament provides otherwise;
 - 2.2 Developing and implementing national policy;
 - 2.3 Coordinating the functions of state departments and administrations;
 - 2.4 Preparing and initiating legislation; and
 - 2.5 Performing any other executive function provided for in the Constitution or in national legislation.

Developing and Implementing Policy

3. The nature of government policy is described as “a course of action adopted or pursued by a government, usually dictated by what is believed to be in the public interest”.²⁴ When policy is adopted without clear legislative authority, it has been called “unauthorised administrative legislation”.²⁵ The Constitution specifically authorises the President to make policy together with Cabinet. There is therefore no doubt that the executive may make policy, even in the absence of further authority in a statute to do so.
4. Officials of an administrative body are bound to observe policy, whether the policy is authorised by specific legislation or not. Not only is the administration bound to respect policy, but it has a duty to adhere to it. Failure to comply with the policy may be regarded as disobedience, disregard or wilful default to carry out a lawful order or simply as the display of insubordination.
5. There are limits to the power of the executive to make policy, namely:
 - 5.1 Policy may not be inconsistent with the Constitution, since the Bill of Rights applies to all law and binds the legislature, the executive and the judiciary and all organs of state. In

²³ Section 85(2) of the Constitution.

²⁴ A Rabie & D van Zyl Smit “The Nature and Effect of Legislative and Quasi-legislative Administrative Acts” (continued) (1989) 4 SAPL 74.

²⁵ A Rabie & D van Zyl Smit “The Nature and Effect of Legislative and Quasi-legislative Administrative Acts” (continued) (1989) 4 SAPL 74.

Chapter 4: Clarification of Roles and Responsibilities

- particular the principle of legality, which forms part of the rule of law, dictates that policy may not be arbitrary, but must be rationally related to its purpose.
- 5.2 The executive may not “adopt any policy that takes its fancy”. If policy is made in terms of legislation, it must be compatible with the empowering legislation, and the policy may be neither irrelevant to the decisions which need to be made in terms of the legislation, nor improper given the purpose of the legislation. In the absence of empowering legislation, a Minister may not make policy on matters which are unrelated to his or her powers and functions.
 - 5.3 Finally, the validity of policy which is not authorised by specific legislation is recognised only insofar as it does not infringe on the rights and privileges of subjects outside the administrative body required to implement the policy.²⁶ This means that policy may not constitute a self-generating source of authority for the infringement of rights and interests.²⁷
6. The explanatory memorandum to the PFMA²⁸ also clarifies the division of responsibilities between the EA and HoD:
 - 6.1 The EA is responsible for policy matters and outcomes, including seeking legislature approval and adoption of the department’s budget vote; and
 - 6.2 The HoD is responsible for outputs and implementation, and is accountable to the legislature for the management of the implementation of that budget. This would require the HoD to have been given powers and responsibilities relating to the management and implementation of policy and outputs.
 7. The main task of the executive branch of government is the formulation of policy and the task of the public or state administration is the implementation of policy.

Preparing, Initiating and Implementing Legislation

8. Members of the executive draft or amend legislation and introduce legislation to the relevant legislature.
9. Implementing the legislation will constitute administrative action that is lawful, reasonable and procedurally fair (see section 33 of the Constitution) and is the responsibility of the administration. It is the duty of the EA to give the HoD powers and responsibilities relating to the management and implementation of legislation.

Coordinating Departments

10. EAs are overall responsible for the management of state departments. They are accountable to the legislature for everything that happens in their departments and may

²⁶ A Rabie & D van Zyl Smit “The Nature and Effect of Legislative and Quasi-legislative Administrative Acts” (continued) (1989) 4 SAPL 75.

²⁷ L Baxter Administrative Law (1984) 399.

²⁸ Paragraph 4.1 Explanatory memorandum on the Act.

Chapter 4: Clarification of Roles and Responsibilities

not claim ignorance; they must explain the actions of their officials to the legislators and take responsibility.²⁹

11. The PFMA places the responsibility for financial matters in the hands of the HoD, as the AO. The duties of the AO are outlined in sections 38 to 43 of the PFMA and the Treasury Regulations. The HoD is responsible for the efficient, effective, economical, transparent, competitive and cost-effective use of financial resources, including the setting up of appropriate systems of procurement, financial management, risk management and internal control. This Act provides for personal liability for HoDs in certain circumstances. The Act and corresponding regulations also provide details on reporting and accountability requirements of the HoD toward the EA and the relevant Treasury.
12. Section 7(3)(b) of the PSA provides that an HoD shall be responsible for the efficient management and administration of his or her department, including the effective utilisation and training of staff, the maintenance of discipline, the promotion of sound labour relations and the proper use and care of state property, and he or she shall perform the functions that may be prescribed by this Act. The head of the Office of a Premier shall be the Secretary to the Executive Council of the province concerned.

Conduct

13. There are currently no formal guidelines for conducting relations between the political leadership and officials at implementation level. This critical relationship is often influenced by personalities, affecting policy implementation and impacting on the morale of an entire department.
14. Section 96(2) of the Constitution provides some guidance on the conduct of EAs and provides for a code of ethics prescribed by national legislation. The Executive Members' Ethics Act, 1998 is confined to matters of disclosure of private interests, the management of conflicts of interests and the framework for reporting and investigating breaches. As in the case of the Constitution, the Act does not provide further guidance on the authority and role of EAs. There is a need to develop guidelines and best practice in managing the relationship between political and administrative leadership in all three spheres of government.
15. The Public Service Code of Conduct set out in the Public Service Regulations provides guidance on the relationship between employees and the legislatures and the executive. HoDs, by virtue of their responsibility in terms of section 7(3)(b) of the PSA, are, inter alia, bound by a duty to ensure that their conduct and that of their employees conform to the basic values and principles governing public administration, as well as the norms and standards prescribed by the PSA. HoDs should also ensure that their staff members are acquainted with these measures and that they accept and abide by them.
16. As regards the relationship with the legislature and the executive, the Public Service Code of Conduct stipulates that an employee –

²⁹ Ian Currie and Johan de Waal *The new Constitution & Administrative Law* (2001) 250.

Chapter 4: Clarification of Roles and Responsibilities

- 16.1 Is faithful to the Republic and honours and abides by the Constitution in the execution of his or her daily tasks;
 - 16.2 Puts the public interest first in the execution of his or her duties;
 - 16.3 Loyal executes the policies of the government of the day in the performance of his or her official duties as contained in all statutory and other prescripts;
 - 16.4 Strives to be familiar with and abides by all statutory and other instructions applicable to his or her conduct and duties; and
 - 16.5 Cooperates with public institutions established by legislation and the Constitution in promoting the public interest.
17. In essence, the relationship between an EA and an HoD is built on trust. Checks and balances and external authorities will not remedy the situation if this trust has broken down. To avoid a breakdown of trust, however, there must be frequent and effective communication between the parties. The EA must give clear strategic direction to the department. The HoD must provide regular feedback on implementation challenges. EAs and HoDs must meet regularly, preferably formally each quarter, to assess progress.

Enabling Environment

18. The roles and responsibilities at the executive/administrative interface highlight the need for EAs to create an enabling environment in the administration by delegating powers and duties to HoDs. An HoD must also create an enabling environment in the department by delegating powers and duties to lower performer levels.
19. Appendix C contains a summary of the roles and responsibilities of EAs and HoDs at the executive/administrative interface. The Appendix does not attempt to provide a complete list of roles and responsibilities, but rather emphasises the need for appropriate public administration and financial delegations.
20. The competency framework for the Senior Management Service in the public service specifies the required competencies of HoDs. Appendix D provides a summary of the competency indicators for the HoD performer level. To perform on these competencies, delegation of powers and duties by EAs to HoDs is necessary.
21. The Leadership Development Management Strategic Framework for the Senior Management Service, published by the DPSA, specifies the management responsibilities for the different performer levels. Figure 1 depicts a summary of the management responsibility areas, dominant key performance indicator types as well as the nature of plans required per performer level in order to implement the strategic plan and annual performance plan. **Performing these management responsibilities and associated plans requires that delegations be cascaded to the different performer levels.**

Figure 1: Management Responsibilities per Performer Level



Deputy Ministers

22. The definitions of EA in the PSA and the PFMA refer to the President, a Premier of a province, and a Cabinet member (Minister) and a member of the Executive Council of a province accountable and responsible for a department, government component or public entity. **Deputy Ministers are excluded from the definition of EA and may not hold any legal delegation in terms of the PSA or the PFMA.**

Special Advisers

23. The PSA³⁰ provides that special advisers may be appointed to –
- 23.1 Advise an EA on the exercise or performance of the EA's powers and duties;
 - 23.2 Advise an EA on the development of policy that will promote the department's objectives; or
 - 23.3 Perform such other tasks as may be appropriate in respect of the exercise or performance of the EA's powers and duties.
24. Since a special adviser would 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 adviser and the HoD concerned. The special adviser shall direct his or her inputs to the

³⁰ Section 12A(1).

EA and refrain from interfering in the administration and management of the department, which in law is the function and responsibility of the DG.³¹ **A special adviser cannot hold any delegation in terms of legislation.**

Line and Support Staff Managers

25. **Line management** authority entails the responsibility to make decisions and issue instructions down the hierarchy to staff. Line managers are directly responsible for the outputs that emanate from key performance areas and subprogrammes, which, in turn, are derived from the department's strategic plan and legislative mandate (see figure 1). Line authority originates from the EA and HoD, where powers required by managers are originally vested, and these powers must be delegated to the appropriate performer level.
26. A line manager is appointed in a department to manage a unit (e.g. directorate, chief directorate or branch). Each unit is normally part of a larger departmental organisation with its mission formulated as part of the department's. From a management point of view, it is the joint effort of all managers (line and support services management) that determines the department's performance. Each manager is responsible for the performance of his or her unit and will be held responsible if performance falls below what is expected. In order to discharge their responsibilities, managers must organise their units, ensure that they have the resources necessary to perform well and that these are properly utilised.
27. A unit's performance is largely determined by its staff. Managers cannot be held accountable for poor performance if they do not have the authority to decide how staff are utilised and to provide input into the composition of the unit. Generally, the manager of a unit takes work-related decisions regarding individuals that could have an impact on the staffing and performance of the unit. Powers must therefore be delegated to line managers to enable them to discharge their responsibilities with regard to public administration, financial management and human resource management. In discharging these responsibilities, they must act within the limits of the powers delegated, and adhere to the relevant prescripts, norms and standards.
28. The line manager should have no doubt that he or she will be able to attend to his or her responsibilities with the support of the human resource and financial managers. The manager should at all times operate within the limits of the power delegated and accept that support staff officials will advise on and monitor the adherence to the relevant prescripts to ensure that the manager operates within the relevant legal boundaries. The support staff functionary's advice and expertise will also ensure that the line manager's actions comply with the norms and standards required by legislation and relevant regulations.
29. **The support staff management functionary** is responsible for the promotion of sound administration of finance, procurement, facilities and human resource management and must advise and assist line managers in this regard. Support staff functionaries should be mindful that they act within an extensive legal and regulatory framework that is not

³¹ Dispensation for the Appointment and Remuneration of Persons (special advisers) Appointed to Executive Authorities on Ground of Policy Considerations in Terms of Section 12A of the Public Service Act, 1994: 1 January 2010.

Chapter 4: Clarification of Roles and Responsibilities

divorced from the hierarchy of management. The functionary should not interfere with the management of employees, unless this forms part of a specialised function for which human resource or financial management is responsible. The functionary operates within the boundaries of the powers and duties delegated in terms of legislation, relevant regulations, collective agreements and other prescripts. This mandate requires that the support staff functionary must be knowledgeable and skilled in order to fulfil the specialised support role to the line manager.

Chapter 5: Delegation Process and Templates

Delegation Process

1. The delegation process is essential to managers in the public sector to assist them in discharging the responsibilities delegated to them. Delegation does not take place automatically; it is initiated by the PF and implemented by the DO to whom the power or duty is delegated.
2. The recommended steps to carry out the delegation process are described below:
 - 2.1 **Step 1 – Decide on the powers and duties to be delegated.** Duties of a repetitive nature can easily be delegated. It is important to delegate more challenging tasks in order to develop employees and to create self-confidence.
 - 2.2 **Step 2 – Decide who should exercise the powers and perform the duties.** The time available, competencies and skills required, and experience of the subordinate employee should be taken into account.
 - 2.3 **Step 3 – Provide sufficient resources for carrying out the powers and duties delegated.** These include human, financial, technical, information and other physical resources. Without sufficient resources, employees will not be able to exercise the powers and perform the duties that have been delegated to them.
 - 2.4 **Step 4 – Delegate the powers and duties and set limitations and conditions.** The PF delegating the powers and duties should brief the DO and provide all relevant information on the task to be performed, including limitations, conditions and the results expected. Open channels of communication should exist between the manager and the employee on all matters related to the delegation.
 - 2.5 **Step 5 – Establish a reporting system.** This is vital because the outcome of the delegation process is information on the performance of the delegated power or duty. This serves as a measure to evaluate its execution and as input for when delegations are reviewed.

Guidelines for Overcoming Delegation Risks

3. In order to make decisions about whether to delegate a power or function and to whom a power or function should be delegated, it is necessary to make an assessment of any foreseeable risks associated with the exercise of the power or function by the delegate.³² Foreseeable risks will vary depending on the power or duty that is being considered for delegation. Possible risks may include poor performance and undesirable or unintended outcomes, negative findings from political scrutiny, adverse audit reports, litigation, adverse media exposure, increased resources devoted to reviews of administrative actions, exposure to fraud, maladministration or unethical conduct, or a breach of the Public Service Code of Conduct.
4. PFs should consider contingencies to minimise the risk associated with delegation. Strategies to minimise risk may include ensuring that –

³² Delegations Series, Commonwealth of Australia 2002, ISBN 0 642 54355 0.

Chapter 5: Delegation Process and Templates

- 4.1 Delegations are within the scope permitted by the legislative framework;
- 4.2 Both the PF and DO are familiar with their roles and responsibilities;
- 4.3 DOs possess the necessary skills and competencies to exercise the delegation;
- 4.4 Effective performance management, feedback and reporting mechanisms are in place;
- 4.5 Appropriate internal audit and controls are in place;
- 4.6 Regular review and monitoring are undertaken;
- 4.7 DOs receive relevant training;
- 4.8 Delegations are regularly reviewed for appropriateness and accuracy, particularly following internal reorganisation or restructuring, introduction of new legislation or amending legislation, policy changes, changes to programme budget structures and in the case of the transfer of functions between departments; and
- 4.9 Clear directions or instructions are given and conditions set that restrict the exercise of delegations.

Delegation Templates

5. To ensure that delegation formats are standardised across the public service, it is proposed that every HoD must keep a completed delegation template in the format directed by –
 - 5.1 The Minister for the Public Service and Administration in the case of public administration. The formats of the templates for Public Administration delegations are set out in appendix E.
 - 5.2 The Minister of Finance in the case of financial administration. The formats of the templates for financial delegations are set out in appendices F and G.
6. The DPSA and the National Treasury will issue completed sample delegation templates, which departments may use to develop their own delegation documents.
7. Every HoD must submit a copy of the completed templates for public and financial administration delegations to the DPSA and National Treasury annually by 30 April or when delegations are amended.
8. The DPSA and National Treasury will monitor the delegations of departments to –
 - 8.1 Promote alignment of delegations with strategic plans, strategic objectives and organisational structures;
 - 8.2 Promote compliance with delegation principles; and
 - 8.3 Advise departments on enhancing the quality of delegations.
9. It is proposed that any DO to whom a power has been delegated or who has been authorised to perform a duty maintain a **Register of Delegation Decisions** to record their discretionary powers to act. An example of such a register, which at the very least should provide for a chronological number, date, reference to delegated power and

Chapter 5: Delegation Process and Templates

synopsis of decision taken, is contained in appendix H. Keeping a delegation decision register has the following advantages for officials:

- 9.1 It will help to build capacity and competency of DOs;
- 9.2 PFs will be able to assess performance of DOs;
- 9.3 Delegated powers and actions can be audited by the Auditor-General;
- 9.4 Maladministration and unethical conduct will be identified and discouraged;
- 9.5 It will promote transparency in exercising delegated powers and duties; and
- 9.6 It will enable monitoring by the PF.

Tool for Decomposing Delegations

10. Appendix I contains a tool to assist practitioners in decomposing delegations between performer levels in head, regional, and district offices. The tool should plot delegated powers and duties of DOs and control measures or guidelines set by the PF so as to indicate formalities to be observed and impose limits and constraints on the discretionary power to act.
11. The tool assists in decomposing the roles and responsibilities of role players involved in the value chain when performing the delegated power or duty. The following VARICE indicators are used to capture the roles and responsibilities for inclusion in delegation templates: Verifier, Accountable, Responsible, Informed, Consulted and Execute.

Chapter 6: Delegation Principles

1. The delegation principles set out in chapter 6 are presented to encourage the development of effective and efficient delegation. The approach that is followed is to state a particular principle, followed by an explanation if required.
2. **Primary Principles** – The following primary principles must be upheld:
 - 2.1 **Upholding the Constitution and legislation** – No delegation may be in conflict with the Constitution, the relevant legislation, applicable collective agreements or departmental policy.
 - 2.2 **Delegation authorised by statutory authority** – Any delegation must be authorised by an empowering provision in legislation or subordinate legislation (see Appendix A: Delegation and Non-delegation Instruments).
 - 2.3 **Administrative action in terms of delegation is subject to judicial review** – See grounds for judicial review in terms of PAJA in paragraph 7, chapter 3. There is no delegation, but cause for review of administrative action if –
 - (a) The PF retains control over the exercise of the delegation by, for example, requiring that it must approve all actions taken by the DO;
 - (b) The DO simply acts as the agent of the PF. The position is similar where the PF takes the decision, but leaves it to another official to inform the person affected of the decision by, for example, signing a letter on behalf of the person who took the decision;
 - (c) The DO acts on the instruction or dictation of another person or body that was not given the power to take such decision; or
 - (d) The DO avoids taking the decision by referring it to someone else. This does not preclude consultation on the specific matter.
 - 2.4 **Submissions must indicate that delegation decision is compliant with PAJA** – Every submission where a decision needs to be taken in terms of the delegation of a power or duty must include:
 - (a) A paragraph to confirm that the delegated decision is compliant with PAJA. Such paragraph in the submission may read as follows under a heading PAJA COMPLIANCE: “All the requirements for taking a lawful, reasonable and procedurally fair administrative action have been complied with and no grounds exist for the review of the action.”
 - (b) A PAJA checklist, duly completed and signed by the DO exercising discretionary power in terms of a delegation of powers and duties. An example of the checklist is contained in appendix B.
 - 2.5 An EA shall provide the HoD with appropriate powers and authority to enable an HoD to manage his or her department efficiently and effectively.
 - 2.6 An HoD shall empower employees in the department by means of appropriate delegations.

2.7 Any **HoD must keep completed delegation templates for all delegations** in the format directed by –

- (a) The Minister for the Public Service and Administration in the case of public administration;
- (b) The Minister of Finance in the case of financial administration.

The HoD must also submit a copy of the registers to the aforementioned Ministers annually by 30 April or when they are amended (see paragraph 4.7 below).

3. **System of Delegations Principles** – Every system of delegations must –

3.1 **Measure ideal and desired results and performance** on work outputs;

3.2 **Be specific and unambiguous** about the power or duty being delegated;

3.3 **Uphold the principles of responsibility, accountability, effectiveness and efficiency**;

3.4 Be **periodically reviewed** for validity and completeness by Legal Services and, in the case of financial delegations, also by Internal Audit;

3.5 Be **aligned** with the strategic plan, measurable objectives, organisational structure and budget programme or responsibility structure for implementation;

3.6 **Fast-track decisions** – Only the following officials must be included on the route form: the Verifier – “I Must Check”, those that must be Consulted – “Always Keep Me In The Loop”, and the DO – “I Am The Decision-maker”;

3.7 Provide for a **formal process** to –

- (a) Ensure the validity (quality and legal soundness) of delegations. This should involve expert scrutiny and sign-off by Legal Services and in the case of financial delegations, Internal Audit; and
- (b) Allocate specific responsibility to an official(s) for managing, maintaining and monitoring delegations in the department.

4. **Delegation Conditions** – Any delegation or authorisation to exercise a power or perform a duty –

4.1 Must be in writing.

4.2 Does not prevent the PF who made the delegation or granted the authority from exercising that power or performing that duty himself or herself. Such action by the PF must be communicated to the DO to avoid duplication and wasteful expenditure.

4.3 May at any time be withdrawn in writing by the PF. General guidelines regarding the withdrawal of delegations are set out in paragraph 25 of chapter 3.

4.4 Is subject to any limitations and conditions the PF may impose.

4.5 Is subject to any limitations and conditions that may be prescribed in terms of legislative provisions.

4.6 Must be to the holder of a post. Delegation to the holder of a post will ensure continuation of service delivery in instances where another person lawfully acts in a post with associated delegated powers and duties.

Chapter 6: Delegation Principles

- 4.7 Does not divest the PF of the responsibility concerning the exercise of the delegated power or performance of the duty.
- 4.8 Must be reviewed bi-annually or when –
- (a) A new EA is elected or appointed;
 - (b) A new HoD is appointed;
 - (c) Changes are effected to the strategic plan or measurable objectives;
 - (d) Changes are effected to the organisational structure due to reorganisation or restructuring;
 - (e) Changes are effected to the programme or responsibility structure; and
 - (f) Changes are effected in terms of new or amended policy, or new or amended legislation.
- 4.9 A PF may only vary or revoke a decision by a DO as a result of a delegation if legislation specifically provides for such an empowering provision; see chapter 3: Legal Framework for such provisions in terms of the PFMA.
5. **The Principal Functionary** – The following principles apply to any principal functionary:
- 5.1 **The PF must record delegations in employment contracts or performance contracts.** A delegation or authorisation to exercise a power or perform a duty must be recorded in the employment contracts of HoDs and in the performance contracts of senior managers.
- 5.2 **The PF delegates to the DO** only. The DO may not delegate further to any other official, unless expressly authorised by legislation. In practice, this means that the PF must delegate across all the performer levels in the organisation.
- 5.3 To delegate his or her powers lawfully, a PF **must be authorised** to do so by the empowering provision.
- 5.4 The PF must (where the delegation takes place in the same administrative hierarchy) **retain a measure of control** over the DO.
- 5.5 The PF must **provide guidelines** as to how the powers are to be exercised.
- 5.6 The PF must provide **clear guidance** on expectations, limitations applicable, the circumstances in which or the conditions on which a delegation must be exercised and the factors to be taken account of in the exercise of a delegation.
- 5.7 A PF may only **delegate to employees** who occupy positions on the approved establishment of the department.
- 5.8 A PF must ensure that the DO has the **required capacity** (skills and competency, administrative, technical, financial and human resources) to enable the effective discharge of delegations.
- 5.9 The PF must **sign and date each page of the delegation templates** and any amendments to such templates to ensure that no unauthorised changes can be effected to the delegations.

6. **Delegated Officials** – The following principles apply to any DO:
- 6.1 A DO must **report to the PF at such intervals as the PF may require** on decisions taken or on the exercise of a delegated power or performance of a delegated duty.
- 6.2 The DO must **keep a register of delegation decisions** (see appendix H). The register should at the very least provide for a number (chronologic), date, reference to delegated power and synopsis of decision taken.
- 6.3 In the case of any delegation that has any **financial implication**, the DO must ensure that he or she –
- (a) Is duly authorised as a budget holder (programme or responsibility manager) to incur expenditure within the prescribed limits; or
 - (b) Obtains the approval of the relevant budget holder (programme manager, responsibility manager or chief financial officer) if not authorised to incur such expenditure.
- 6.4 **Acting in a post** – Section 32(2) of the PSA provides that an employee may be directed in writing to act in a post subject to such conditions as may be prescribed.
- (a) In the case of an HoD, such acting arrangements shall be made by the relevant EA.
 - (b) In the case of any other post, such acting arrangements shall be made by the employee occupying the post, unless otherwise determined by the HoD.
 - (c) A person acting in a post performs the delegations associated with that post.
 - (d) Only employees may act in a post. Consultants may not act in posts or exercise any delegation.
 - (e) A seconded employee who acts in a post performs the delegations associated with that post.
- 6.5 A DO may only exercise such a power or perform such a duty with regard to employees at a lower post level than him- or herself in the relevant component. However, if a delegation is of a transversal nature, it may be exercised in respect of the entire department (e.g. the Head of HR appoints all employees at a particular level for the whole department).
7. **Minimum Levels of Delegation for Public Management and Administration**
- 7.1 The Forum of South African Directors-General (FOSAD) proposes that minimum delegations provide that EAs delegate the appointment of employees to Chief Director level (level 14) to HoDs.
- 7.2 Minimum levels of delegations proposed in terms of the PSA and PSR are set out in appendix K. Minimum levels of delegations are essential to give effect to delegation principles 2.5 and 2.6, which require an EA to provide the HoD with appropriate powers and authority and the HoD to empower employees by means of appropriate delegations.
- 7.3 The minimum levels of delegations are required for the following two key management areas:
- (a) **Internal organisation of departments** – dealing with organisational development aspects such as the transfer of functions, creation and abolition of

posts and the organisational structure. The proposed minimum levels of delegation –

- (i) Follow a clear hierarchical approach to support sound public management practices with checks and balances to ensure that the authority that authorises the creation of posts is separated from the authority that authorises the appointment of employees to such posts. This will minimise the potential manipulation of the organisational structure, posts and appointments by the same authority or DO; and
 - (ii) Are included as indicators in the Management Performance Assessment Tool of the Department of Performance Monitoring and Evaluation to assess the performance of HoDs.
- (b) **Employee management** – dealing with the recruitment, appointment, performance management, transfer, dismissal and career incidents of employees. Not all HoDs are at the same level. Most HoDs for national departments and Superintendent-Generals in the provinces are at level 16. Some heads of government components and HoDs of smaller provincial departments are at level 15. Appendix J contains two models for minimum delegation to heads of government components and HoDs at level 16 or 15, including the cascading of decision-making at Head Office, regional/institutional and district tiers.

Chapter 7: Implementation Plan

1. The guidelines, concepts and principles set out in this Principles document apply equally to delegations authorised in terms of line function legislation. Apart from promoting effective and efficient human resource management and financial delegations, it is imperative that the Principles document also informs delegations in terms of the line function activities of departments. Such a holistic approach to delegations will have the most positive impact on promoting an efficient, effective and development-oriented public service and on service delivery to citizens.
2. If Cabinet approves the Principles of Public Administration and Financial Delegations, the Principles will be implemented as follows:
 - 2.1 Amendment of the Public Service Regulations by including the following formulation as a new regulation to ensure that public administration delegation formats are standardised across the public service:
 - (a) An HoD shall keep a delegation template at the appropriate performer levels in terms of section 42A of the Act in the format directed by the Minister and shall submit a copy of the completed delegations template to the Minister annually by 30 April or when amended.
 - (b) Any employee to whom a power has been delegated or who has been authorised to perform a duty in terms of section 42A of the Act shall keep a register of delegation decisions in the format directed by the Minister.
 - 2.2 Issuing of a circular or directive by the Minister of Finance and the Minister for the Public Service and Administration to institutionalise delegation principles and templates.
 - 2.3 Presentations to provincial executive councils to explain delegation principles.
 - 2.4 Capacity building presentations to national and provincial departments and rendering of implementation support to departments.
 - 2.5 Development of an induction and training module on delegations by the National School of Government (NSG).
 - 2.6 Continued updating of delegation templates with the latest circular, directive and collective agreements. These will be posted on the websites.
 - 2.7 Departments being required to align their delegations with the circular and directive within the next 18 months.
 - 2.8 Requesting the Auditor-General to audit compliance with circulars, directives and delegation principles.

Principles Document prepared by

The Branch Service Delivery and Organisational Transformation in the DPSA

The Office of the Accountant-General in the National Treasury

Appendix A: Example of Delegation and Non-delegation Instruments

<p>Original legislation (expressly authorises the delegation of powers and duties)</p> <p><i>The Constitution</i> <i>Legislation</i></p>	<p>Delegation instruments</p>
<p>Subordinate legislation (legislation expressly authorises the delegation of powers and duties)</p> <p><i>Regulations</i> <i>Proclamations</i> <i>Determinations and instructions</i> <i>International agreements</i> <i>Collective agreements with organised labour</i> <i>Contracts</i> <i>Policy</i></p>	
<p>Non-delegation instruments (legislation or subordinate legislation does not expressly authorise the delegation of powers and duties)</p> <p><i>Policy</i> <i>White Papers</i> <i>Green Papers</i> <i>Strategic frameworks</i> <i>Guides</i> <i>Handbooks</i> <i>Process maps</i> <i>Standard operating procedures</i></p>	<p>Non-delegation instruments</p>

Appendix B: PAJA checklist

Include in the submission a paragraph under the heading **PAJA COMPLIANCE:**

“All the requirements for taking a lawful, reasonable and procedurally fair administrative action have been complied with and no grounds exist for the review of the action.”

- | | | | |
|---|---|------------------------------|-----------------------------|
| A | There is an empowering provision authorising the decision. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| B | The decision will achieve the objective/purpose of the empowering provision. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| C | The person requested to make the decision is authorised to do so by:
(a) an empowering provision; or
(b) a valid written delegation of power. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| D | The following is applicable:
(a) There has been compliance with all the procedures in the empowering provision and relevant prescripts and time frames; or
(b) the empowering provision allows for a deviation from procedure or time frames and such deviation is in these circumstances fair and justified. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| E | All conditions contained in the empowering provision have been met. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| F | The information considered is relevant and correct. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| G | The decision is justifiable. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| H | In the event that the decision adversely affects an individual(s), provision is made for the individual(s) to be notified of the decision. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| I | The notice referred to in paragraph H informs the affected individual(s) of their right to appeal or review the decision, as well as their right to request written reasons. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| J | The submission contains all the information mentioned in paragraphs A to I. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Delegated Official

DATE:

Appendix C: Roles and Responsibilities Executive/Administrative Interface

Executive Authority	Head of Department
<p>Accountable to Parliament</p> <p>Accountable to electorate</p> <p>Accountable to President in terms of a performance and delivery agreement with the President (or Premier of a province in the case of MECs)</p>	<p>Accountable to Parliament</p> <p>Accountable to EA in terms of a performance agreement with EA</p>
<p>Develops policy, sets the policy framework and provides vision</p> <p>Drafts or amends legislation</p>	<p>Manages the implementation of policy</p> <p>Manages the implementation of legislation</p> <p>Supports and advises EA on policy formulation – principal policy adviser</p> <p>Supports EA in drafting or amending legislation; department renders technical legal support</p>
<p>Coordinates the functions of state departments and administrations (section 85(2) of the Constitution)</p> <p>Overall responsible for management of department</p>	<p>Responsible for the efficient management and administration of department, including the effective utilisation and training of staff, the maintenance of discipline, the promotion of sound labour relations and the proper use and care of state property (section 7(3)(b) of PSA)</p>
<p>Responsible for outcomes</p>	<p>Responsible for measurable outputs to achieve outcomes based on considerations of efficiency, effectiveness and economy</p>
<p>Seeks Parliamentary/legislature approval and adoption of the department's budget vote</p>	<p>Responsible for the efficient, effective, economical, transparent, competitive and cost-effective use of financial resources, including the setting up of appropriate systems of procurement, financial management, risk management and internal control</p> <p>Exercises powers and performs duties as AO (sections 36 and 38 of the PFMA); responsible for outputs and implementation, and accountable to Parliament/legislature for the management of the implementation of that budget</p>

Appendix D: Competency Indicators for HoD Performer Level

Competency Element	Competency Descriptor
Organisational vision and direction setting	<p>Leads and takes forward the development of the vision for the organisation.</p> <p>Aligns and cohesively articulates the vision and strategy in the context of wider government priorities.</p> <p>Understands and amalgamates environmental trends at a macro-level and prioritises trend towards organisational success.</p> <p>Manages the acceptance of accountability within the organisation.</p>
Plans and organises strategically at an organisational level	<p>Considers the social contract of the public service and has its pursuit in mind.</p> <p>Translates the vision into smaller building blocks which, in turn, lead to the development of strategic and organisational plans.</p> <p>Leads the development of strategic plans towards securing and allocating funding correctly to the various programmes which must speak to strategic direction.</p> <p>Persuades political head to adopt and implement results/outcomes of project.</p> <p>Initiates programmes/projects that lead to the achievement of the long-term strategic objectives of the organisation.</p> <p>Leads and coordinates the translation of policy into operational and action plans.</p> <p>Integrates processes, policies and structures across the organisation to achieve improved efficiency and effectiveness of service delivery.</p>
Financial management	<p>Provides the guidelines according to which the financial affairs of the organisation as a whole should be managed.</p> <p>Strategically develops long-term monitoring and evaluation tools in terms of financial management at an organisational level.</p> <p>Sets budgeting guidelines for the department/organisation based on the strategic direction and objectives.</p> <p>Identifies and approves partnerships and explores other avenues to achieve financial savings.</p> <p>Evaluates performance of organisation against budgets and initiates corrective actions.</p> <p>Develops long-term plans, performance measures and budgets that are aligned with strategic objectives.</p> <p>Evaluates performance of the organisation against budget.</p> <p>Evaluates financial planning processes and reports on the state of spending in the department.</p>

Appendix D: Competency Indicators for HoD Performer Level

Competency Element	Competency Descriptor
Champions change	<p>Creates an environment that encourages change, innovation and improvement. Identifies broad change strategies to achieve desired results.</p> <p>Sponsors “change agents” (responsible for implementing the change) and creates a network of leaders who support and own the change.</p> <p>Personally communicates a clear vision of the broad impact of change.</p> <p>Adapts current infrastructure to change initiatives.</p> <p>Mentors others on the leadership of change.</p> <p>Creates innovative ways of reinforcing change, rewarding acceptance and discouraging resistance to change.</p>
Leads organisation	<p>Alerts organisation to broad future learning needs that may affect organisational capability.</p> <p>Creates an environment where employees consistently push for improved performance and productivity.</p> <p>Develops and incorporates best-practice people management processes.</p> <p>Creates an environment conducive to the effective management of diversity.</p> <p>Develops and maintains a strategic focus on managing human resources.</p> <p>Creates and supports a vision and culture where staff feel empowered to seek and share knowledge.</p> <p>Nurtures and supports new concepts, models, innovations or theories that have wide-ranging impacts on a field, policy area or programme, nationally and possibly internationally.</p> <p>Integrates processes, policies and structures.</p>

Appendix E: Template for Public Administration Delegations

PART A: EXECUTIVE AUTHORITY DELEGATIONS TO HEAD OF DEPARTMENT FOR PUBLIC MANAGEMENT AND ADMINISTRATION

DEPARTMENT OF(Fill in name of Department)

In accordance with the powers vested in me by –

(a) the Public Service Act, 1994, as amended by Act 30 of 2007, as referred to in appendix A; and

(b) the Public Service Regulations, 2001, as referred to in Part A, Appendix B;

I,(fill in name and surname of Executive Authority), President/Deputy President/Premier/Minister/Member of Executive Council for (fill in portfolio), delegate the powers and duties vested in me to the Head of Department: (fill in name of department) as referred to in appendices A and B, read in conjunction with the general conditions set out hereinbelow.

Executive Authority and Head of Department to sign and date all pages.

SIGNED AT ON THIS DAY OF 20.. (fill in year)

NAME OF EXECUTIVE AUTHORITY (fill in name)

NAME OF EXECUTIVE AUTHORITY PORTFOLIO (fill in portfolio)

NAME OF HEAD OF DEPARTMENT (fill in name)

NAME OF DEPARTMENT (fill in portfolio)

PART A		APPENDIX B				
EXECUTIVE AUTHORITY DELEGATIONS TO THE HEAD OF DEPARTMENT IN TERMS OF THE PUBLIC SERVICE REGULATIONS, 2001 AS AMENDED						
POWER OR DUTY BEING DELEGATED		Principal Functionary	DESIGNATION/POST LEVEL DELEGATED TO PER TIER			CONDITIONS OF DELEGATION
Regulation	Topic Description		Head Office	Region	District	
						Indicators for Execution/Reporting/ Consultation/Informing ₃

Date:

Date:

SIGNATURE: Executive Authority

SIGNATURE: Head of Department

PART B: HEAD OF DEPARTMENT DELEGATIONS TO PERFORMER LEVELS FOR PUBLIC MANAGEMENT AND ADMINISTRATION
DEPARTMENT OF(Fill in name of Department)

In accordance with the powers vested in me by –
(a) the Public Service Act, 1994, as amended by Act 30 of 2007, as referred to in appendix A; and
(b) the Public Service Regulations, 2001, as referred to in Part B, Appendix B;

I,(fill in name and surname), Head of Department: (fill in name of department), delegate the powers and duties vested in me to the incumbents of posts as set out in appendices A and B, read in conjunction with the general conditions set out hereinbelow.

Head of Department to sign and date all pages.

SIGNED AT ON THIS DAY OF 20.. (fill in year)

NAME OF HEAD OF DEPARTMENT (fill in name)
NAME OF DEPARTMENT (fill in portfolio)

Appendix F: Template for Financial Delegations, PFMA

**FINANCIAL DELEGATION OF POWERS,
ACTIVITIES AND DUTIES IN RESPECT OF PUBLIC
FINANCE MANAGEMENT ACT, ACT 1 OF 1999
(AS AMENDED BY ACT 29 OF 1999)**

Issued in terms of Section 44 of the Public Finance Management Act

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General Responsibilities

Responsibilities relating to Budgetary Control

Reporting Responsibilities

Reporting Responsibilities when Assets are Transferred

Virement between Main Divisions

General Definitions, Application and Date of Commencement

1.1 General Definitions

- 1.1.1 In these financial delegations, unless the context indicates otherwise, a word or expression to which a meaning has been given, has the same meaning, and –
- “Accounting Officer” means the Director-General: [Department]
- “Act” means the Public Finance Management Act, Act 1 of 1999 (as amended)
- “Budget manager” means an employee who has been designated in writing to manage and administer all resources allocated to an activity within a subprogramme
- “Chief Financial Officer” means the employee designated in terms of Treasury Regulation 2.1.1
- “Department” means the ----- as a government department listed in Schedule 1 of the Public Service Act
- “Executive Authority” means the Minister/MEC-----
- “Programme” means one of the main segments into which the Department’s vote is divided
- “Programme manager” means an employee designated to manage and oversee the financial affairs of a programme or a subprogramme
- “Subprogramme” means a main segment of a programme

1.2 Application

- 1.2.1 These financial delegations apply to all employees of the Department, unless indicated otherwise.

1.3 Date of Commencement

- 1.3.1 These financial delegations take effect on the date approved by the Accounting Officer.

**Public Finance Management Act, Act 1 of 1999
General Responsibilities**

I t e m	Reference to PFMA section	Description of powers, activities and duties that are delegated	Delegated to			Conditions/limitations/remarks
			Office/Division/ Programme/Chief Directorate/ Directorate	Designation or position delegated to	Subdelegated to designation or position	
1.						
2.						
3.						
4.						
5.						

DIRECTOR-GENERAL

____/____/____
DATE

**Appendix G: Template for Financial Delegations, Treasury
Regulations**

**FINANCIAL DELEGATION OF POWERS,
ACTIVITIES AND DUTIES IN RESPECT OF
THE TREASURY REGULATIONS**

Issued in terms of Section 44 of the Public Finance Management Act

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Money and Property Held in Trust

Banking, Cash Management and Investment

Public/Private Partnerships

Supply Chain Management

Basic Accounting Records and Related Issues

Basic Accounting Records and Related Issues (continued)

Monthly and Annual Reports

Gifts, Donations and Sponsorship

Payments and Remissions as an Act of Grace

Government Payroll Deductions

1. General Definitions, Application and Date of Commencement

1.1 General Definitions

1.1.1 In these financial delegations, unless the context indicates otherwise, a word or expression to which a meaning has been given has the same meaning, and

–

“Accounting Officer” means the Director-General: [department---]

“Act” means the Public Finance Management Act, Act 1 of 1999 (as amended)

“Budget manager” means an employee who has been designated in writing to manage and administer all resources allocated to an activity within a subprogramme

“Chief Financial Officer” means the employee designated in terms of Treasury Regulation 2.1.1

“Department” means the [-----] as a government department listed in Schedule 1 of the Public Service Act

“Executive Authority” means the Minister of Finance

“Programme” means one of the main segments into which the Department’s vote is divided

“Programme manager” means an employee designated to manage and oversee the financial affairs of a programme or a subprogramme

“Subprogramme” means a main segment of a programme

1.2 Application

1.2.1 These financial delegations apply to all employees of the Department, unless indicated otherwise.

1.3 Date of Commencement

These financial delegations take effect on the date approved by the Accounting Officer.

Appendix G: Template for Financial Delegations, Treasury Regulations

Chapter

Item (1)	Reference to Treasury Regulation (2)	Description of powers, activities and duties that are delegated (3)	Delegated to			Conditions/limitations/remarks (7)
			Office/Division/ Programme/Chief Directorate/ Directorate (4)	Designation or position delegated to (5)	Subdelegated to designation or position (6)	
1.						
2.						
3.						
4.						
5.						

DIRECTOR-GENERAL

____ / ____ / ____
DATE

Appendix I: VARICE Tool for Decomposing Delegations

The VARICE table is a tool to plot the division of work for the purpose of decomposing delegations between performer levels in head, regional, and district offices. The table should plot discretionary powers of Delegated Officials and control measures or guidelines set by the Principal Functionary so as to indicate formalities to be observed and impose limits and constraints on the discretionary power to act.

OUTPUT/OUTCOME	ACTIVITY/TASK/DECISION/DELIVERABLE/ FUNCTION/ROLES AND RESPONSIBILITIES/DISCRETIONARY POWERS/CONTROL MEASURES	ABBREVIATE TITLES OF ROLE PLAYERS IN VALUE CHAIN					
Add rows							

Plot the following VARICE indicators per role player:

Verifier – “I Must Check” – Those who check whether the activity/task/deliverable et cetera meets the acceptance criteria set forth in the product description.

Accountable – “The Buck Stops Here” – The PF upon whom a power is conferred or a duty is imposed through an empowering provision in terms of which an administrative action is taken. There must be only one PF specified for each activity/task/deliverable et cetera.

Responsible – “I Am The Decision-maker” – The DO obligated to perform specific delegated discretionary powers with yes/no authority for executing the activity/task/deliverable et cetera.

Informed – “Keep Me In The Picture” – Those who are kept up to date on progress and with whom there is just one-way communication.

Consulted – “Always Keep Me In The Loop” – Those whose involvement, recommendation or opinions are sought prior to the decision or action and with whom there is two-way communication.

Execute – “The Doer” – Those who execute the task.

Appendix J: Minimum Levels of Delegation for Public Management and Administration

1. Internal Organisation of Departments

<p>An Executive Authority has all those powers and duties necessary for the internal organisation of the department concerned, including its organisational structure and establishment, the transfer of functions within that department, human resource planning, the creation and abolition of posts and provision for the employment of persons additional to the fixed establishment – section 3(7)(a) of the Public Service Act, 1994.</p>		
Principal Functionary	Level of Delegated Official delegated to	Description of power and duties
The President	Not delegated	Establishment of departments and government components, including their designations and those of the HoD by Presidential Proclamation, so as to amend Schedule 1, 2 or 3 of the Public Service Act – section 7(5)
Executive Authority	Not delegated	L13 to L15 This includes changes to the organisational structure that affects the SMS.
	HoD	L1 to L11/12 This includes changes to the organisational structure that affects levels 1 to 11/12.

2. Employee Management

2.1 Department or Government Component with HoD at level 16

<p>An Executive Authority has all those powers and duties necessary for the recruitment, appointment, performance management, transfer, dismissal and other career incidents of employees of that department or government component, including any other matter which relates to such employees in their individual capacities – section 3(7)(b) of the Public Service Act, 1994.</p>				
Principal Functionary	Level of Delegated Official	Level of employee to whom delegation applies, and per tier		
		Head Office	Region/Institution	District
Executive Authority	Not delegated	HOD L16 DDG L15		
	HoD L16	CD L14 D L13		
	DDG (Head of branch or region or institution) L15	L1 to L11/12		
	CD (Head of region, institution or district) L14	None	L1 to L9/10	
	D or DD (Head of region, institution or district) L13	None	L1 to L8	

2.2 Department and Government Component with HoD at level 15

An Executive Authority has all those powers and duties necessary for the recruitment, appointment, performance management, transfer, dismissal and other career incidents of employees of that Department or Government Component, including any other matter which relates to such employees in their individual capacities – section 3(7)(b) of the Public Service Act, 1994.				
Principal Functionary	Level of Delegated Official delegated to	Level of employee to whom delegation applies, and per tier		
		Head Office	Region/Institution	District
Executive Authority	Not delegated	HoD L15 CD L14		
	HoD L15	D L13 L1 to L11/12		
	CD (Head of chief directorate, region, institution or district) L14	L1 to L9/10		
	D or DD (Head of region, institution or district) L13	None	L1 to L8	