SECTION 1 IS AN INTRODUCTION TO THE GUIDE AND TO ORGANISATIONAL STRUCTURING. THE SECTION CONTAINS THE FOLLOWING:

- CHAPTER 1: INTRODUCING THE GUIDE
- CHAPTER 2: UNDERSTANDING ORGANISATIONAL STRUCTURE AND DESIGN
- CHAPTER 3: THE REGULATORY FRAMEWORK
- CHAPTER 4: ORGANISATIONAL STRUCTURING PROCESS
- CHAPTER 5: TROUBLESHOOTING AND FREQUENTLY ASKED QUESTIONS

CHAPTER 3

THE REGULATORY FRAMEWORK

CHAPTER 3

3. THE REGULATORY FRAMEWORK

3.1 INTRODUCTION

This chapter introduces you to the framework of policies and legislation that should guide you in your organisational structuring work. It:

- Identifies the key legislation and policies that guide organisational structuring in the public sector.
- Outlines the powers of the Executive Authority, the MPSA, the Premier and Accounting Officers in organisational structuring.
- Summarises the relevant sections of the Public Service Act, the Public Service Regulations, the Public Finance Management Act and the Labour Relations Act.
- Gives an overview of the requirements for consultation and submitting a business case.
- Identifies the main elements of the process for authorising organisational structuring.

A basic understanding of the regulatory framework will help you to:

- Plan the organisational structuring process in your department.
- Follow the correct legal and administrative procedures in organisational structuring.
- Avoid unnecessary delays resulting from following incorrect procedures.
- Minimise the risks of non-compliance.

Much of the information in this chapter is a summary or overview. You should therefore:

- Consult the specific legislation and policies for detailed information.
- Seek advice or opinions from the legal section of your organisation.
- Check for updates and amendments to legislation, policies and directives.

The regulatory framework described in this Guide confines itself to national and provincial government departments. If you are working in local government or in a public entity, you should refer to the legislation governing your particular organisation.

3.2 WHAT POLICIES AND LEGISLATION SHOULD YOU KNOW AND WHY?

The table below shows the policies and legislation that are most relevant to organisational structuring. The list is not exhaustive. As part of your planning for an organisational structuring exercise, you should check for all policies and legislation that may be relevant.

What should you know?	Why?
South African Constitution, 1996	• Chapter 10 sets out basic values and principles that underpin the administration of the public service and other organs of state.
Public Service Act, 1994	• It is the principal legislation governing the public service. • It sets the overall framework for the organisation and administration of the public service. • It sets out powers of the Minister for Public Service and Administration (MPSA), Premiers and Executive Authorities (EAs).
Public Service Regulations, 2001	• Outlines the rules for planning, work organisation and reporting in the public service. • Prescribes what the EA may do with regard to organisational structures. • Outlines the rules for transfer of functions between departments.
Public Finance Management Act, 1999 and Treasury Regulations	• Organisational structure must be within current budget and MTEF. • Prescribe rules for establishment of a new entity and transfer of assets and liabilities to another entity.
Labour Relations Act, 1995	• Prescribes how to deal with staff who may be affected by restructuring.
Collective agreements between government as employer and organised labour	• Collective agreements reached in bargaining councils are binding on all parties to the agreement. Some agreements specifically cover restructuring.
White Paper on the Transformation of the Public Service (1995)	• Sets out eight transformation priorities for the public service. All these are relevant to organisational structuring.
White Paper on the Transformation of Service Delivery (Batho Pele) 1997	• Enhancing service delivery is one of the key considerations in organisational structuring.
Legislative mandate and policies of your organisation	• These define the business of your organisation. • They influence how your organisation may be organised or structured.
Minimum capacity requirements for certain functions	• Some functions have minimum capacity requirements specified by the dpsa or other government agencies, for example, Minimum Capacity Requirements for Anti-Corruption. These could influence organisational structuring.

You should also familiarise yourself with other Guides previously issued by the dpsa to assist managers and practitioners. Some of these are listed below:

- Guide on Transformation and Restructuring: Human Resources (June 2006).
- Guidelines on Integrated Human Resource Planning in the Public Service.
- Guide on job descriptions.
- Guide on job evaluation.
- Batho Pele Handbook.

3.3 WHO ARE THE KEY DECISION MAKERS?

In organisational structuring the key decision makers are:

- Minister for Public Service and Administration.
- Premier (in the case of provincial administrations and provincial departments).
- Executive Authority.
- Accounting Officer (Director General or Head of Department).

Below is a summary of their powers in organisational structuring.

Who is involved?	What powers do they have?	Conditions for exercise of power
Minister for Public Service and Administration	• Makes the rules and issues directives on administration of the public service. • May make a determination on the: o Allocation of any function to a department. o Abolition of a function. o Transfer of a function from a department to any other body. o Transfer of a function from any other body to a department. • Advises the President on establishment or abolition of any department or organisational component in the national sphere. • Advises the President on designation (name of department or organisational component or head).	• Must consult relevant EAs on transfer or abolition of functions. • Authority to make determinations on functions is confined to the national sphere.
Premier	• May make a determination on the: o Allocation of any function to a department. o Abolition of a function. o Transfer of a function from a department to any other body. o Transfer of a function from any other body to a department.	• Authority to make determinations on functions is confined to the provincial sphere. • Must approach MPSA for proclamation to amend schedule to Public Service Act. • Must consult MPSA on organisational structure according to MPSA directives.
Executive Authority	• Determines the department's structure. • Defines posts needed to carry out functions. • Grades new jobs. • Conducts human resource planning.	• Organisational structure must be based on strategic plan. • Job grading and human resource planning must be done according to PSR. • Must consult MPSA on organisational structure according to MPSA directives. • Must consult MPSA if organisational structuring involves transfer of functions to another entity.

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Who is involved?	What powers do they have?	Conditions for exercise of power
Accounting Officer	• Carries out organisational structuring functions under delegated authority from Executive Authority. • Must ensure that organisational structure is funded in current budget and MTEF.	• Must consult and seek written consent from National Treasury if intending to establish a new entity. • Obligated to draw up inventory of assets and liabilities when transferring functions to another entity.

3.4 PUBLIC SERVICE ACT AND PUBLIC SERVICE REGULATIONS

Public Service Act, 1994 (as amended)	Public Service Regulations, 2001 (as amended)
• The Public Service Act is the principal legislation governing the public service: o It sets the overall framework for the organisation and administration of the public service. o It regulates conditions of employment, terms of office, discipline, retirement and discharge of officials. o It applies to national departments and provincial administrations. • Chapter III of the Act deals with the organisation of the public service into national departments and provincial administrations. The Act does not however prescribe how departments should be structured. • The Public Service Act gives the MPSA the authority to make regulations and issue directives on matters relating to the public service, including organisa-tional structure.	• Part III of the Public Service Regulations deals with planning, work organisation and reporting requirements of national and provincial departments. • PSR B.2 sets out the following conditions for organisational structuring: o The organisational structure of the department should be based on the department's strategic plan. PSR B.1 sets strategic plan requirements. o The posts necessary to carry out the functions must be defined. These posts will constitute the department's official establishment. o The posts must remain within the current budget and MTEF. This means that posts on the official establishment must be funded. o New jobs must be graded using the job evaluation system referred to in Part IV of the PSR. o Human resource planning must be done in accordance with PSR III D. • PSR B.2 stipulates that the Executive Authority must consult the MPSA prior to making a final determination on the organisational structure. The MPSA specifies the circumstances that require consultation with the MPSA. These are set out in a directive issued by the MPSA and took effect on 1 July 2006. • PSR III H outlines the rules for the transfer of functions between departments: o The principle is that resources (including personnel) must follow the function. o The recipient department accepts accountability for the function from the date of transfer. o The transfer of personnel must meet the requirements of the Labour Relations Act, 1995. o The transfer of funds must meet the requirements of Treasury Regulations paragraph 6.5.

3.5 OTHER RELEVANT LEGISLATION

Labour Relations Act, 1995	• **Organisational structuring is likely to have an impact on employees. It is therefore important that you have some knowledge of the Labour Relations Act (LRA). The LRA:** o **Is the country's primary labour legislation and applies to all organs of state, excluding the National Intelligence Agency, the South African Secret Service and the South African National Defence Force.** o **Section 189 of the LRA deals with the dismissal of employees for reasons relating to the operational requirements of the employer's business. It requires the employer to consult affected employees, the workplace forum or registered trade union.** o **Section 197 of the LRA deals with the transfer of employees from one business to another as a result of reorganisation. All rights and obligations that existed at the time of the transfer remain in force with the new employer.** • **The decision to restructure is the prerogative of the employer. The LRA does however place an obligation on the employer to consult those affected or likely to be affected by the restructuring.** *Note: It is essential that you consult the dpsa Guide on Transformation and Restructuring: Human Resources. You should also consult the Labour Relations specialist or the legal division in your department to ensure that you have interpreted the provisions of the LRA correctly.*
Public Finance Management Act, 1999	• The Public Finance Management Act (PFMA) governs financial management in national and provincial government institutions including public entities. The important points to remember about the PFMA are: o Section 45 places a responsibility on all officials to use financial and other resources effectively, efficiently, economically and in a transparent manner. Take these aspects into account when restructuring. o Expenditure must be authorised before it is incurred. This means that all the necessary approvals must have been obtained before spending funds on the design and implementation of a new or revised organisational structure. o Section 63 (1) requires the Executive Authorities to perform their statutory functions within the limits of their approved budget. This means that the Executive Authority should only make a determination on an organisational structuring if there are sufficient funds in the budget and MTEF. o Section 38 (m) requires the Accounting Officer to consult and obtain written approval from the National Treasury when intending to establish a new entity. • Section 42 spells out the respective responsibilities of Accounting Officers when transferring assets and liabilities between departments (or other institutions) following the reorganisation of functions. The transferring department's Accounting Officer must do the following: o Draw up an inventory of assets and liabilities. o Provide the receiving department or institution with substantiating records. o Provide the receiving department or institution with the personnel records of staff to be transferred. o Both Accounting Officers must sign the inventory when the transfer takes place. o The transferring department's Accounting Officer must file a copy of the signed inventory with the relevant Treasury and the Auditor-General within 14 days of the transfer.

3.6 CONSULTATION AND SUBMISSION REQUIREMENTS

3.6.1 WHY CONSULT?

Consultation is an important and necessary step in any organisational structuring process. It is a process of dialogue that should contribute to making decisions about the organisational structure.

How extensively you consult and the format for the consultation will depend on the nature and extent of the organisational structuring exercise. If the organisational structuring exercise is comprehensive, it is likely that you will need to consult extensively.

There are statutory requirements for consultation in certain types of organisational structuring. You should familiarise yourself with these requirements from the outset. (Refer to the MPSA directive of 24 June 2006 and dpsa Guide on Transformation and Restructuring: Human Resources, June 2006.)

3.6.2 BENEFITS AND CHALLENGES

Consultation is an opportunity to enhance the organisational design process and is not simply a duty to be performed. Consultation has benefits and challenges:

Benefits	**Challenges**
• Opportunity to provide **accurate information** to affected staff, management and stakeholders. • Opportunity to **solicit insights** and ideas from staff, management and stakeholders. • Creates a climate for **building consensus** on organisational structure. • Improves **quality of decisions**. • Generates **ownership** of organisational design process and outcome.	• **Not** always **clear** whom to consult. • Can be **time-consuming**. • Can raise unrealistic expectations from stakeholders. • **Requires skills** in communicating, negotiating and building consensus. • **Requires planning** and resources to be performed effectively.

3.6.3 WHO SHOULD BE CONSULTED?

Whom you consult depends on the nature and extent of the organisational structuring you are undertaking and what you want to achieve with the consultation. The particular circumstances in your organisation, for example decision making processes and structures, will also influence the consultation. The table below provides a guide on whom to consult.

Whom to consult	When to consult	Why
Executive Authority	• Before embarking on an organisational structuring that requires EA's approval. • Consult EA at regular points in the process.	• To obtain initial go-ahead. • To obtain EA's strategic and political perspective. • To secure EA's commitment and support for the process.
Staff	• Always consult those affected or likely to be affected by the organisational structuring. • Other staff who have knowledge or experience of a particular area or service.	• To obtain their views on problems, challenges and opportunities and how to respond to these. • To secure their support for proposed changes.
Managers	• Always consult the manager who is responsible for the unit that is the subject of structuring. • Consult other managers at various phases (e.g. CFO regarding budget).	• To obtain initial go-ahead (if they have delegated authority). • To obtain their strategic and managerial perspective. • To secure their commitment to and support for the process.
Trade unions	• If staff are affected or likely to be affected in terms of sections 189 and 197 of the Labour Relations Act.	• To comply with good labour relations practice and legislation.
Internal and external users of services	• In diagnostic phase of organisational structuring. • If service delivery is likely to be affected.	• To obtain their views on problems, challenges and opportunities and how to respond to these. • To secure their support for proposed changes.
Other government departments	• At various phases if changes are likely to have an impact on the other departments' operations. • If restructure is likely to affect occupational categories or levels that are also used by other departments (e.g. social workers).	• To obtain their views on proposed changes. • To obtain support for proposed changes.
External stakeholders	• In diagnostic phase of a major organisational structuring.	• To obtain their views on problems, challenges and opportunities and how to respond to these. • To secure their support for proposed changes.
MPSA	• If there are changes to the top three tiers of the organisation's structure. • If functions are to be transferred into or out of the organisation. • If intending to establish a new entity.	• To obtain comments on proposed changes. • To obtain approval for transfer of functions and changes to Schedule to Public Service Act. • To obtain approval for new entity and changes to Schedule to Public Service Act.
National Treasury	• If intending to establish a new entity.	• To obtain approval for new entity and changes to Schedule to PFMA.

Helpful tips on consultation	Status
√ Be clear about the objectives of consultation and what you want to achieve.	
√ Identify whom to consult. Where possible, involve all those who will be affected by the outcome or who can contribute to the process.	
√ There is no single "right" method for consultation. Choose the method or mix of methods that best suit the circumstances.	
√ Have a realistic plan for consultation backed up with adequate resources.	
√ Be transparent in your consultations.	
√ Ensure that the information you provide in consultations is timely, clear, accurate and can be understood by participants.	
√ Give feedback to participants about how the information has been used to inform decisions.	
√ Treat everybody's views with respect.	
√ Ensure that statutory consultations comply with legislation.	

3.6.4 CONSULTATION WITH THE MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION

When making changes to the organisational structure, the Executive Authority is required to consult the MPSA. The MPSA decides which changes require consultation and the format for the consultation. This decision is contained in a directive that the MPSA issues. You should check to ensure that you have the latest directive.

The current directive which came into effect on 1 July 2006 requires that the Executive Authority consult the MPSA where changes are made to the top three tiers of a departmental organisational structure.

	National sphere	Provincial sphere
Tier number one	• Structure and post establishment in the Ministry. • Director General. • Office of the Director General.	• Premiers. • MECs. • Offices of Premiers. • Offices of MECs. • Offices of Heads of Department.
Tier number two	• Deputy Director General/Branch head level.	• Branch head level (mostly Chief Directors), some at DDG level.
Tier number three	• Functions performed directly below tier number two.	• Functions performed directly below tier number two.

The directive specifies the minimum information that the Executive Authority must forward to the MPSA in the consultation process. You should refer to the directive for the information.

You may wish to use the checklist below as a guide to ensure the completeness of the submission to the MPSA.

MPSA submission requirements	Status
√ Covering letter signed by the Executive Authority supporting the proposed structure.	
√ Organisational structure in format required by dpsa (with each page initialled by the Executive Authority or delegated official).	
√ Electronic version of organisational structure (with version control indicated).	
√ Business case for the structure or restructure.	
√ If the Executive Authority has delegated the organisational structuring function, then the submission should include a copy of the written delegation.	

3.6.5 BUSINESS CASE GUIDELINES

The business case is a structured way of developing and presenting the 'case' for the organisational structure intervention. Developing a business case for organisational structuring is good practice irrespective of the scale of the organisational structuring. A good business case presents all the necessary information clearly so that decision makers can evaluate and approve, or decline, the proposal.

The business case for organisational structuring is the outcome of the processes described in Section 2 of the Guide. The table provides guidance on the main elements of a business case. The level of detail in the business case will depend on the size and complexity of the intervention.

You should also consult the relevant directives when submitting a business case to the MPSA as part of the formal consultation. If you are proposing to establish a public entity, you should consult the Guidelines for Public Entities published by the National Treasury.

Headings	Considerations
Executive summary	• Precise and brief description of problem or opportunity to be addressed; what the proposed structure will achieve; impact on service delivery, operations and staff; and financial implications.
Background	• What problem, need or opportunity has to be addressed. • Describe the current situation in department or unit. • Include useful statistical information relating to service delivery, service users, performance, inputs (staff, infrastructure and budgets), processes.
The proposed structure	• Objectives: what will the proposed structure achieve. • Describe the proposed organisational architecture and the number and types of positions required. • Indicate the governance structures required to achieve the objectives. • Strategic alignment: how the proposed structure would align with the strategic plan and mandate. • Behaviour alignment: how the proposed structure would guide required employee behaviour and support the required culture. • Methodologies used in arriving at proposed structure.

Headings	Considerations
Alternatives to restructuring	• List viable alternatives considered. • Why they were eliminated.
Impact of the new structure	• Impact on service delivery: increase or decrease in service delivery points, extension of service hours, changes in service norms and standards. • Impact on staff: increase or reduction of staff, internal reorganisation, training. • Impact on infrastructure: information and communication technology, office space, furniture. • Impact on external stakeholders: suppliers, service delivery partners in government and civil society.
Benefits (financial and non-financial)	• Cost of new or revised structure current year and MTEF. • Availability of funding. • Benefits of proposed structure as regards leadership, service delivery, citizen convenience, employee optimisation, supplier management, social impact, process efficiency and effectiveness, infrastructure optimisation (financial and non-financial). • Detailed cost-benefit analysis is required for establishing a new entity.
Risk management	• Identify and assess probability of and impact of key risks on proposed structure and implementation. • Propose strategies to mitigate risks.
Implementation plan	• High-level implementation plan with major phases, deliverables and target dates for completion. • Roll-out or phased implementation. • Change management strategy. • Roles and responsibilities of those involved in implementation. • Costs to carry out implementation plan.
Consultation process	• Who was consulted. • What consultation processes were used. • What was outcome of consultations.
Monitoring and evaluation	• What indicators will be used to monitor and evaluate the structure. • How will changes be monitored and evaluated. • Who will be responsible for monitoring and evaluation.
Review and sign-off	• Describe who and how the business case analysis was reviewed and signed off, for example, HR manager, line manager, EXCO, Director General and Executive Authority.

3.7 PROCESS FOR AUTHORISATION

3.7.1 WHO CAN AUTHORISE ORGANISATIONAL STRUCTURING?

Authorisation, or approval, for organisational structuring takes place at various stages of the organisational structuring process. You may require authorisation at different points in the process as shown below:

- When initiating organisational structuring.
- On reaching certain milestones in organisational structuring process.
- Upon submitting proposed structure to Executive Authority.
- When submitting proposed structure to MPSA.
- When final structure is ready for implementation.
- When new structure is implemented.

The table below gives an indication of who can authorise organisational structuring. There will no doubt be variations within departments depending on the type of structuring.

Phase	Type of structuring	Authorisation
Initiating organisational structuring exercise	• Major structuring. • New entity. • Transfer of function between departments.	• Executive Authority.
	• Minor structuring.	• Director General, Head of Department if delegated authority by EA.
Critical milestones during diagnostic and design phases	• Any organisational structuring.	• Director General, Head of Department or executive Committee of department.
Submitting proposed structure and business case to EA	• Any organisational structuring.	• Director General, Head of Department.
Submitting proposed structure and business case to MPSA	• Changes to top three tiers of departmental structure.	• Executive Authority.
Submitting proposed structure and business case to dpsa and National Treasury	• Establishing new public entity or agency.	• Executive Authority.
Final determination of organisational structure and staff establishment	• Any organisational structuring.	• Executive Authority.
Implementation of new structure	• Any organisational structuring.	• Executive Authority.

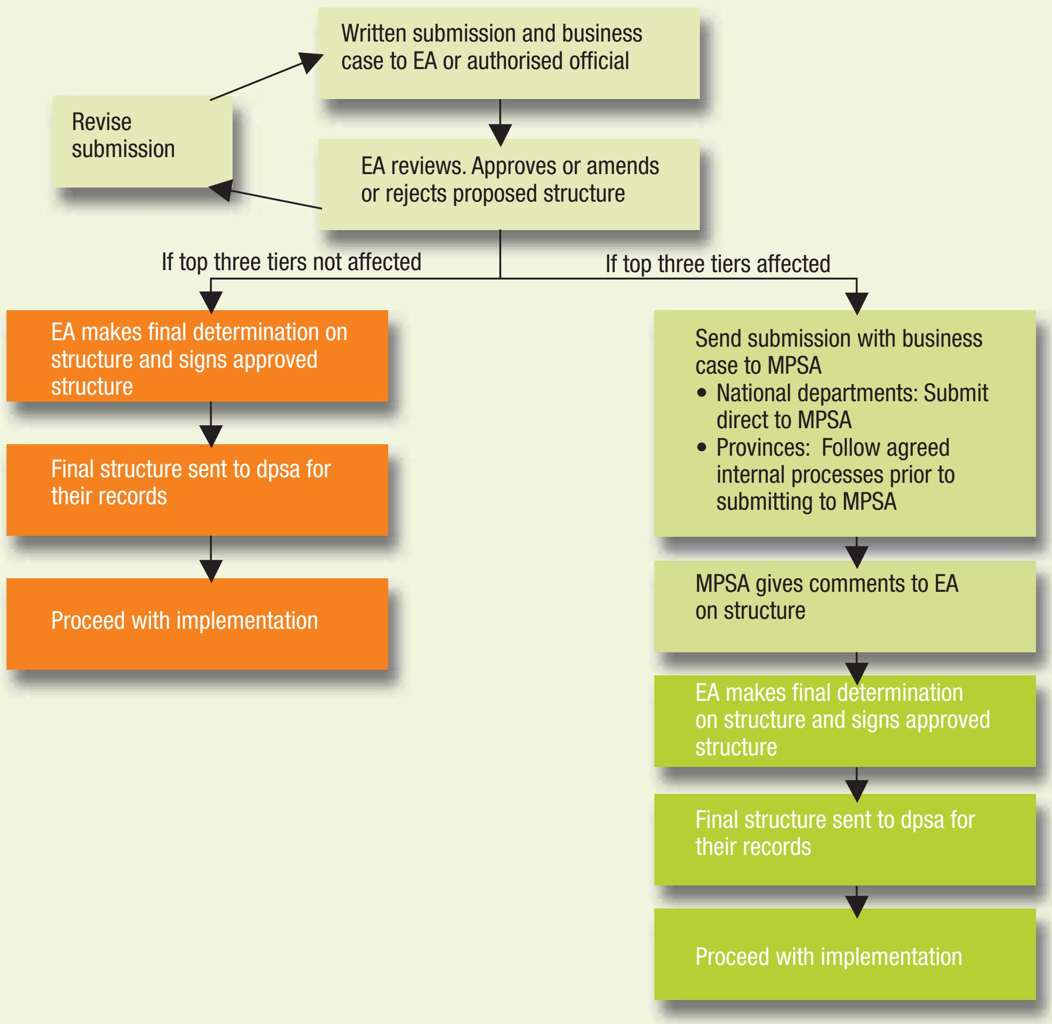
Some aspects of organisational structuring may also be delegated in some departments and provincial administrations. It is important that your organisation has a clear set of delegations for organisational structuring.

Helpful tips on delegation	Status
√ Delegation aims to introduce efficiencies. Authority for organisational structuring should be delegated to as low a level as possible in the organisation.	
√ Delegation should be supported by information and resources to enable delegates to carry out their delegated functions.	
√ Delegation for organisational structuring must be in writing and kept on a delegated authority file.	
√ The delegations should be reviewed at least once a year.	
√ Delegation does not remove the accountability of the Executive Authority and Accounting Officer. They need to put in place the necessary controls and systems and monitor how officials are exercising their delegated authority.	

3.7.2 HOW DOES THE APPROVAL PROCESS WORK?

The approval or sign-off process will vary from department to department, depending on internal delegations and arrangements. There will also be variation amongst the provincial administrations. Some provinces have decentralised decision making on organisational structures from the Office of the Premier to departments while other provinces require departments to seek the approval of the Premier and/or the Provincial Cabinet for their organisational structures. The following diagram shows a generic approval process. It is important that **you** know what the approval process is in your department and/or province.

Generic approval process



3.8 CONSEQUENCES OF NON-COMPLIANCE

If you do not comply with the regulatory framework, you may be placing the credibility and effectiveness of the organisational structuring at risk.

Specific consequences of non-compliance include:

Non-compliance	Consequences
Approving and implementing structure without sufficient funding	• Unauthorised expenditure in breach of the PFMA may result in appearance before SCOPA.
Failure to consult MPSA on proposed structure in terms of MPSA directive	• Changes to structure are null and void. Officials may be in their posts "illegally" and this has consequences for the validity of their decisions and expenditure incurred by them.
Failure to submit documents with minimum information required by MPSA	• Delays in processing submission in the dpsa.
Failure to obtain determination from EA for proposed structure	• Changes to structure are null and void. Officials may be in their posts "illegally" and this has consequences for the validity of their decisions and expenditure incurred by them.
Failure to consult trade unions or workplace forums when required by the LRA	• Breach of the LRA and could lead to industrial dispute.
Failure to consult staff especially those directly affected by organisational structuring	• Makes difficult process of organisational structuring more difficult, staff do not trust management and may undermine processes.