Principles of Public Administration and Financial Delegations

7 February 2011
# Table of Contents

Abbreviations ............................................................................................................... iii
Glossary of Terms ........................................................................................................ iv

## Chapter One: Introduction
- Background .............................................................................................................. 1
- International Trends ............................................................................................... 2
- South African Context ............................................................................................ 4
  - Structure of the South African State ................................................................. 4
  - Administrative Decentralisation ....................................................................... 5
- Purpose and Advantages of Delegation .............................................................. 7
- Delegation Challenges ......................................................................................... 8

## Chapter Two: Legal Framework
- The Constitution and PAJA .............................................................................. 10
  - Just administrative action ............................................................................. 10
  - Statutory grounds of judicial review of administrative action .................... 11
  - Prerogative of the Executive and Administrative Powers ....................... 12
  - Delegations by the Executive Authority in Terms of the Constitution ...... 13
  - Assignment of functions, powers and duties .............................................. 14
  - Original and Delegated powers ................................................................... 15
- Table One: Example of Delegation and non-delegation Instruments ........... 16
  - PAJA Compliance Checklist ....................................................................... 17

## Chapter Three: Key Elements for Effective Delegations
- Conceptual Elements ......................................................................................... 19
- Delegation Registers .......................................................................................... 20
- Public Service Functionality Framework ..................................................... 20
  - Figure One: Functionality framework of the input/output service delivery value-chain in the public sector .......................................................... 21
  - Responsibility Charting ............................................................................... 21
  - Figure Two: Responsibility and KPIs per Performer Level ....................... 22
- Clarification of Roles and Responsibilities .................................................... 23
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Authorities and Heads of Departments</td>
<td>23</td>
</tr>
<tr>
<td>Special Advisors</td>
<td>28</td>
</tr>
<tr>
<td>Line and Support Staff Managers</td>
<td>28</td>
</tr>
<tr>
<td>Delegation Process</td>
<td>30</td>
</tr>
<tr>
<td>Figure Three: Delegation Process</td>
<td>31</td>
</tr>
<tr>
<td>Guidelines to Overcome Delegation Obstacles</td>
<td>31</td>
</tr>
<tr>
<td>Figure Four: Situational Management Model</td>
<td>34</td>
</tr>
<tr>
<td>Table Two: For Delegates - Solutions to Delegation Challenges</td>
<td>35</td>
</tr>
<tr>
<td>Chapter Four: Delegation Principles</td>
<td>36</td>
</tr>
<tr>
<td>Appendix A: PAJA Checklist</td>
<td>39</td>
</tr>
<tr>
<td>Appendix B: Register of Delegation Decisions</td>
<td>41</td>
</tr>
<tr>
<td>Appendix C: Functional Requirements Per Performer Level</td>
<td>42</td>
</tr>
<tr>
<td>Appendix D: Responsibility Charting Technique</td>
<td>44</td>
</tr>
<tr>
<td>Appendix E: Executive Administrative Interface – Roles and Responsibilities</td>
<td>45</td>
</tr>
<tr>
<td>Appendix F: Delegation Register</td>
<td>48</td>
</tr>
</tbody>
</table>
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>DO</td>
<td>Delegated Official</td>
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<tr>
<td>DPSA</td>
<td>Department of Public Service and Administration</td>
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<tr>
<td>DG</td>
<td>Director-General</td>
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<tr>
<td>DDG</td>
<td>Deputy Director-General</td>
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<tr>
<td>EA</td>
<td>Executive Authority</td>
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<tr>
<td>HoD</td>
<td>Head of Department</td>
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<td>HR</td>
<td>Human Resources</td>
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<td>MEC</td>
<td>Member of the Executive Council</td>
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<td>PAJA</td>
<td>Promotion of Administrative Justice Act, Act 3 of 2000</td>
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<td>PF</td>
<td>Principal Functionary</td>
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<tr>
<td>PFMA</td>
<td>Public Finance Management Act, 1999 as amended</td>
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<td>PSA</td>
<td>Public Service Act 1994, as amended by Act 30 of 2007</td>
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<td>PSR</td>
<td>Public Service Regulations, 2001 as amended</td>
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</tbody>
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Glossary of Terms

In this document, unless the context otherwise indicates:

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

“Delegated Official” means any person to whom power has been delegated or who has been authorized to perform a duty in terms of a formal delegation. This includes:

(a) An official who lawfully act in the capacity of the DO\(^1\).
(b) A category of positions or performer level such as all Heads of Regional Offices or all Deputy Directors-General, etc.
(c) A specific official, post or occupation.

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


“Delegation” means the assignment of authority and responsibility to another person to carry out specific activities. The act of delegation, then, involves assigning powers or duties to another so he or she can act on your behalf.

To delegate means to entrust a task, responsibility, power or duty or power to somebody else – an agent of the original holder of the power.

For purposes of this guide, an PF delegates decision-making authority to a DO so that that person may make decisions, use resources, 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.

The person who delegated the work remains accountable for the outcome of the delegated work.

“Department” means a national department, a national government component, the Office of a Premier, a provincial department or a provincial government component.

“Employee or Officer” means a person contemplated in section 8 of the PSA but excludes a person (special advisor) appointed in terms of section 12A of that Act.

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\(^1\) See section 10(2) and 10(6) of the Interpretation Act, 1957 as amended
“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.

“Head of Department” means the incumbent of a post mentioned in Column 2 of Schedule 1, 2 or 3 of the Public Service Act, 1994.

“Principal Functionary” 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.
Chapter One: Introduction

Background

1. This document provides principles to guide the development delegations in terms of existing legislation and in particular public administration and financial delegations. The concepts and principles set out in the document generally apply to delegation authorised in terms of any legislation, the PSA, PFMA and MFMA.

2. The delegation principles were developed in response to government’s programme of action that the Department of Public Service and Administration, the National Treasury and the Department of Cooperative Governance -
   2.1 Conduct a review of human resource management and financial delegations in terms of the PSA, PFMA and MFMA; and
   2.2 Develop a principles guide and templates for effective financial, human resource and administrative delegations.

3. Once a government has been established its policy-making organs formulate policy, which is mainly the task of the highest ranking political officials in government – Cabinet Ministers at national level members of the Executive Council at provincial level, and members of the Municipal Council at local government level.

4. Legislative organs give effect to this 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 under a constitutional duty "loyally execute the lawful policies of the government of the day"\(^\text{2}\).

5. The vast range of responsibilities borne by the modern state, especially in the developing world, 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).

6. An administrative act is defined as acts that implement or give effect to a policy, a piece of legislation or an adjudicative decision. This is the operational side of the state; since policies, laws and judgements 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 are increasingly being...

\(^2\) Section 197(1) of the Constitution
given power 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. The truth is that 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.

7. Delegation is one of the most difficult skills to maintain or master because it is a developmental process for both PF and DO. 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.

International Trends

8. The decentralisation of human resource and financial management functions and delegations of authority within the public service forms part of global trends within public administration that had gained impetus since the middle of the 1980’s. This was the consequence of a growing consensus, both within developing and developed countries, that it was not only undesirable for the state to aim to control all aspects of economic and social and economic life, but also that highly centralised systems for public management led to bureaucracies that were excessively regulatory, did not deliver services efficiently, and were often unresponsive to the needs of the populace. In addition, the globalisation of the world economy meant that countries faced more economic competition in areas that were previously thought to be domestic concerns. The wave of democratic governments that replaced previously authoritarian regimes in African, Latin American and Eastern European states were exposed to increased demands for accountability by their citizenry as populations became more informed about the duties of government.

9. Different types of public service reforms had been undertaken in various countries since the end of the 1980’s, which pointed towards a broad trend of decentralising, or devolving, human resource and financial management functions to lower levels of government. Broadly speaking, it is possible to identify the following objectives in the public service reforms that were initiated:

9.1 Decentralisation and devolution of authority within government;

9.2 Clarifying the boundaries between policy-making and administrative functions in government;

9.3 Increased efficiency through increased autonomy in financial and human resource matters for managers;

9.4 Enhanced service quality through the delegation of powers closer to citizens; and

9.5 Improved accountability and reduced opportunities for corruption.

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10. Decentralisation refers to a set of strategies that seek to delegate political and managerial powers and duties from national level to the lowest possible sub-national level (such as regional and local government structures), capable of dealing with the associate costs and service obligations. This means that services can be delivered by government structures more familiar with local conditions, the targeting of the neediest groups in society becomes easier, and the legitimacy of government structures is enhanced and wider popular participation and citizen involvement in government is easier to accomplish.

11. In practice however, the increase in responsibilities depends on the viability and expertise of the regional or local government system and on the capacity of these institutions to deliver on their mandates. In many countries, central governments also put monitoring systems in place to provide information on the implementation of the policies for which regional and local governments are responsible.

12. Decentralisation was usually accompanied by a broader unbundling of managerial authority. Traditional government bureaucracies had been characterised by a high level of central control and direction, with a clear set of rules leaving little discretion to ministries and agencies. In many countries, a civil service commission, or an equivalent body exercised direct control of the management of the public service, including issues such as appointments and promotion of personnel, job analysis, performance-based personnel systems, hearing appeals and determining remuneration and benefits.

13. Decentralising programmes saw that responsibility for financial, human resource and related administrative resources were usually delegated to line managers, which included the delegation of responsibility for managing their staff. More emphasis was placed on achieving results, and the accountability of managers was strengthened. Managers could only be held accountable for results over which they had control. If control over their staff was held elsewhere, it would be unreasonable to hold managers fully accountable. Managers also needed more autonomy if they were to react to local circumstances and if organisations were to function within local labour markets. The extent to which authority was delegated varied between countries. In some instances day-to-day responsibilities were delegated. In others, a wider range of terms and conditions were delegated, so that line managers could also appoint and dismiss personnel on set terms according to local conditions.

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14. Most reform programmes had the effect of demarcating the boundary between political and administrative functions more clearly. Authority was specifically delegated to senior officials in exchange for accountability for performance. Monitoring was instituted through performance agreements and the specification of expectations in contracts for staff at senior levels to provide a basis for a review of their performance and achievements at a higher departmental or ministerial level.

South African Context

Structure of the South African State

15. The current public management and financial delegations regime in South Africa arose out of the comprehensive reorganisation of the state that occurred after the transition to democracy in 1994. While the nature of the apartheid system had been extensively documented elsewhere and need not be discussed at length here, a brief overview should suffice to illustrate the scope of the changes initiated in the democratic era.

16. By 1990, the apartheid state had established a pervasive state bureaucracy which administered the ‘homeland’ areas of Gazankulu, Qwa Qwa, Lebowa, Kwa-Zulu, KaNgwane and KwaNdebele, the ‘independent republics’ of Transkei, Bophuthatswana, Venda and Ciskei. It also contained three own ‘affairs administrations’ (for white, coloured and Indian affairs) and four provincial administrations, in the Cape, Free State, Natal and Transvaal provinces as well as 1 262 municipalities. The predecessor to the modern day Office of the Public Service Commission, the ‘Commission for Administration’, was responsible for regulating the public service and set policy on all organisational, administrative and personnel issues. The public service was highly centralized, as the powers of the Commission attests. It set salaries and standards for all public sector institutions, including local government, parastatals, public corporations and universities. The Commission had disciplinary authority, was responsible for pensions, leave, promotions, and evaluated staff qualifications and requirements. It was also responsible for the grading of posts, the setting of wages and salaries, the recognition of staff associations and regulations of conditions of work.

17. 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 and is the final decision-maker on a defined range of functions and is accountable for its decisions.

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18. In respect of the legislative powers of the National Assembly, the Constitution provides for a hierarchical structure of government for South Africa. This conception recognizes a hierarchy of interests, with national interests being of overriding importance, with provincial interests being of overriding importance within a particular province, and with local interests being of primary importance within the locality. The spheres of government may be perceived as interlocking, but each also has certain autonomy in the performance of its functions. The concept does imply theoretical parity between each sphere in the design and delivery of development, although in reality it does not detract from the natural hierarchy mentioned above. The natural hierarchy continues to apply in three ways -
   (a) Each sphere is no less responsible for ensuring that a lower sphere is able to fulfil its constitutional task;
   (b) The hierarchy of delivery continues in which national policy is made by national government, provincial policy is made at provincial level and delivery at municipal level; and
   (c) Each sphere is entrusted with specific functions that do overlap, although they should not be exploited or encroached upon.  

Administrative Decentralisation

19. The post 1994 system for managing the public service represented a comprehensive change from a system that was highly centralised and managed by the Commission for Administration to one where human resource functions had been extensively delegated to EAs.

20. Administratively, the Constitution provides for a public service in the national and provincial spheres. This was brought about by the Public Service Act, 1994 (which created new national departments and provinces and came into effect on 1 July 1994). The South African public service was reorganized to comprise, in its current shape, 44 national departments, nine offices of the Premiers, seven national government components, nine provinces with 101 departments, and 283 municipalities. The nature and manner in which the state discharges its functions is interwoven in the intergovernmental relations system described in the Constitution.

21. The President has the powers to appoint and manage the career incidents of Directors-General at national level. These have been delegated to the Deputy President and national Ministers. Premiers in turn, have the power to appoint and manage career incidents of provincial HoDs. These have been delegated, in most instances, to provincial Members of the Executive Council to mirror the national arrangement.

22. In 1996, the policy-formulation and decision-making functions of the Public Service Commission were unbundled. The responsibility for public service reform was assigned to the Ministry of Public Service and Administration, and a newly created Department of Public Service and Administration established. The new Public Service Commission, like similar bodies in the Commonwealth, has a research, monitoring and watchdog role over the public service in terms of efficiency, effectiveness, values and ethics. Therefore, the

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post 1994 system for managing the public service represented a comprehensive change from a system that was highly centralised and managed by the Commission for Administration to one where human resource functions had been extensively delegated to EA’s.

23. The Public Service Act, 1994 made provision for the unbundling of a host of HR functions to EAs who could in turn delegate these to HoDs. These included amongst others, the organisation and staff issues, the appointment and transfer of members of staff and the obligations, rights and privileges of employees. This was augmented in 1999, when the Public Service Regulations (PSR) were introduced and which did away with much of the detailed rules and regulations contained in the former Staff Code, giving departments the flexibility to develop their own human resource management policies within a framework of national norms and standards. Furthermore, powers relating to organisational and staffing matters in departments were conferred on EAs.

24. A critical initiative aimed at strengthening human resource management in the public service is the repositioning of human resource management, initiated in 2005. The repositioning suggests that departments should critically review their human resource management components to ensure that they are able to manage not only the personnel administration function but are able to strategically assist the department to reach its service delivery goals through effective human resource planning, recruitment and retention practices.

25. A number of capacity assessments that were conducted by government between 2005 and 2007, suggested that delegation regimes were not in a desirable state. It was found that delegation documents were often in place, but not implemented. Staffing (structures, numbers and grading) across offices, regions or provinces were not consistent in relation to workloads. Moreover, a study by the Public Service Commission in 2007 and a review of the state of HR delegations from EAs to HODs both recommended that a standard format for delegations in the public service be developed.

26. 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 and citizen-centred and accountable relationship and to provide 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 constitutions provides the framework within which the public administration is governed.

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12 Department of Public Service and Administration, 2008, ‘Transformation and Capacity of the Public Service’, Paper commissioned by the Presidency for the 15 Year Review, p 44
13 Department of Public Service and Administration, 2008, ‘Transformation and Capacity of the Public Service’, Paper commissioned by the Presidency for the 15 Year Review, p 32
Purpose and Advantages of Delegation

27. Delegation is defined as the assignment of authority and responsibility to another person to carry out specific activities. The act of delegation, then, involves assigning powers or duties to another so he or she can act on your behalf. To delegate means to entrust a task, responsibility, power or duty to somebody else.

28. For purposes of this guide, a PF delegates decision-making authority to a DO so that that person may make decisions, use resources, 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.

29. In practice, delegation has three primary purposes, as a means of -

29.1 Achieving results through the actions of others;
29.2 Developing the competencies and commitment of officials; and
29.3 Freeing up one’s time to devote attention to highly important tasks.

30. The efficient performance of work calls for the realistic delegation of authority extending to the lowest possible level in the hierarchy of the department. To provide services and accomplish related tasks officials need a large degree of delegation, especially where regional and local offices are involved. For this reason, the delegation of authority is closely intertwined with the extent of centralisation or decentralisation of departmental activities. The advantages that accrue from a delegations regime that mirrors decentralisation of administrative functions can include, amongst others -

30.1 The workload of EAs and HODs and other managers are reduced, enabling them to devote more attention to strategic issues;
30.2 The speed, quality and flexibility of decision-making improves because the decisions are closer to the work at hand and time does not have to be allocated for referring the matter to a higher authority;
30.3 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 being prepared to assume greater responsibilities;
30.4 Employees are encouraged to exercise judgement and accept responsibility, which adds to their self confidence and willingness to take initiative;
30.5 Capacity development of support services practitioners and line officials; and
30.6 Building institutional memory at various levels in the department.
Delegation Challenges

31. It should be noted that there are several personnel and managerial factors that can inhibit delegation and needs to be negotiated. These can include:

31.1 The higher the degree of accountability that legislation demands from the EA and HoD may lead to a tendency in the public service to centralise its activities and reluctance to delegate to officials lower in the departmental hierarchy.

31.2 EAs or HODs fear that insufficient capacity exists amongst subordinates to carry out the tasks to be delegated.

31.3 EAs or HODs fear that their performance evaluation could suffer if officials fail to carry out the tasks delegated to them.

32. 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 can include:

32.1 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.

32.2 When senior managers fail to delegate a power or duty there is a strong likelihood that the responsibility for its execution will eventually be passed to others in the organisation, which creates additional staff, reporting, performance evaluation and communication burdens.

32.3 In the absence of clear delegation documentation, or with poorly developed job descriptions, staff members at all levels of the organisational hierarchy may not have a good understanding of what is expected of them.

33. Effective use of delegation will not necessarily come easily, because it calls for changes in mindset, assumptions and behaviours that can be difficult for new and veteran delegators alike14.

33.1 Especially in professional organizations, 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 can be unpleasant especially when the delegator finds the work to be a source of motivation and satisfaction.

33.2 When new, a manager may not feel he or she knows the work well enough to delegate it. However, this tendency to avoid delegation can become a habit over time, trapping the manager in a deliberate cycle of under-delegation.

14 Centre for Applied Research @2001, CFAR, RES7:020102, p2
33.3 Delegators generally delegate work and expect outputs that mesh with their expectations, yet they do not communicate their expectations clearly or provide key information and guidance.

33.4 Sometimes, managers who wish to be liked by employees avoid delegating duties in order not to “impose” on subordinates.

33.5 Managers can become envious of a subordinate's ability instead of giving credit where it is due and working to develop a deputy or potential replacement.

33.6 Managers are sometimes more comfortable “doing” than “managing,” which are fundamentally different jobs and very different frames through which to think about work.

33.7 Managers sometimes allow employees to keep the responsibility for “next steps” with the manager instead of with the employee. Thus, the employee waits for the manager to get back to him rather than the manager waiting on the employee.
Chapter Two: 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, which govern 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. In support of 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’, the Constitution sets down the qualification that the particular delegation must be consistent with the enabling legislation.

3. Section 7(2) of the Constitution places 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. Over and above this general constitutional duty, the specific powers and duties of administrators are laid down in the empowering statute or empowering provision. 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. Thus, on the one hand, exists the need for efficient administration and good governance, and on the other exist 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 to citizens and duties to administrators. These include the right to access 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:

15 Section 8(1) of the Constitution
“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 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 of judicial review of administrative action

7. The grounds of 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;
Chapter Two: Legal Framework

7.6  The action itself –
(a) contravenes a law or is not authorised by the empowering provision; or
(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 so exercised the power or performed the function; or

7.9  The action is otherwise unconstitutional, or unlawful.

Prerogative of the Executive and Administrative Powers

8.  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 the public or state administration is the implementation of policy. PAJA applies to the actions of administrators and organs of state who are involved in implementing legislation and implementing policy.

9.  The Cabinet, which is the supreme executive body, does not fall within the ambit of the terms “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 shows that the executive powers of the national and provincial executive and the executive powers of municipal councils 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.

10. 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 as well as 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

11. The executive authority of the Republic is vested in the President.\(^{16}\) The President exercises the executive authority, together with the other members of the Cabinet, by:\(^{17}\)

11.1 Implementing national legislation except where the Constitution or an Act of Parliament provides otherwise;

11.2 Developing and implementing national policy;

11.3 Co-ordinating the functions of state departments and administrations;

11.4 Preparing and initiating legislation; and

11.5 Performing any other executive function provided for in the Constitution or in national legislation.

11.6 A similar provision exist with regard to the Premier and executive councils of the provinces\(^{18}\)

12. The afore-mentioned section provides that the Cabinet had to be consulted in the exercise and performance by the President of some of his/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 whole of the Cabinet with regard to every decision he/she takes.

13. Section 238 of the Constitution provides that an executive organ of state\(^{19}\) in any sphere of government may -

13.1 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

13.2 exercise any power or perform any function for any other executive organ of state on an agency or delegation basis.

14. It is submitted that Cabinet could delegate its consultation function or constitutional powers, in terms of the afore-mentioned section, with reference to any particular power or function of the President, to any Minister or Ministers.

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\(^{16}\) Section 85(1) of the Constitution
\(^{17}\) Section 85(2) of the Constitution
\(^{18}\) Section 125 of the Constitution
\(^{19}\) "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
Assignment of functions, powers and duties

15. An exception to the general principle that powers have to be exercised by those to whom they are delegated, in terms of enabling legislation, are where powers are lawfully assigned or transferred to another authority. The assignment or transfer of functions is not delegation.

16. 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 do not “free up” the delegator in the same way as assigning work to another.

17. The Constitution 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.

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

19. A Cabinet member may furthermore assign powers or functions that are exercised or performed by him/her in terms of an Act of Parliament to a member of the executive council of a province or to a municipal council. An assignment can take place only if an agreement to this effect exists between the relevant Cabinet member and the executive council member or municipal council. 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.

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20 Section 97 of the Constitution
21 Section 137 of the Constitution
22 Section 98 of the Constitution
23 Section 138 of the Constitution
24 Section 99 of the Constitution
25 Section 126 of the Constitution
Original and Delegated powers

20. “Original legislation” is legislation enacted by Parliament; a provincial legislature or a, municipal council 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.

21. “Delegated power” is power which has been transferred from an original power to another body or administrator. A statute may authorise the delegation of a function (administrative functions encompass both powers and duties) by the relevant Minister to officials of the department. For example the Immigration Act empowers the Minister of Home Affairs to delegate certain powers conferred on him/her in terms of that Act to any officer or category of officers in the Public Service.

22. The exercise of any administrative power, duty or function, which includes the exercise of a discretionary power and the delegation of powers and duties, is inevitably linked to the taking of a decision. The presence of a discretionary power is determined from the language of the statute and is often reflected by the use words “shall” or “may”. The word “shall” is peremptory which generally means 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 indicate a mandatory provision.

23. It is a principle of our law that where a power is entrusted to a person to exercise his own individual judgment and discretion, it is not competent for him or her to delegate such power unless he/she has been empowered to do so expressly 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”\(^\text{26}\).

24. 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. Table 1 below provides examples of instruments that specify empowering provisions in terms of which delegated powers are exercised. The Table 1 highlights the following instruments:

24.1 Delegation instruments which expressly authorises the delegation of powers and duties in terms of legislation, namely;

(a) Original Legislation; and

(b) Subordinate legislation.

24.2 Non delegation instruments in terms of which legislation or subordinate legislation does not expressly authorises the delegation of powers and duties, but support and elucidate the above-mentioned delegation instruments.

\(^{26}\) Section 6(2)(a)(ii)
Table One: Example of Delegation and non-delegation Instruments

<table>
<thead>
<tr>
<th>Original Legislation</th>
<th>Delegation Instruments</th>
</tr>
</thead>
<tbody>
<tr>
<td>(expressly authorises the delegation of powers and duties)</td>
<td></td>
</tr>
<tr>
<td>The Constitution</td>
<td></td>
</tr>
<tr>
<td>Legislation</td>
<td></td>
</tr>
</tbody>
</table>

| Subordinate Legislation                  |                        |
| (legislation expressly authorises the delegation of powers and duties) |                        |
| Regulations                             |                        |
| Proclamations                           |                        |
| Determinations and Instructions         |                        |
| International Agreements                |                        |
| Collective Agreements with organised labour |                    |
| Contracts                               |                        |
| Policy                                  |                        |

| Non Delegation Instruments              |                        |
| (legislation or subordinate legislation does not expressly authorises the delegation of powers and duties) |                        |
| Policy                                  |                        |
| White Paper                             |                        |
| Green Paper                             |                        |
| Strategic Framework                     |                        |
| Guide                                   |                        |
| Handbook                                |                        |
| Process Map                             |                        |
| Standard Operating Procedure            |                        |

25. The legislatures should also expressly stipulate the exact power to be delegated and the DO to whom it may be delegated. In addition, the PF must provide guidelines as to how the delegated powers are to be exercised.
Chapter Two: Legal Framework

PAJA Compliance Checklist

26. 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 within departments. To ensure that departments comply it is prudent that all submissions where a decision needs to be taken, must include:

26.1 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”.

26.2 A PAJA checklist 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 is set out in Appendix A.

Public Service Act

27. Section 42A of the PSA establishes the following principles, namely:

27.1 An executive authority may27-
   (a) delegate to the head of a department any power conferred on the executive authority by this Act; or
   (b) authorise that head to perform any duty imposed on the executive authority by this Act.

27.2 The head of a department may28-
   (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 subsection (4); or
   (b) authorise that employee to perform any duty-
      (i) imposed on that head by this Act; or
      (ii) that that head is authorised to perform in terms of subsection (4).

27.3 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 appropriate29.

27 Section 42A(4)
28 Section 42A(5)
29 Section 42A(6)
Chapter Two: Legal Framework

27.4 Any delegation of a power or authorisation to perform a duty in terms of this section -
   (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.

28. The Public Service Amendment Act, Act 30 of 2007, did away with the previous practice whereby an executive authority may delegate to other employees other than the head of department. The PSA now establishes the delegation principle whereby an executive authority delegates only to the HoD who can further delegate to officials in the department.

29. The Public Service Regulations is being amended to prescribe that a HoD shall keep a register of all delegations and a register of delegation decisions in the format directed by the Minister and submit a copy of the register of delegations to the Minister of Public Service and Administration annually by 30 April.

Public Finance Management Act
Information to be provided by National Treasury

Municipal Finance Management Act
Information to be provided by Department of Cooperative Government
Chapter Three: Key Elements for Effective Delegations

1. This Chapter highlights various elements to enhance effective and efficient delegations.

Conceptual Elements

2. The purpose behind the delegation of administrative power is to facilitate 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. Delegations also give practical expression to the existing regulatory frameworks and provide the basis for the coherent implementation of departments’ service offerings as close as possible to the point of service delivery. Delegations should also be seen as an instrument for officials to obtain decision-making experience, to improve their competencies and develop new skills.

3. The following elements explain key concepts of delegation philosophy as the foundation for effective delegations:

   3.1 Authority to exercise discretion is delegated to the DO to make decisions, to use and allocate the resources efficiently, 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. Authority is the right to give commands, orders and get the things done. The top level management has greatest authority. Authority always flows from top to bottom and explains how a superior gets work done from his subordinate by clearly setting conditions or explaining what is expected of him/her and how he/she should go about it. Authority should be accompanied with an equal amount of responsibility. Delegating the authority to someone else doesn't imply escaping from accountability. Accountability still rest with the PF having the utmost authority.

   3.2 Responsibility - is the duty of the DO to complete the task assigned to him. A person who is given the responsibility should ensure that he/she accomplishes the tasks assigned to him/her. Responsibility without adequate authority leads to discontent and dissatisfaction for the person with delegated authority. Responsibility flows from bottom to top. The lower level and middle level management holds more responsibility. The person held responsible for exercising a power or duty is answerable for it.

   3.3 Accountability - means being answerable for the end result and giving explanations for any variance in the actual performance from the expectations or conditions set. Accountability can not be delegated. The top level management is most accountable. Accountability can not be escaped as it arises from responsibility. The PF, in whom a power or duty is vested, remains accountable for the outcome of the delegated power or duty.
3.4 **Guidelines and control over delegated authority.** In view of the accountability requirements, the PF must retain a measure of control over the exercise of discretionary power or provide the DO with adequate conditions and guidelines for the exercise of the power. The purpose of control measures or guidelines is to: impose limits and constraints on the discretionary power to act; clarify the performance of delegated authority, and confirm formalities to be observed. A common example in the public service 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.

**Delegation Registers**

4. Any DO to whom a power has been delegated or who has been authorized to perform a duty must maintain a Register of Delegation Decisions to record their discretionary powers to act. An example of such a register, which must as a minimum provide for a chronological number, date, reference to delegated power and synopsis of decision taken, is set out in Appendix B. The advantages for officials to keep a delegation decision register are -

4.1 Building capacity and competency;
4.2 Assessing performance;
4.3 Auditing of delegated powers and actions by the Auditor-General;
4.4 Discourage and identify maladministration and unethical conduct;
4.5 Promote transparency in exercising delegated powers and duties, and
4.6 Monitoring by the PF.

5. To ensure that delegation formats are standardised across the public service, every HoD must keep a register of all delegations in the format directed by:

5.1 The Minister for Public Service and Administration in the case of public administration (the format of the Delegation Register is set out Appendix F);
6.2 The Minister of Finance in the case of financial administration.

6. Every HoD must submit a copy of the Delegation Registers mentioned in paragraph 5 to the afore-mentioned Ministers annually by 30 April or when amended. The DPSA and the National Treasury will issue completed delegation register templates, which departments may use to customise their own public and financial administration delegation registers.

**Public Service Functionality Framework**

7. The exercising of delegated powers and duties are performed within a particular public service functionality framework. Figure 1 outlines the functionality framework which represents an input/output service delivery value-chain in which officials operate and which influence their work.
Chapter Three: Key Elements for Effective Delegations

8. The functionality framework identifies both the external and internal organisational environments, and based on the mandates of a particular department converts inputs to outputs in order to achieve particular outcomes that have a positive impact on society and citizens. Feedback through monitoring and evaluation is an important element of the framework.

9. This input/output service delivery value-chain should be understood by all officials and must be taken into consideration when delegations are decomposed between the different performer levels in head-, regional-, and district offices.

Figure One: Functionality framework of the input/output service delivery value-chain in the public sector

Responsibility Charting

10. The efficient performance of work requires the division of work and responsibilities to enable realistic delegation of authority extending to the lowest possible level in the hierarchy of the department. To provide services and accomplish related tasks necessary for it, officials must be empowered through delegation, especially where regional and local offices are involved. For this reason, the delegation of authority is closely intertwined with the extent of centralisation or decentralisation of departmental activities.
11. The division of work for the purpose of decomposing delegations between performer levels\textsuperscript{30} in head-, regional-, and district offices should take cognisance of the functional requirements at each performer level as set out in the Leadership Development Management Strategic Framework for the Senior Management Service, published by the DPSA. The functional requirements for six performer levels are set out in Appendix C.

12. The division of work for the purpose of decomposing delegations, but based on areas of responsibility and predominant key performance indicators (KPI) between performer levels is indicated in Figure 2.

Figure Two: Responsibility and KPIs per Performer Level

13. Having considered the functional requirements at each performer (Appendix C) and areas of responsibility including predominant KPIs between the different performer levels, responsibility charting imposes a discipline that helps managers to identify major tasks and responsibilities, and subsequent decisions that need to be performed.

14. More importantly, effective delegation depends on clear communication of both the task’s substance and the nature of the delegation relationship. Responsibility charting establishes a shared language to describe these relationships accurately and quickly. Responsibility charting is a powerful tool, because it enables clear communication and is a way to make explicit for the manager and employees who has responsibility for which aspects of a task.

\textsuperscript{30} Performer levels are, the levels of management that describes the job of a manager in terms of complexity, responsibility, time application, value attached to the job, skills required and difficulty dimensions
Chapter Three: Key Elements for Effective Delegations

15. Responsibility charting also rapidly reveals all-too-common discrepancies in role perceptions among managers and staff. Differences in these perceptions can contribute to several adverse outcomes, including lack of task accomplishment, emergencies that the manager must take care of and the manager becoming overwhelmed with responsibilities that could have been delegated more efficiently. Using a tool like responsibility charting will facilitate getting work done, rigorous attention to developing employees and managing the manager's time more effectively.

16. Set out in Appendix D is a responsibility charting technique to plot the division of work for the purpose of decomposing delegations between performer levels in head-, regional- and district offices. The technique should plot discretionary powers 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.

Clarification of Roles and Responsibilities

Executive Authorities and Heads of Departments

17. The Organisation for Economic Co-operation and Development (OECD) with 33 member states defines itself as a forum of countries committed to democracy and the market economy, providing a setting to compare policy experiences, seek answers to common problems, identify good practices, and co-ordinate domestic and international policies. South Africa participates in the work of the OECD through the Africa Partnership Forum as a key forum at a senior political level for discussing and monitoring policy issues, strategies and priorities in support of Africa's development. The OECD agenda also seeks to strengthen co-operation with Brazil, China, India, Indonesia and South Africa through a process of enhanced engagement.

18. All OECD governments share the ideal of a professional public service which gives objective advice, delivers services fairly to all citizens, and provides for the continuity of the administrative system. But equally it is fundamental in each country that public servants are responsive to the political will of the government of the day. How to balance the needs of professional continuity and political responsiveness is a key issue of public governance. There is wide diversity among OECD countries in how the political administrative interface is managed. In some countries –

18.1 Each change of government is accompanied by new appointments of senior officials across the public service;

18.2 In others, the turnover is relatively low;

18.3 In some countries party membership of civil servants is well known and important in the senior appointment process;

18.4 In others civil servants may not or, as a matter of professionalism, do not align themselves with a political party;

18.5 In some countries efforts are made to create a distinctive apolitical culture within the civil service; and

18.6 in others the leadership groupings embrace both politicians and public servants.
19. The political administrative interface is determined in the context of the constitutional arrangements and culture of each society. In all 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 non partisan professionalism. What is evident is that some of the changes in employment practices in OECD countries impact on the political/administrative interface. For example, in countries with the Westminster tradition, on the one hand more functions are being put under statutory protection (e.g. economic regulators) while on the other hand there is more use of personal political staff by ministers and an increased tendency to make new senior appointments with an incoming government.

20. The Constitutional context provides that the President exercises the executive authority, together with the other members of the Cabinet, by:

20.1 implementing national legislation except where the Constitution or an Act of Parliament provides otherwise;
20.2 developing and implementing national policy;
20.3 co-ordinating the functions of state departments and administrations;
20.4 preparing and initiating legislation; and
20.5 performing any other executive function provided for in the Constitution or in national legislation.

**Developing and Implementing Policy**

21. 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” When policy is adopted without clear legislative authority, it has been called ‘unauthorised administrative legislation’ The Constitution now specifically authorizes 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 to do so in a statute.

22. Officials of an administrative body are bound to observe policy, whether the policy is authorized by specific legislation or not. Not only is the administration bound to respect policy, but it has a duty to adhere to it. The 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.

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31 Section 85(2) of the Constitution
32 A Rabie & D van Zyl Smit “The nature and Effect of Legislative and Quasi-legislative Administrative Acts” (continued) (1989) 4 SAPL 74
33 A Rabie & D van Zyl Smit “The nature and Effect of Legislative and Quasi-legislative Administrative Acts” (continued) (1989) 4 SAPL 74
23. There are limits to the power of the executive to make policy, namely:

23.1 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 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.

23.2 The executive cannot ‘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 over matters which are unrelated to his or her powers and functions.

23.3 Finally, the validity of policy which is not authorized by specific legislation is recognized only in so far as it does not infringe on the rights and privileges of subjects outside the administrative body required to implement the policy. This means that policy cannot constitute a self-generating source of authority for the infringement of rights and interests.

24. The exploratory memorandum to the PFMA also clarifies the division of responsibilities between the EA and HoD -

24.1 the EA is responsible for policy matters and outcomes including seeking legislature approval and adoption of the department's budget vote; and

24.2 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 that the HoD been given powers and responsibilities relating to the management and implementation of policy and outputs.

25. An administrative act is defined as acts that implements or give effect to a policy, a piece of legislation or an adjudicative decision. This is the operational side of the state; since policies, laws and judgements are not self-executing, they have to be put into operation by the public authorities responsible for administering them. 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.

Prepaving, initiating and implementing legislation

26. Members of the executive draft or amend legislation and introduce legislation to the legislators.

34 A Rabie & D van Zyl Smit “The nature and Effect of Legislative and Quasi-legislative Administrative Acts” (continued) (1989) 4 SAPL 75
36 Paragraph 4.1 Explanatory memorandum on the Act
27. The responsibility to implement 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 that the HoD been given powers and responsibilities relating to the management and implementation of legislation.

Co-ordinating Departments

28. Executive authorities are overall responsible for the management of state departments. They are accountable to the legislatures for everything that happens in their departments and may not claim ignorance; they must explain the actions of their officials to the legislators and take responsibility.37

29. The PFMA places the responsibility for financial matters in the hands of the HoD, as the accounting officer. The duties of the accounting officer 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, This Act and corresponding regulations also provide details on reporting and accountability requirements from the HOD to the Executing Authority and the relevant Treasury.

30. Section 7(3)(b) of the PSA provides that a 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.

Appointments

31. The PFMA makes HoDs financially accountable but the PSA makes executive authorities responsible for key human resource matters such as the organisation and appointments. This was aimed at dislodging HODs not committed to transformation but has since created tensions between some HODs and their political principals.

32. Under the current arrangement, the President appoints HODs in consultation with Cabinet, but the appointment process, career management and performance management is delegated to executing authorities. The Minister of Public Service and Administration oversees the appointment process on behalf of Cabinet, while the Public Service Commission (PSC) manages the evaluation process of Heads of Department at National and Provincial Levels on behalf of executing authorities. In the case of Provinces, Directors General are appointed by the President, but HoDs are appointed by Premiers in consultation with Members of the Executive Committees of Provinces.

37 Ian Currie and Johan de Waal The new Constitution & Administrative Law (2001) 250
Chapter Three: Key Elements for Effective Delegations

Code of Conduct

32. There are currently no formal guidelines for conducting relations between the political leadership and officials at implementation level. This critical relationship is often compromised by personalities, affecting policy implementation and impacting on the morale of an entire department. There is a need to develop guidelines and best practice in managing the relationship between political and administrative leadership as well as establishing a clearly defined Head of the Public Service to manage the career incidents of HODs at all levels in the system.

33. 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 conflict of interests and the framework for reporting and investigating breaches. As with the Constitution, the Act does not provide further guidance on the authority and role of executive authorities.

34. The Public Service Code of Conduct set out in the Public Service Regulations provide guidance on the relationship between employees and the legislatures and the executive. Heads of department, by virtue of their responsibility in terms of section 7(3)(b) of the PSA are, inter alia, under a duty to ensure that their conduct and that of their employees conform to the basic values and principles governing public administration and the norms and standards prescribed by the PSA. Heads of department should also ensure that their staff members are acquainted with these measures and that they accept and abide by them. The Code of Conduct specifies that regarding the relationship with the legislature and the executive an employee -

34.1 Is faithful to the Republic and honours the Constitution and abides thereby in the execution of his or her daily tasks;

34.2 Puts the public interest first in the execution of his or her duties;

34.3 Loyally 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;

34.4 Strives to be familiar with and abides by all statutory and other instructions applicable to his or her conduct and duties; and

34.5 Co-operates with public institutions established under legislation and the Constitution in promoting the public interest.

35. 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. It remains for a redeployment or a re-determination of the contract to be agreed upon. To avoid a breakdown of trust, however, there must be frequent and effective communication between the EA and the HoD. The EA must give clear strategic direction for the department, while the HoD must provide regular feedback on implementation challenges. EAs and HoDs must meet regularly and should meet formally each quarter to assess progress.
36. Set out in Appendix E is a summary of the roles and responsibilities of EAs, HoDs and Advisors 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.

Special Advisors

37. The PSA provides that special advisers may be appointed to –
   37.1 advise an EA on the exercise or performance of the EA’s powers and duties;
   37.2 advise an EA on the development of policy that will promote the department's objectives; or
   37.3 perform such other tasks as may be appropriate in respect of the exercise or performance of the EA’s powers and duties.

38. 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/her inputs to the EA and refrain from interfering in the administration and management of the department, which in law is the function and responsibility of the Director-General. A special advisor cannot hold any delegation in terms of legislation.

Line and Support Staff Managers

39. 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 sub-programmes, which is in turn derived from the department's strategic plan and legislative mandate (See also Figure 2). Line authority originates from the EA and HoD, where powers that managers require are originally vested, and these powers must be delegated to the appropriate level.

40. A line manager is appointed in a department to manage a unit (e.g., Directorate, Chief Directorate and 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.

41. 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 meet their responsibilities, managers must organise and ensure that their units have the resources necessary to perform well and that these are properly utilised. One of the most critical and demanding responsibilities for a manager is the management of human resources.

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36 Section 12A(1)
39 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
42. 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 meet their responsibilities with regards to public administration, financial management and human resource management. In fulfilling these responsibilities, they must act within the limits of the powers delegated, and adhere to the relevant prescripts, norms and standards.

43. The line manager should be in 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 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 demanded by legislation and relevant regulations.

44. **The support staff management functionary** is responsible for the promotion of sound administration of finance, procurement, facilities and human resource management and must advice and assistance to line managers in this regard. Such officials should be mindful that they act within an extensive legal and regulatory framework that is not divorced from the hierarchy of management. The functionary should not interfere with the management of employees, unless 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 the PFMA, PSA, relevant regulations, collective agreements and other prescripts.

45. This mandate suggests that the support staff functionary must be knowledgeable and skilled in order to fulfil the specialised support role to the line manager. The responsibilities of, for example, human resource management officials include, but are not limited to the following:

45.1 To develop and establish policies, norms and standards and practices for recruitment, employment and utilisation of employees within the parameters of the legislative environment;

45.2 To provide inputs into personnel planning;

45.3 To render assistance into the evaluation and control of human resource management;

45.4 To render advice and specialised services to the manager in respect of recruitment, employment and utilisation of resources;

45.5 To ensure that the prescripts that guide recruitment, employment and utilisation of employees are applied correctly;

45.6 To ensure that norms and standards are adhered to;

45.7 To administer service benefits for employees who qualify for it on a non-personal basis;
45.8 To manage, maintain and utilise a computerised employee and salary administration system; and

45.9 Maintain proper records.

46. The functional relationship between the line manager and the human resource management functionary can be illustrated by way of the following example: When an employee applies for leave it’s the manager’s decision to approve or disapprove the leave application as well as to decide on the duration thereof. This is because the manager is responsible for the effective functioning of the unit and therefore has to manage the employee’s leave in such a manner that it does not detract from the unit’s performance and outputs. The human resource management functionary is responsible for the leave being granted and utilised in terms of the applicable prescripts and to capture the leave for recording purposes. It is not the task of the human resource management functionary to approve leave.

**Delegation Process**

47. The delegation process is essential to managers in the public service to assist them to discharge the responsibilities delegated to them as well as for the growth and well-being of employees. Delegation does also not take place automatically; it is initiated by the EA and HoD and implemented by the employee to whom the power is delegated. Furthermore, conditions change rapidly in the public service environment, so it is very important that the EA, HoD and managers review the changing requirements with their subordinates. In the case of newly appointed employees, a greater amount of time will be required to ensure that they understand their jobs and what will be required of them.

48. The steps recommended by which the delegation process can be carried out is described below:

48.1 Decide on the powers and duties to be delegated. Duties of a repetitive nature, or minor chores, can easily be delegated. It is important to delegate more challenging tasks in order to develop employees and to create self-confidence.

48.2 Decide who should perform the powers and duties. The time available, competencies and skills required, and experience of the subordinate employee should be taken into account.

48.3 Provide sufficient resources for carrying out the powers, and duties delegated. These include human, financial, physical (such as computers, telephones, office furniture and so on) and information resources. Without sufficient resources employees will not be able to execute the powers and duties that have been delegated to them.

48.4 Delegate the powers and duties. The manager delegating the powers and duties should brief the officials responsible and provide all relevant information on the task to be performed, including the results expected. Open channels of communication should exist between the manager and the employee on all matters related to the delegation.
48.5 The manager should be prepared to step in, if necessary. Problems could be experienced with tasks at hand if resources are insufficient, or if the functionary lacks sufficient experience or the appropriate skills. Managers should be prepared to assist where necessary and the functionary should be made aware it is possible to request assistance.

48.6 Establish a feedback system. This is vital because the outcome of the delegation process is information on the performance of the task. This serves as a measure to evaluate its execution and as input for when delegations are reviewed and others considered.

49. The delegation process is illustrated in the figure below:

**Figure Three: Delegation Process**

![Delegation Process Diagram]

**Guidelines to Overcome Delegation Obstacles**

50. 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\(^{40}\). 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 or unethical conduct, or a breach of the public service Code of Conduct.

\(^{40}\) Delegations Series, Commonwealth of Australia 2002, ISBN 0 642 54355 0
Chapter Three: Key Elements for Effective Delegations

51. Principal functionaries should consider contingencies to minimise the risk associated with the delegation of a power or duty. Strategies to minimise risk may include ensuring that –

51.1 Delegations are within the scope permitted by the legislative framework;
51.2 Both the PF and DO are familiar with their roles and responsibilities;
51.3 DOs possess the necessary skills and competencies to exercise the delegated power and duties;
51.4 Effective performance management and feedback mechanisms are in place;
51.5 Appropriate internal audit and controls are in place;
51.6 Regular review and monitoring is undertaken;
51.7 DOs receive relevant training;
51.8 Delegations are regularly reviewed for appropriateness and accuracy, particularly following internal reorganising or restructuring and in the case of the transfer of functions between departments; and
51.9 Clear directions or instructions are given that restrict the exercise of the delegated power or duty.

52. The following contingency factors provide some guidance to determine the degree to which authority is delegated:

52.1 The size of the organisation. Managers in large organisations resort to increased delegation. Because top managers in larger organisations have only so much time and can obtain only so much information, they become increasingly dependent on the decision making of lower-level managers.
52.2 The importance of the duty or decision. The more important a duty or decision, the more important it is to provide clear guidance regarding the circumstances in which or the conditions under which and the factors to be taken account of, in the exercising discretion.
52.3 Task complexity. The more complex the task, the more difficult it is for top management to possess current and sufficient technical information to make effective decisions. Complex tasks require greater expertise, and decisions about them should be delegated to the individuals who possess the necessary knowledge.
52.4 Organisational culture. If management has confidence and trust in subordinates, the culture will support a greater degree of delegation. When mistakes are made, the employee should be assisted in finding solutions to problems.
52.5 Qualities of subordinates. Delegation requires subordinates with the skills, abilities, and motivation to accept decision-making authority and act on it.
52.5 Improved communication between managers and employees removes obstacles to delegation. Close communication will reveal the strengths and weaknesses of employees, enabling managers to know which powers and duties can be delegated in the knowledge that that the necessary tasks will be successfully executed. Training employees will assist them in understanding their responsibilities, authority and accountability.
Management Style

53. Effective delegation is also dependant on the management style applied by delegators as well as their approach to use delegations to develop staff and create opportunities for the growth of staff\textsuperscript{41}.

53.1 Rather than a single management style regarding delegation, managers and other delegators need a continuum of styles that are indexed to their colleagues’ particular developmental paths. These styles range along a sequence from direction on one side of the scale, to coaching, supporting and, finally, to an emphasis on delegation at the other side.

53.2 Good managers and delegators should carefully use delegation to develop employees’ competence and commitment, attributes upon which effective “empowerment” depends. The goal is to help employees proceed from dependence to independence by expanding their comfort zones and potential.

53.3 The delegator must be assertive about managing his or her own time while remaining mindful of employees’ needs and requirements. Employees need different management styles.

54. A situational management model is presented in Figure 4 below. This model describes a progression of situational management styles (directing, coaching, supporting and delegating) that are necessary as employees (or any delegated official) develop competence and commitment. The situational management model\textsuperscript{42} argued that two ingredients determine a person’s performance or achievement: competence and commitment. Competence refers to knowledge and skills, while commitment is a combination of confidence in a person’s ability to get the work done and motivation to do it well. Different employees have different levels of these ingredients. An individual employee’s mix of competence and commitment should determine the appropriate management style and level of delegation to use with them as explained in the following sequence.

54.1 Directing. For example, a new employee is likely to be highly enthusiastic (have high commitment) but probably has a lot of ground to cover to gain competence in the work. That employee will need primarily directing.

54.2 Coaching. Little by little, the employee climbs the learning curve. Thus, competence is somewhat higher, but the process of learning is difficult. His or her confidence might be vulnerable, and motivation might suffer under work-related stress. Thus, he or she will still need direction to increase competence. In addition, he or she will need support, praise and involvement in decision-making to increase commitment and to get through the difficult time.

54.3 Supporting. Still later, once the employee achieves a relatively high level of competence, he or she will still need basic support including praise and advice.

\textsuperscript{41} Centre for Applied Research @2001, CFAR, RES7:020102, p3

54.4 Delegating. Ultimately, high competence and commitment in the employee are married together, and the manager can enjoy delegating — turning over responsibility for day-to-day decision making.

**Figure Four: Situational Management Model**

Develop employees through delegation

55. In addition to the situational leadership model, the following considerations may help to develop employees.

55.1 Reinforce a DO’s role. When appointing a DO, clearly state his or her role to team members and external stakeholders. This builds a support network for the DO task while creating line-of-sight among the team to help the official to accept ownership and accountability.

55.2 Provide support. During virtually all stages of performing work, a DO will need positive support. Sources of support include provision of information, time, resources and encouragement. The PF should also be open to the possibility of an official needing extra help in some circumstances.

55.3 Give feedback. One of the most powerful ways to promote a person’s growth is to provide timely feedback, both formally and informally, as a part of two-way communication. Both formal and informal feedback provides an opportunity to recognize and analyse achievements, discuss problems and identify solutions.

55.4 Praise and reward. It is important to give credit where credit is due, both one-on-one and publicly. The manager should identify faults and errors. However, praise and reward play more important parts in motivating future commitment and performance.

55.5 Analyse difficulties. If things do not go according to plan, the PF and DO should analyse and learn from difficulties that are encountered. Problems can come from many sources, including unclear instructions, insufficient skills/experience, a changing environment or incongruent organisational procedures. Whatever the difficulties they are to be learned from with an eye to future progress.

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55.6 Develop your own delegation skills. The PF should avoid being complacent about his or her own performance as a delegator. Delegators should proactively seek training, coaching and feedback from a variety of sources.

For Delegators: Solutions to Delegation Challenges

56. Delegation challenges exist for delegators in organizational systems that lack tolerance for mistakes, tend to be overly critical of decisions, allow confusion about responsibility and authority and create such a sense of urgency that people feel there is no time to explain. Accordingly, this document concludes with solutions to some of the more pervasive of these challenges as set out in Table Two:

Table Two: For Delegators - Solutions to Delegation Challenges

<table>
<thead>
<tr>
<th>Causes</th>
<th>Solutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insecure in the role of delegator</td>
<td>Learn to recognize. Accept risk as inherent. Allow mistakes. Learn from them</td>
</tr>
<tr>
<td>Lack of confidence in your staff</td>
<td>Train, develop, trust your staff</td>
</tr>
<tr>
<td>Become overly involved in detail and routine</td>
<td>Do less of what you can delegate; avoid getting mired in detail</td>
</tr>
<tr>
<td>Give unclear, incomplete or confused instructions</td>
<td>Ensure clear, unambiguous instructions. Ask subordinates to restate to ensure understanding. Apply responsibility charting</td>
</tr>
<tr>
<td>Envious of subordinate’s ability</td>
<td>Give full credit where it is due. Develop your own replacement</td>
</tr>
<tr>
<td>Believe that you alone can do the job better and faster</td>
<td>Lower standards to what is “acceptable.” Open your mind to alternative views of what “acceptable” should be. Avoid perfectionism</td>
</tr>
<tr>
<td>More comfortable “doing” than “managing”</td>
<td>Recognize that practice leads to success which leads to comfort. Manage rather than perform tasks</td>
</tr>
<tr>
<td>Expect everyone to “know all the details”</td>
<td>Recognize that this should not be expected of someone who is handling delegated responsibility</td>
</tr>
<tr>
<td>Lack of appropriate controls</td>
<td>Establish plans. Create schedules with details. Provide progress reports. Monitor deadlines.</td>
</tr>
<tr>
<td>Over control</td>
<td>Emphasize goal-accomplishment methods and procedures. Measure results, not just activity.</td>
</tr>
<tr>
<td>Fail to follow-up</td>
<td>Always check progress to ensure enough time to take corrective action</td>
</tr>
</tbody>
</table>

44 Centre for Applied Research @2001, CFAR, RES7:020102, p10,11
Chapter Four: Delegation Principles

1. All delegations must be exercised with due regard to the Constitution, the PFMA and Financial Regulations, the PSA, and Public Service Regulations, the relevant statutory and financial requirements, applicable collective agreements and departmental policy.

2. To delegate his or her powers lawfully, an PF must be authorized to do so by the empowering provision.

3. Any delegation of a power must be authorized by an empowering provision in legislation or subordinate legislation (see Table 1: Delegation and Non-delegation Instruments).

4. Following the Constitutional principle that everyone has the right to administrative action that is lawful, reasonable and procedurally fair:
   4.1. Every submission where a decision needs to be taken must include 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 to take a lawful, reasonable and procedurally fair administrative action have been complied with and no grounds exist for the review of the action”.
   4.2. 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 and information manual is set out in Appendix A.

5. The PF who was granted powers in terms of the empowering legislation has to exercise those powers him or herself. The authority may in other words not delegate those powers to any other body or person unless authorised to do so expressly by the authorising statute or subordinate legislation (see Table 1: Delegation and Non-delegation Instruments).

6. Where the express power is granted to delegate powers to a certain body or person the following principles usually apply:
   6.1. The body or person who is (validly) delegated such power may not further delegate such power (unless this is expressly authorised) by the statute.
   6.2. The powers may not be delegated to anyone else.
   6.3. The fact of a valid delegation must dearly and satisfactorily be established through documentary proof (where powers are so delegated).
   6.4. The PF must (where the delegation takes place in the same administrative hierarchy) retain a measure of control over the DO.
   6.5. The PF must provide guidelines as to how the powers are to be exercised.
   6.6. Other powers, other than those expressly mentioned, may not be delegated.
Chapter Four: Delegation Principles

7. The PF must for the purpose of granting discretionary powers in terms of a delegation, provide clear guidance regarding the circumstances in which or the conditions under which and the factors to be taken account of, in the exercising of such discretionary powers.

8. Powers and duties may only be delegated to DOs whom have been appointed in terms of the PSA and who occupy positions on the approved establishment of the department.

9. Any DO must keep a register of delegation decisions in the prescribed format (see Appendix B). The register must as a minimum provide for a number (chronologic), date, reference to delegated power and synopsis of decision taken.

10. Any HoD must keep a register of all delegations in the format directed by -
   10.1 The Minister for Public Service and Administration in the case of public administration (the format of the Delegation Register is set out Appendix F);
   10.2 The Minister of Finance in the case of financial administration; and
   10.3 Submit a copy of the registers to the afore-mentioned Ministers annually by 30 April or when amended.

11. An PF must ensure that the DO has the required capacity (skills and competency, administrative, financial and human resources) to enable the effective discharge of delegated powers and duties.

12. Any delegation of a power or authorisation to perform a duty:
   12.1 Must be in writing;
   12.2 Does not prevent the PF who made the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and
   12.3 May at any time be withdrawn in writing by the PF.

13. If an employee acts in a higher post on the approved establishment of a department, as directed in writing in terms of section 32 of the PSA, the incumbent of which possess powers and duties by means of delegation, the powers and duties attached to that higher post are delegated to such an employee acting in the higher post.

14. A person on a post level to whom a power or duty is delegated, may only exercise such a power or duty with regard to employees on a lower post level than her/himself in the relevant component. However, if a power or duty is of a transversal nature, it should be exercised in respect of the entire department.
15. Any DO to whom a power has been delegated or who has been authorized to perform a duty that has any financial implication must ensure that he/she -

15.1 Is duly authorised as a budget holder (programme or responsibility manager) to incur expenditure within the prescribed limits in terms of the PFMA and financial regulations; and

15.2 Obtain the approval of the relevant budget holder (programme manager, responsibility manager or chief financial officer) if not authorised to incur expenditure.

16. There is no delegation of powers and duties, and course for review of administrative action if -

16.1 The PF retain control over the exercise of powers by, for example, requiring that it must approve all actions taken by the DO;

16.2 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.

16.3. The DO act on the instruction or dictation of another person or body who was not given the power to take such decision.

16.4. The DO avoid taking the decision by referring it to someone else. This does not preclude consultation on the matter.
Appendix A: PAJA Checklist

Include in the submission a paragraph 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”.

A  There is an empowering provision authorizing the decision.  Yes  No

B  The decision will achieve the objective/purpose of the empowering provision.  Yes  No

C  The person requested to make the decision is authorized to do so by:-  Yes  No
   (a) an empowering provision; or
   (b) a valid written delegation of power.

D  There is compliance with –  Yes  No
   (a) all the procedures in the empowering provision and relevant prescripts and time frames; or
   (b) the empowering provision allows for a deviation of procedure or time frames and such deviation is in this circumstance fair and justified.

E  All conditions contained in the empowering provision have been met.  Yes  No

F  The information considered is relevant and correct.  Yes  No

G  The decision is justifiable.  Yes  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.  Yes  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.  Yes  No

J  The submission contains all the information mentioned in paragraph A to I  Yes  No

__________________________________________
Delegated Official
DATE:
Appendix B: Register of Delegation Decisions

Delegated Officials must maintain a Register of Delegation Decisions.

<table>
<thead>
<tr>
<th>Name of Delegated Official:..............................</th>
<th>Persal/Persol No:..............................</th>
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</thead>
<tbody>
<tr>
<td>DATE</td>
<td>FILE NUMBER</td>
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</table>
## Appendix C: Functional Requirements Per Performer Level

### Performer Level: Assistant Director - Managing Self

**Competency Indicators:** Planning/organising/delegating/controlling

**Levels of Complexity:** A combination of Pure Operational-A focus on single separate/isolated elements in a highly structured environment.

<table>
<thead>
<tr>
<th>Skills</th>
<th>Time Application</th>
<th>Work Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concrete, rational thinking, novice or inexperience people needing more direction</td>
<td>Short-to medium time frames; concrete and tangible information is available, clear commitments are necessary and immediate results</td>
<td>Short term vision; getting results through knowledge and direction from others</td>
</tr>
</tbody>
</table>

### Performer Level: Deputy Director - Managing Self and Others

**Competency Indicators:** Standard Operation Procedures (SOPS)/Research and Feedback

**Levels of Complexity:** A combination of Operational/Diagnostic: Linear sequence/causality tangible focus

<table>
<thead>
<tr>
<th>Skills</th>
<th>Time Application</th>
<th>Work Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creative, but depends on thorough knowledge and experience</td>
<td>Short-to medium time frames; Information is available, goals are clear and specific.</td>
<td>Short to medium term vision; getting results through application of knowledge and others.</td>
</tr>
</tbody>
</table>

### Performer Level: Director - Managing Self Others and Function

**Competency Indicators:** Guidelines/Practices/ Frameworks/ M &E

**Levels of Complexity:** A combination of Tactical/Diagnostic/Operational-Coordination of structural elements within a system, interactions between tangible elements; e.g. tactical plans, budgets, projects

<table>
<thead>
<tr>
<th>Skills</th>
<th>Time Application</th>
<th>Work Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Setting priorities and planning the direction for the achievement of goals set by top management</td>
<td>Medium-to long time frames; vague, unclear information, clear goals, commitments necessary</td>
<td>Medium to long term vision; getting results through others and other units. Making time available for subordinates.</td>
</tr>
</tbody>
</table>
## Appendix C: Functional Requirements per Performer Level

### Performer Level: Chief Director - Managing Managers and Function

**Competency Indicators:** Performance Standards/Policies

**Levels of Complexity:** A combination of Tactical/Diagnostic/Parallel-Coordination across systems and contexts, process approach, relatively intangible focus; e.g. theoretical models, co-ordination of systems, broad strategy.

<table>
<thead>
<tr>
<th>Skills</th>
<th>Time Application</th>
<th>Work Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Translating the Strategic plan of the department into activities and setting priorities and strategies for the achievement of priorities of the component</td>
<td>Medium-to-long time frames; information not available, clear commitments necessary</td>
<td>Long term vision; getting results through others; success of component report; time with other units, stakeholders</td>
</tr>
</tbody>
</table>

### Performer Level: Deputy Director-General - Managing a Group of Functions

**Competency Indicators:** Strategic Frameworks/M&E

**Levels of Complexity:** A combination of Parallel/Tactical/Strategic: Holistic consideration of whole systems of many strata, theoretical models and coordination of a group of functions.

<table>
<thead>
<tr>
<th>Skills</th>
<th>Time Application</th>
<th>Work Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Setting priorities for achievement of strategic objective in an abstract situation.</td>
<td>Medium-to-long time frames; information sketchy and is not readily available, goals are unclear; situation is changing rapidly, clear direction is not obvious</td>
<td>Long term vision; getting results through others, success of a group of functions that make up the success of the organization/province; results and impact are medium to long term. Time with components</td>
</tr>
</tbody>
</table>

### Performer Level: Director-General - Managing a Department/Enterprise

**Competency Indicators:** Leadership and Management Strategy

**Levels of Complexity:** A combination of Pure Strategic/ Tactical/Parallel: Philosophical trends, vague, emerging patterns, wide contextual implications

<table>
<thead>
<tr>
<th>Skills</th>
<th>Time Application</th>
<th>Work Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual planning, budgets, projects and annual reporting; Direction planning and directing change.</td>
<td>Long-to-medium time frames; information is ambiguous available, higher level commitments necessary.</td>
<td>Long term vision; getting results through others, success of an organization make up success of government or province; results and impact are medium to long term. Getting results through others; visible integrity, success of organisation.</td>
</tr>
</tbody>
</table>
Appendix D: Responsibility Charting Technique

The VARICE Table is a technique 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.

<table>
<thead>
<tr>
<th>OUTPUT / OUTCOME</th>
<th>ACTIVITY / TASK / DECISION / DELIVERABLE / FUNCTION / ROLES AND RESPONSIBILITIES / DISCRETIONARY POWERS / CONTROL MEASURES</th>
<th>ABBREVIATE TITLES OF ROLE PLAYERS IN VALUE CHAIN</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td>Add rows</td>
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</tbody>
</table>

Plot the following VARICE indicators per role player:

Verifier – “I Must Check” - Those who check whether the activity /task / deliverable etc., 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 etc.

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 etc.

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 E: Executive Administrative Interface – Roles and Responsibilities

## Executive Authority

<table>
<thead>
<tr>
<th>Executive Authority</th>
<th>Head of Department</th>
<th>Ministerial Advisor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountable to Parliament</td>
<td>Accountable to Parliament</td>
<td>Accountable to EA</td>
</tr>
<tr>
<td>Accountable to electorate</td>
<td>Accountable to EA in terms of a performance agreement with EA</td>
<td>Accountable to EA in terms of a performance agreement with EA</td>
</tr>
<tr>
<td>Accountable to President in terms of a performance and delivery agreement with the President (or premier of a province in the case of MECs)</td>
<td>Advise EA on the development of policy, and the drafting or amendment of legislation</td>
<td>No powers and duties can be delegated to advisers</td>
</tr>
</tbody>
</table>

- Develop policy
- Draft or amend legislation

## Executive Authority

<table>
<thead>
<tr>
<th>Executive Authority</th>
<th>Head of Department</th>
<th>Ministerial Advisor</th>
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</thead>
</table>
| Enforce policy implementation through instruments which legislation expressly authorizes the executive authority to perform powers and duties, namely:  
  - Proclamations  
  - Regulations  
  - Determinations  
  - Instructions  
  (see Table 1) | Implement policy through instruments which legislation expressly authorizes the HoD to perform powers and duties | Implement policy through instruments which legislation expressly authorizes the executive authority to delegate powers and duties to the HoD (see Table 1) |
<p>| Enable the HoD with powers and responsibilities to manage the implementation of policy | Implement policy through instruments which legislation expressly authorizes the HoD to perform powers and duties | Implement policy through instruments which legislation expressly authorizes the executive authority to delegate powers and duties to the HoD (see Table 1) |
| | Ensure that there are strategic and operational processes in place to deliver on political priorities | Ensure that there are strategic and operational processes in place to deliver on political priorities |
| | Enable the implementation of policies through the sound management of the department | Enable the implementation of policies through the sound management of the department |
| | Ensure the translation government policy initiatives into local policy, strategic and performance plans | Ensure the translation government policy initiatives into local policy, strategic and performance plans |</p>
<table>
<thead>
<tr>
<th>Executive Authority</th>
<th>Head of Department</th>
<th>Ministerial Advisor</th>
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</thead>
<tbody>
<tr>
<td>Responsible for outcomes</td>
<td>Responsible for measurable outputs to achieve outcomes based on efficiency, effectiveness and economy considerations</td>
<td>Advise on exercise or performance of powers and duties of executive authority</td>
</tr>
<tr>
<td>Responsible on a political level to the electorate as well</td>
<td>Responsible for the efficient management and administration of department, including the effective utilization 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)</td>
<td>No relationship of authority over HoD with no interference in the administration and management of the department</td>
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<tr>
<td>Responsible for overall management of department</td>
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<tr>
<td>(The Minister is accountable to the President and Parliament for policy and outcomes)</td>
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<tr>
<td>Appointment of HoD and DDG in consultation with Cabinet</td>
<td>The following powers of executive authorities in terms of section 3(7) of the PSA should be delegated to HoDs (a) the internal organisation of the department, including its organisational structure and establishment, (b) the transfer of functions within that department, (c) human resources planning, (d) the creation and abolition of posts and provision for the employment of persons additional to the fixed establishment; and (e) the recruitment, appointment, performance management, transfer, dismissal and other career incidents of employees of that department, including any other matter which relates to such employees in their individual capacities.</td>
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<tr>
<td>Career incidents of HOD (delegated by the President)</td>
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<tr>
<td>Public Finance</td>
<td>Public Finance</td>
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<tr>
<td>Seeking Parliamentary/legislature approval and adoption of the department’s budget vote</td>
<td>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</td>
<td>Performs powers and duties as accounting officer (section 36 and 38 of the PFMA) - The HoD is responsible for outputs and implementation, and is accountable to Parliament/legislature for the management of the implementation of that budget</td>
</tr>
</tbody>
</table>
## Appendix E: Executive Administrative Interface – Roles and Responsibilities

<table>
<thead>
<tr>
<th>Executive Authority</th>
<th>Head of Department</th>
<th>Ministerial Advisor</th>
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<tbody>
<tr>
<td>Set the policy framework and provide vision</td>
<td>Advise, reshape, implement (accurately, completely and on time)</td>
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<tr>
<td>Give political leadership</td>
<td>Give administrative leadership</td>
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<td>Be seen and heard (public accountability for Ministry’s performance)</td>
<td>Be faceless</td>
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<td>Eyes on the governments’ success</td>
<td>Eyes on the continuity of the state machinery while governments change.</td>
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<td>Politically active</td>
<td>Politically neutral</td>
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<tr>
<td>Obligation to consult with and support his/her colleagues</td>
<td>Obligation to consult with and support the Minister</td>
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<tr>
<td>Securing resources for the Ministry</td>
<td>Proper utilisation of the resources</td>
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<td>Being a change sponsor</td>
<td>Being a change agent</td>
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<tr>
<td>Taking collective responsibility for Cabinet decisions</td>
<td>Taking responsibility for what happens in the department (coordinate, control, manage, communicate)</td>
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Appendix F: Delegation Register

Delegations in terms of the PSA and PSR

<table>
<thead>
<tr>
<th>POWER OR DUTY BEING DELEGATED</th>
<th>DESINATION / POST LEVEL DELEGATED TO PER TIER</th>
<th>DELEGATION CONDITIONS</th>
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</thead>
<tbody>
<tr>
<td>Section</td>
<td>Topic Description</td>
<td>Head Office</td>
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^45 Note:

45.1 Provide clear instructions/guidance regarding the circumstances in which or the conditions under which and the factors to be taken account of, in the exercising of discretion.

45.2 Indicate the roles and responsibilities of role players – Use the attached VARICE indicators