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# **PUBLIC ADMINISTRATION AND MANAGEMENT DELEGATIONS**

## **2018 REPORT ON THE STATE OF COMPLIANCE BY DEPARTMENTS WITH THE DIRECTIVE ON PUBLIC ADMINISTRATION AND MANAGEMENT DELEGATIONS**

Compliance as at 31 March 2018 compared over the three year period 2015, 2016 and 2017

Report approved by the Minister for the Public Service and Administration on 3 July 2018

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## GLOSSARY OF TERMS AND ABBREVIATIONS

“**Department**” means a national department, a national government component, the office of a premier, a provincial department, or a provincial government component listed in Schedules 1, 2 or 3 of the PSA.

“**Directive**” means the Directive on Public Administration and Management Delegations, 2014.

“**DPSA**” means the Department of Public Service and Administration.

“**Executive Authority (EA)**”, 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.

“**HoD**” means **Head of Department**, the incumbent of a post mentioned in column 2 of Schedule 1, 2 or 3 of the PSA.

“**Minister**” means the Minister for the Public Service and Administration.

“**MPAT**” means the Management Performance Assessment Tool of the Department of Planning, Monitoring and Evaluation. The MPAT annually measures stated management performance standards.

“**NDP**” means the National Development Plan, Vision 2030.

“**PAJA**” means the Promotion of Administrative Justice Act, 3 of 2000.

“**PFMA**” means the Public Finance Management Act, 1 of 1999.

“**Principal Functionary**” means any EA or HoD upon whom a power is conferred or a duty is imposed through an empowering provision in terms of the PSA and PSR - the authority with original powers.

“**PSA**” means the Public Service Act, 1994, (Proclamation 103 of 1994) as amended.

“**PSR**” means the Public Service Regulations, 2016.

“**SMS**” means the Senior Management Service established in terms of the PSR.

## 1. INTRODUCTION

- 1.1 The NDP, under the topic "Building a Capable and Developmental State" observed the importance of delegation and proposes that delegation, accountability and oversight be strengthened, as highlighted below -
- (a) promoting greater and more consistent delegations supported by appropriate systems of support and oversight;
  - (b) ensuring that staff at all levels have the authority, competency and support they need to do their jobs;
  - (c) effective delegation enhances staff morale, particularly for middle management who are given the authority to make day-to-day decisions;
  - (d) human-resources practitioners need to provide expert advice to managers to help them do their jobs effectively, and ensure they follow appropriate procedures and get the most out of their staff. These functions are not just about the enforcement of rules, but also about using discretion. Staff need to have sufficient confidence in their own abilities to trust their judgment and delegate where appropriate. This needs to be backed by effective systems for the management of performance, so that oversight can be maintained and weaknesses identified at an early stage;
  - (e) levels of delegations vary from department to department. These inconsistencies creates a degree of instability and makes it harder to establish clear lines of accountability;
  - (f) the lack of effective delegation slows down decision-making and impedes implementation; and
  - (g) accountability is weakened when paperwork has to be signed by multiple people or at multiple stages in the process. Streamlined processes are needed, that maintain checks and balances, while clarifying accountability and making it easier for departments to take decisions.
- 1.2 To advance the aspirations in the NDP in respect of delegations -
- (a) as a first phase, Cabinet approved the Principles of Public Administration and Financial Delegations and minimum levels of delegations on 7 August 2013. These Principles represents Government's policy position on how delegations should be managed and were aimed at promoting a more stable political and administrative interface by providing clear lines of accountability from EA to HoD and from HoD to other performer levels, thereby ensuring greater stability and consistency in the assignment of delegations;

- (b) Even though the delegations by principal functionaries are discretionary in terms of the PSA, the Cabinet at the request of the Forum of South African Directors-General, in 2013, approved minimum levels of delegation for HoDs to approve the appointment and career incidents of employees at levels 13 and 14 (Director/Chief Director). Subsequently, EAs should retain the appointment and career incidents of HoDs and Deputy Directors-General;
  - (c) as the second phase, the Minister issued the Directive on Public Administration and Management Delegations, 2014, on 4 August 2014, to provide HoDs with greater delegations for the things they are responsible for; and
  - (d) the third phase, the Minister issued the Guide on Administrative and Operational Delegations, 2017 on 28 February 2017 to provide principles and a toolkit for exercising discretionary decision-making at an administrative/operational level.
- 1.3 In respect of Governments Programme of Action to implement Outcome 12, the Medium Term Strategic Framework, 2014-2019 has set the target that by 2019, 90% of departments adhere to the Directive.
- 1.4 This report responds to the 2017/2018 Medium Term Strategic Framework stated targets that the DPSA –
- (a) provides implementation support to 10 departments; and
  - (b) submits a report on compliance by departments with the Directive.

## 2. CONTEXT

- 2.1 The act of delegation means the allocation of a power conferred or a duty imposed on a principal functionary, in terms of the PSA and PSR, to an employee (delegated official).
- 2.2 The delegation approach set out in section 42A(4) and (5) of the PSA provides for a discretionary empowering provision namely that, an EA may delegate any power conferred or duty imposed on that EA to the HOD. Subsequently, a HoD may delegate any power conferred or duty imposed on that HoD or those delegated by the EA to that HoD, to any employee. An EA can delegate to the HoD only and not to employees.

- 2.3 The Directive incorporated the delegation approach set out in the PSA by prescribing standardized delegation registers for principal functionaries and ensuring that a HoD is supported by the relevant departmental assurance bodies (e.g., legal services or other unit) to manage and monitor the system of delegations. Populated templates are provided on the DPSA website that departments may customize for their specific context.
- 2.4 It is important for principal functionaries to delegate the exercising of discretionary decision-making for the following reasons:
- (a) Delegated decision-making contributes to the development of a professional public service and improve the quality of management and decisions. A SMS is established in the public service to promote a management culture of excellence based on the values and principles in section 195(1) of the Constitution and the provisions of the PSA and to build managerial, professional and strategic expertise.
  - (b) Without delegations, managers and professionals tend not to accept accountability and responsibility and inhibit themselves from participating in administrative decision-making because they do not see it as constituting part of their jobs. Weak participation, or the lack of it, tends to produce de-motivating effects that is an impediment for developing a more professional public service.
  - (c) Delegation as a legal instrument, promotes the principles of just administrative action, the rule of law, lawfulness, procedural fairness and reasonableness as set out in PAJA.
  - (d) Principal functionaries are freed from the day-to-day administrative decisions in terms of the PSA and PSR and can rather focus on strategic matters and service delivery outcomes.
  - (e) To promote more effective and efficient decision-making processes while keeping lines of accountability within the administration clear and known.
  - (f) To promote high quality in both policy-preparation and in administrative decision-making. Delegation works better where there are pre-established norms and standards, and decisions are rather mechanical because they are rule bound in term of the provisions set out in the PSA, the PSR and directives issues by the Minister.

- (g) Directives issued by the Minister and the new PSR, in particular, provide clear rules, norms and standards for decision-making processes that are mostly administrative of nature and should be delegated, hence reducing the need for administrative decision-making based on political convenience. For example, employees at all levels are appointed on the basis of competency, following strict rules of advertising, employee selection and competency assessment.
- (h) Speeding up administrative decision-making. No administration can work effectively if all or most decision-making powers are wielded by principal functionaries. For a department to work smoothly decision-making powers need to be delegated down the hierarchical ladder.
- (i) Delegation optimizes the use of resources and ensures a closer alignment between public administration and financial management. This synergizes the powers and duties of HoDs in terms of the PSA and their powers and duties as accounting officers in terms of the PFMA.

### **3. SUPPORT PROVIDED TO DEPARTMENTS**

- 3.1 Following the issuing of the Directive in August 2014 the DPSA conducted the following support initiatives:
  - (a) During September to November 2014, capacity building workshops were conducted with all national and provincial departments to create awareness and prepare departments for implementing the Directive.
  - (b) During 2015 workshops were conducted with 33 national and provincial departments to provide hands-on support with the implementation of the Directive.
  - (c) During 2016 workshops were conducted with all national and provincial departments to brief departments on the new 2016 PSR and its impact on delegations. Departments were informed of the need to sign delegations in respect of the 2016 PSR, which replaced 2001 PSR. Through a circular dated 11 July 2016, departments were informed that the 2016 PSR will replace the 2001 RSR with effect from 1 August 2016.
  - (d) During 2017 workshops were conducted with 40 national and provincial departments. A circular was issued on 2 June 2017 to remind HoDs of the minimum compliance standards and to sign delegations for the 2016 PSR.
- 3.2 As a result of continuing engagements with departments since 2014, through written communication, workshops and the MPAT processes, practitioners are well informed of the Directive and the compliance standards.

- 3.3 Despite the above-mentioned support, the rate of compliance is unacceptably low. Support to departments does not have the intended impact unless principal functionaries accept responsibility for complying with the Directive.
- 3.4 In instances where the Offices of Premier coordinated compliance initiatives, those provinces (Gauteng, North West and Western Cape) demonstrated commendable rates of compliance.

#### **4. ASSESSMENT APPROACH AND PERFORMANCE STANDARDS**

##### **Assessment approach and methodology**

- 4.1 The DPSA conducted an assessment of the quality of delegations and compliance by national and provincial departments with the Directive as at 31 March 2018. Compliance is compared over a three year period; 2015, 2016 and 2017.
- 4.2 The 2015 assessment considered both the PSA and the PSR.
- 4.3 The 2016 assessment considered the PSA only, because the 2016 PSR replaced the 2001 PSR, with effect from 1 August 2016 and departments were not able to process and approve PSR, 2016 delegations before the end of the 2016/2017 financial year.
- 4.4 The 2017 assessment which considered both the PSA and the PSR was conducted in terms of the following process:
- (a) Performance standards for delegations are confirmed, approved and communicated to departments by June/July 2017. The performance standards have remained the same over the 3 year period so as to promote consistency.
  - (b) Departments uploaded delegation documents as evidence onto the delegation database by October/November 2017.
  - (c) Pre-moderation of compliance by 158 departments with the Directive against approved performance standards was concluded by November 2017.
  - (d) Moderation of compliance by 158 departments with the Directive was concluded in January 2018. The DPSA participated in the MPAT moderation process.
  - (e) Departments that choose to challenge the outcome of the above-mentioned moderation may provide additional inputs and documented evidence during the MPAT challenge period between February / March 2018.



- (e) Re-moderation concluded by 31 March 2018 with due consideration of additional inputs and evidence provided by departments.

### **Performance standards**

4.5 Compliance with the Directive is assessed and rated against two main outcomes of Not Complying and Complying with due consideration of sub-outcome performance standards as set out below:

#### **4.5.1 Not Complying (Ratings 1, 2):**

- (a) Rating 1 - No evidence of delegations or delegations withdrawn.
- (b) Rating 2 - Not Complying: Delegations are in place in any format but do not comply with the Directive.
- (c) Rating 2+ - Close to Complying: Approved delegations are in the prescribed format but do not comply with the performance standards of a 3 rating. The rating 2+ was discontinued since 2016, because the rating 2 sufficiently describes non-compliance.

#### **4.5.2 Complying (Ratings 3 and 4):**

- (a) Rating 3 - Fully compliant: All four delegation registers are in the prescribed format and duly authorized, registers are updated with the latest legislative amendments with evidence of discretionary delegation of sections 9 and 13 of the PSA by the EA to the HoD (EA can only delegate to HoD) and delegation by the HoD to other performer levels. Minimum levels of delegation have not been implemented.
- (b) Rating 4 - Best Practice: Delegations comply with the performance standards of a 3 rating including delegation in accordance with the Cabinet approved minimum levels of delegation.

## 5. STATE OF COMPLIANCE

### Compliance Overview

- 5.1 A summary of the state of compliance of all national and provincial departments is set out in Appendix A.
- 5.2 A summary that indicates the total rate of compliance for the Public Service as well as the rate of compliance by national and provincial departments, is set out in Table 1.

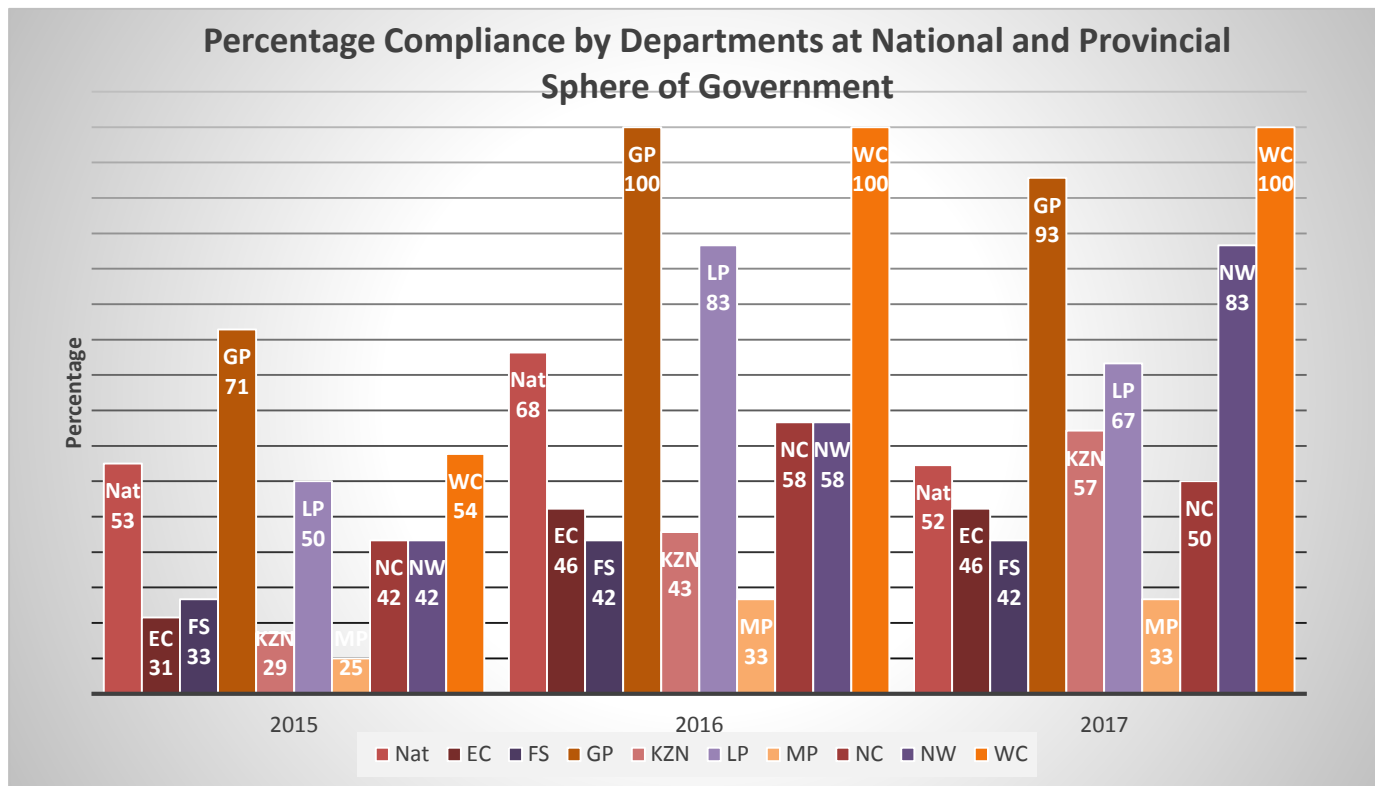
**Table 1: Summary of the rate of compliance for the public service**

Total National and Provincial Departments Complying (Rating 3 and 4)	2015 Percentage Compliance	2016 Percentage Compliance	2017 No. of Departments	2017 Percentage Compliance
<b>Total for the Public Service</b>	<b>45</b>	<b>64</b>	<b>96 of 158</b>	<b>61</b>
Total National Departments	53	68	23 of 44	52
Total Provinces	42	62	73 of 114	64

- 5.3 The summary in Table 1 indicates that:
- (a) 61% of all departments assessed complied with the Directive. This total compliance rate means that 96 out of a total of 158 departments assessed, complied with the Directive.
  - (b) At national level, 52% of national departments assessed complied with the Directive. The percentage compliance decreased with 16 percentage points compared with 68% in 2016.
  - (d) At provincial level, 64% of provincial departments assessed complied with the Directive. The percentage compliance increased with two percentage points compared with 62% in 2016.

5.4 A summary that indicates the percentage compliance by departments at the national and provincial sphere of Government, is set out in Graph 1.

**Graph 1: Percentage Compliance**



5.4 Graph 1 indicates that the following five provinces have achieved a compliance rating (rating 3 and 4) of more than 50% in respect of their provincial departments:

- (a) Western Cape, 100 - all 13 departments,
- (b) Gauteng, 93% - 13 of 14 departments.
- (b) North West, 83% - 10 of 12 departments.
- (c) Limpopo, 67% - 8 of 12 departments.
- (d) Kwa-Zulu Natal, 57% - 8 of 14 departments.

## Compliance by Departments

- 5.5 A detailed analysis of compliance by individual national and provincial departments over the three year period; 2015, 2016 and 2017 are set out in Appendix B.
- 5.6 The analysis, set out in Appendix B, indicates per department, the performance rating over the three year period. The comments for the rating (see columns Re-moderation Comments) is intended to assist departments to effect improvements and enhance compliance.
- 5.7 In the main, the following aspects inhibit compliance (below 3 rating) and should be rectified by principal functionaries:
- (a) Delegation registers are not always updated with the latest amendments to the PSA (e.g., Section 13). In order not to be unduly punitive, departments were not penalized during the 2016 and 2017 assessment if the exact wording of section 13 of the PSA was not incorporated in the delegation registers.
  - (b) Delegation registers do not reference the full text of the provisions in the PSA. Departments sometimes use abbreviations which may lead to incorrect interpretation of prescripts.
  - (c) Delegation registers are outdated and some were last approved before the Directive came into force.
  - (d) The prescribed format and templates are not used.
  - (e) Delegation registers, submitted as evidence, are not approved and signed.
  - (f) Delegation registers do not conform to the delegation approach set out in Section 42A(4) and (5) of the PSA. The delegation approach provides for delegation by the EA to the HOD only and for the HoD to delegate to other performer levels in the department's hierarchy. In some instances EAs continue to delegate to other performer levels, which is impermissible in terms of the PSA.
  - (g) Some departments totally ignored the Directive and others did not provide the required evidence to assess compliance.
  - (h) Some of the principal functionaries have not been in office when the delegation framework and minimum levels of delegation was approved by Cabinet in 2013 and the Directive issued in 2014, hence some principal functionaries may not be aware of government's delegation framework.

- (i) Many departments have not approved delegations for the 2016 PSR, despite public service wide capacity building workshops to explain the impact of the 2016 PSR. The overall compliance rate could have been as high as 73% if those departments who are compliant in respect of the PSA also have approved delegations for the PSR.
- (j) An unacceptable number of departments have a history of non-compliance over the Medium Term Strategic Framework period (2015, 2016 and 2017), and are not accepting responsibility to comply.
- (k) Some principal functionaries are at risk of not complying with the Directive in terms of section 16A of the PSA, which may result in disciplinary action.

### **Cabinet Approved Minimum Levels of Delegation**

- 5.8 The Cabinet approved the minimum levels of delegation in 2013. The minimum levels of delegation entails that an EA approves the macro structure of the department (SMS level) and approves the appointment of members of the SMS at levels 15 and 16, after concurrence by Cabinet. Subsequently, HoDs should be delegated the authority to approve the micro structure of a department (below SMS level) and approve the appointment of members of the SMS at levels 13 and 14. In instances where the HoD is at level 15, the HoD should be delegated the authority to approve the micro structure of a department (below SMS level) and approve the appointment of members of the SMS at level 13.
- 5.9 Despite the Cabinet approved minimum levels of delegation, a principal functionary has the discretionary power to decide to which performer level to delegate to. The National Development Plan observed the importance of delegation and advocates for greater delegation. Principal functionaries should demonstrate commitment and delegate appropriately in respect of the PSA and PSR to lower performer levels.
- 5.10 Of note is that the President has delegated in accordance with the Cabinet approved minimum levels of delegation, thus setting an example and benchmark for the public service to follow. A number of the departments that have delegated in accordance with the minimum levels of delegation are large and complex departments such as the Department of Agriculture, Forestry and Fisheries, the Department of Justice and Constitutional Development and the Department of Trade and Industry. These Departments and The Presidency have set the standard which other departments should aim to attain.

- 5.11 An analysis of Annexure B indicates a decrease in the number of departments that have delegated in accordance with the minimum levels of delegation (rating 4, best practice), as set out below:
- (a) Total for the public service – 21% (33) of departments delegated in accordance with the minimum levels. This percentage, decreased with two percentage points compared with 23% (36) departments in 2016.
  - (b) National departments – 36% (16) of departments delegated in accordance with the minimum levels. This percentage, decreased with 14 percentage points compared with 50% (22) departments in 2016. This trend may signal that some EAs are holding on to power and others do not regard top management as sufficiently competent (required knowledge, skills, behavior and aptitude).
  - (c) Provincial departments – 15% (17) of departments delegated in accordance with the minimum levels. This percentage increased with three percentage points compared with 12% (14) departments in 2016.

## 5. CONCLUSION

- 5.1 Since the issuing of the Directive on 4 August 2014, the DPSA published example delegation registers for departments to use and conducted various capacity building initiatives to assist departments with complying with the Directive.
- 5.2 Principal functionaries who are not complying with the Directive are at risk, in terms of section 16A of the PSA, of failing to comply with the PSA, and may subject themselves to the corrective actions as prescribed.
- 5.3 The rate of compliance is expected to be much higher considering that the current Administration is nearing the end of its term. The Minister will be requested to consider the following interventions to promote compliance.
- (a) Written communication to Premiers and Executive Authorities of non-complying departments to remind principal functionaries of their responsibility in terms of the NDP and the PSA to comply with Directives issued in terms of the PSA.
  - (b) Submitting a non-compliance report to Cabinet and Executive Councils of the Provinces (s16A of the PSA).
  - (c) Informing EAs of the delegation prescripts as part of induction presentations to EAs who assume office in 2019 in the new Administration.

*End of Report prepared by the Branch Governance of the DPSA.*

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