



CHAPTER 6

CHAPTER 6

ETHICS AND CONDUCT

1. INTRODUCTION

- 1.1 The purpose of this chapter is to contribute to the development of high ethical standards in the Senior Management Service. It should not be viewed as a set of rules. Rather it serves to illustrate the values and principles that should underpin a manager's behaviour in the work environment. As such, this Chapter is advisory in nature except insofar as reference is made to specific statutory provisions that are binding on public servants generally or members of the Senior Management Service specifically. Managers should familiarize themselves with the provisions as failure to do so might have legal implications for Government.
- 1.2 It is important to note that there are rules and guidelines that govern some aspects of senior managers' behaviour, but in some situations senior managers must apply general principles and values based on the nature of public service work. An awareness and understanding of how the application of the rules, guidelines, principles and values come together is essential if senior managers are to make ethical judgements and defensible decisions.
- 1.3 Protocols on conduct and ethics cannot cover every possible situation. If a senior manager is unsure of the appropriate action to take in a particular situation, she/he must discuss the matter with her/his colleagues and supervisors. She/he should also obtain as much information as possible on the topic.
- 1.4 Through this chapter, the DPSA hopes to contribute to a situation where senior managers take responsibility for their own behaviour and lead such behaviour and practices in their work environment. This chapter will hopefully also give meaning to the competency "Honesty and Integrity" that has been taken up in the SMS Competency Framework.

2. MANDATORY AND REGULATORY FRAMEWORK

- 2.1 All public service activities are governed to a greater or lesser degree by legislation. The following provisions specifically regulate the conduct of senior managers:

- (1) Section 195(1)(a) of the Constitution, 1996, requires that a high standard of professional ethics must be promoted and maintained in public administration generally.
- (2) Section 41(1)(d)(ii) of the *Public Service Act*, 1994, allows the Minister to make regulations on the management of conduct of officials.
- (3) The Code of Conduct in Chapter 2 of the Regulations gives practical expression to the Constitution and the Public Service Act, 1994.
- (4) The Financial Disclosure of members of the SMS in Chapter 3 of the Regulations prescribes that all managers must disclose their financial interests.
- (5) Part VII/B of Chapter 4 of the Regulations further addresses the promotion of ethical conduct in that it allows the Minister for the Public Service and Administration to issue directives to promote ethical conduct amongst members of the SMS.

2.2 This Chapter will thus supplement the Code of Conduct (Chapter 2 of Regulations) and the Financial Disclosure Framework (Chapter 3 of Regulations) in that it highlights the key principles that should underpin the conduct of a senior public servant.

3. VALUES AND PRINCIPLES

- 3.1 The terms values, ethics and conduct are often used interchangeably and uncertain language is one of the barriers to establish a widely understood framework for ethics.
- 3.2 For purposes of uniformity, the following definitions will apply in this chapter:
 - (1) ethics – what ought to be the ideals of what is just, good and proper;
 - (2) values – the commonly held beliefs that guide judgement about what is good and proper, and from which ethical principles derive;
 - (3) code of conduct – the rules that translate ideals and values into everyday practice; and
 - (4) conduct – the actual behaviour and actions of senior managers

- 3.3 Certain values and principles such as integrity and impartiality have always been part of the ethical standard of the Public Service and will remain fundamental to it. The weight placed on values will change and new values will emerge. The notion of changing values does not suggest that there will not be a consistent set of values for public servants/senior managers. Certain values have become more important in recent years, the most obvious being accountability, responsiveness and improved service delivery (Batho Pele). Values reinforce each other and provide the base for a stronger ethical culture.
- 3.4 Rules also play a role in safe-guarding ethical standards as it will govern aspects of senior managers' behaviour. Hence rules have a key role in guiding one's conduct and where there are laws and rules, they must be observed.
- 3.5 Less formal sets of rules can augment matters covered by legislation and be an important pointer to correct behaviour in a wide range of circumstances. As mentioned above, the Office of the Public Service Commission (OPSC) has issued a manual to explain the contents of the Code of Conduct. This manual serves as a practical guide to the code in specific kinds of situations.
- 3.6 The rest of this chapter highlights the key values and principles that should guide members of the Senior Management Service in their interaction with their superiors, peers, subordinates, and members of the public.

4. RESPONSIVENESS AND IMPARTIALITY

- 4.1 The public service exists to provide advice to, and give effect to the policies of the government of the day. Elected governments, whatever their political make-up, are entitled to expect loyalty and dedication from senior managers.
- 4.2 Departments have to make their decisions and implement policies and programmes in an environment of rapid change. Therefore, the main responsibilities of senior managers are to:
- (1) carry out decisions and implement programmes promptly, conscientiously and effectively, and
 - (2) provide advice which represents the facts accurately, is impartial and maintain a high standard of professional integrity.
- 4.3 Decisions must be made (and be seen to be made) impartially. By requiring reasonable and procedurally fair administrative action, section 33 of the Constitution obliges senior managers to

take decisions which are free from any actual or apparent bias or prejudice. The Promotion of Administrative Justice Act, 3 of 2000 also promotes responsiveness.

- 4.4 In both policy development and program implementation, senior managers need to exercise judgement as to which facts are most relevant, which policy options are most appropriate and which considerations in delegated decision-making are most important. Senior managers should ensure that executing authorities are aware of the values which underpin the policy-advice they have given.
- 4.5 Senior managers must have the ability to interpret the priorities and goals of government. An essential quality is to render free and frank advice, and to draw attention to any unforeseen implications or unintended consequences.
- 4.6 Senior managers are responsible for reporting criminal offences that are committed, or if they suspect that such offences could have been committed. They are further expected to be supportive of staff who make or intend to make protected disclosures.

5. ACCOUNTABILITY

- 5.1 Accountability is fundamental to good governance and is one of the essential elements of ethical administration. The perceptions of the public on the state of governance and administration are to a large extent determined by whether the government and administration are seen to account for its actions.
- 5.2 A description of the responsibilities of accounting officers and senior managers is to be found in Parts 2 and 3 of Chapter 5 of the *Public Finance Management Act, 1999 (PFMA)*.
- 5.3 Important points relating to accountability are:
 - (1) adherence to the rule of law is of paramount importance.
 - (2) the Head of a Department is the accounting officer for a department and may in writing delegate any of the powers (section 44 of the PFMA) entrusted or delegated to her/him to a senior manager in that department or instruct any senior manager to perform any of the duties assigned to the accounting officer in terms of the PFMA.

- (3) senior managers provide services on behalf of government to all manner of client groups and individuals in a great variety of circumstances and in so doing -
 - (a) they must adhere to the law and to the policies of government and not pursue their own interests;
 - (b) they are accountable for the quality of their dealings; and
 - (c) they are required to deal equitably, justly and responsibly with all individuals/groups.

- 5.4 In terms of the PFMA National Treasury may make regulations or issue instructions to promote sound financial administration. In general the regulations and instructions are aimed at the effective, efficient, economical and transparent use of resources.

- 5.5 Section 81 of the PFMA clearly indicates that senior managers to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that senior manager willfully or negligently fails to exercise that power or perform that duty.

- 5.6 Senior managers are further required to be frank, open and cooperative with other bodies established under legislation such as the Public Service Commission, Portfolio Committees and the Auditor-General.

6. LEADERSHIP

- 6.1 It is of utmost importance that a culture of ethical behaviour is manifested in the senior management and that they exhibit the highest ethical standards in carrying out their duties.

- 6.2 Senior managers must provide leadership in the area of ethics and “walk the talk”. They should give firm support to staff who raise problems of an ethical nature and ensure an openness on what constitutes correct conduct.

- 6.3 To fulfil this duty senior managers must have a thorough understanding of the Code of Conduct and the ethical standards and values that should shape the ethical culture of their units.

- 6.4 Senior managers should treat all people with whom they interact fairly, with courtesy and sensitivity. They must take pride in any advice or service they provide.

- 6.5 It is also essential for the proper functioning of departments that senior managers retain the trust and confidence of their Executing Authority and their colleagues in the manner in which they handle their official responsibilities and accountability.
- 6.6 Senior managers must lead by example and encourage their staff members to exercise similar qualities of personal and professional behaviour. They should also avoid unnecessary delays in making decisions or taking action.

7. COMMUNICATION

- 7.1 Effective communication is vital in planning, organising and carrying out the activities of government.
- 7.2 How the senior manager communicates is often as important as what she/he communicates. While words are important, gestures and body signals, often unconsciously exhibited, serve to either reinforce or contradict messages you want to send.
- 7.3 It is important to note that public servants may only communicate with the media if they are permitted to do so in terms of departmental policy (see Regulation H.4 of Chapter 2 of the Public Service Regulations, 2001). An employee may also not release information to the public if she/he does not have the necessary authority – see Regulation E of Part 11 of Chapter 1 of the Regulations.
- 7.4 Under certain circumstances it is not appropriate for senior managers to make public comment. Senior managers, in their private capacity as members of the community, have the right to make public comment and enter into public debate issues. When making comment a senior manager must not take improper advantage of official information and may not act in a way that will constitute a breach of C.5.4 of Chapter 2 of the Regulations (disclose official information for personal gain), or act in a way that gives rise to a conflict of interest. Equally a manager may not in her or his official capacity publicly criticise Government policy.
- 7.5 Senior managers are expected, where possible, to try to resolve complaints internally, without resorting to public comment or criticism.
- 7.6 Senior managers who make public comments in their private capacity, must make it clear that they act in their personal capacity.

8. MANAGEMENT OF MISCONDUCT

- 8.1 An ethical culture cannot develop in an environment where there are no effective mechanisms for the detection, investigation and institution of misconduct.
- 8.2 Prompt and decisive disciplinary action should be seen as a means of reinforcing high standards. There must be a will to use such mechanisms and such actions can demonstrate to staff and the community that government is committed to eliminating unethical conduct – see chapter 7 of the SMS Handbook. Action in this regard can demonstrate to staff and the public that departments/government are committed to eliminating unethical conduct.
- 8.3 Senior managers must report any unethical behaviour or wrongdoing by any other official (Refer to C4.10 of Chapter 3 of the Regulations). This may include behaviour that they believe violates any law, rule or regulation, constitutes mismanagement, or is a danger to public health or safety. Such reporting is called “whistle blowing”. The Protected Disclosure Act, 2000 provides procedures in terms of which any senior manager may disclose information relating to an alleged offence or a malpractice in the workplace by her/his employer, colleagues or other officials. The Act further provides for the protection of a person, who made a disclosure in accordance with the procedures provided for by the Act, against any reprisals as a result of such disclosure.
- 8.4 Senior managers may also complain to the Public Protector Provincial Public Protector, the Public Service Commission or the Auditor General where they believe that a department has acted wrongly in its decision-making or actions.

9. CONFIDENTIALITY OF OFFICIAL INFORMATION

- 9.1 A fundamental rule on the use of official information is that senior managers must not disclose any official information to any persons unless they are acting:
 - (1) in the course of their official duty;
 - (2) with the express authority of the their department; or
 - (3) for other lawful purposes
- 9.2 This restriction on the use of official information derives from C4.12 and C5.4 of Chapter 2 of the Regulations.

- 9.3 Senior managers should not misuse information gained in their official capacity in seeking to take advantage for personal reasons. They should further take care to maintain the integrity and security of official documents/information for which they are responsible. Every attempt should be made to avoid leaks.
- 9.4 Official information or documents acquired in the course of employment should only be disclosed when required to do so by law, in court, or when proper authority has been given. In such cases a senior manager's disclosure should be limited to factual information and should not express any personal opinion.
- 9.5 It is also important for Senior Managers to act and advise with honesty and integrity in all aspects of official duties. If a senior manager believes an aspect of policy or administration may have unforeseen consequences or otherwise requires review, it should be brought to the attention of the Head of Department or to the Executing Authority.

10. FINANCIAL AND OTHER PRIVATE INTERESTS (DISCLOSURE)

- 10.1 Chapter 3 of the Regulations prescribes that all senior managers must disclose their financial interests on an annual basis. Financial interests may take the form of shares, directorships or property which have the potential of conflict with official duties. Part D of the Regulations further describes the kinds of interests to be disclosed.
- 10.2 C4.5 and C4.6 of Chapter 2 of the Regulations place the onus on senior managers to alert their departments to any actual or potential conflict of interest, financial or otherwise. Hence they must disclose situations where their private interests may conflict with their official duties and take steps to avoid such conflict.
- 10.3 Senior managers should disclose all their registrable interests according to the prescribed form and procedures. Should circumstances change drastically after an initial disclosure has been made, and new or additional facts become material, the senior manager should disclose the further information.
- 10.4 Senior managers should not allow themselves to be improperly influenced by personal relationships. They should recuse themselves from any decision when there might be a conflict between their personal relationships/interests and the public interest.
- 10.5 A senior manager should perform the duties of her/his office impartially, uninfluenced by fear or favour.

- 10.6 A senior manager should not use information obtained in the course of official duties to gain direct or indirect advantage for her/himself or for any other person. (refer to 9.3 *supra*)
- 10.7 Senior managers must not solicit or accept any bribe or other improper inducement. Only in exceptional circumstances should gifts be accepted (where the gift is offered as part of a formal exchange of gifts).
- 10.8 Senior managers may accept unsolicited gifts or moderate acts of hospitality. Accepting such gifts or benefits is essentially a matter of judgement for the individual concerned. In such instance they must be satisfied that their position will not in any way be compromised by acceptance.
- 10.9 In terms of the Financial Disclosure Regulations (Regulation E(f) of Chapter 3) senior managers are required to disclose details with regard to gifts and hospitably with a value in excess of R350. They must further disclose any material advantage that they received from any source e.g. any discount prices or rates that are not available to the general public.

11. POLITICAL PARTICIPATION

- 11.1 Senior managers should be aware of the potential for conflict of interest and must not take part in any political activity when on duty or on official premises. They must further not attend in their official capacity outside conferences or functions convened by or under the aegis of a party political organisation.
- 11.2 The use of a public office or public resources for political activities is not acceptable and is contrary to Regulation C3.7 of Chapter 2 where it is clearly stated that senior managers must refrain from party political activities in the workplace.
- 11.3 Senior managers should not in their official capacity, participate in the political process. Similarly, they should not place their peers/subordinates in a position of conflict by inviting their participation in political events.
- 11.4 Senior managers should also be aware of the following statutory measures that regulate the participation of public servants in party political activities.
- 11.5 A public servant may not become a member of the National Assembly or any provincial legislative in terms of section 47 and 106 of the Constitution. This implies that should she/he be elected to one of these bodies, she/he is deemed to have resigned from the

public service with effect from the date on which her/his election is officially announced.

- 11.6 The same disqualification does not apply to municipal councils. Section 21(1) of the Municipal Structures Act, 1998, determines that every citizen who may vote for a municipal council is entitled to stand as a candidate in a municipal election and if elected, to be a councillor, except certain categories of persons mentioned in section 158(1)(a), (c), (d) or (e) of the Constitution. (Note: The aforementioned subsections do not apply to Public Service Act employees).
- 11.7 But despite the above “concession”, senior managers must note that an employee must place the whole of his/her time at the disposal of the State (section 30 of the Public Service Act, 1994). Employees may not perform remunerative work (for instance in the capacity as municipal councillors) outside their employment in the Public Service without the permission of the relevant Executing Authority or his/her delegate.
- 11.8 Section 36 of the Public Service Act, 1994 provides that a public servant may be a member and serve on the management of a lawful political party or may attend a public political meeting, but may not preside or speak at such a meeting. A public servant may also not draw up or publish any writing or deliver a public speech to promote or prejudice the interests of any political party.
- 11.9 The Code of Conduct (Chapter 2 of the Public Service Regulations, 2001), requires of employees to avoid conflicts of interest and not to abuse their positions in the Public Service to promote or prejudice any political party or interest group. (See parts B2, C2.7, C3.7, C4.5, C4.6, C5.4 and C5.5).
- 11.10 In summary:
- (1) Section 158(1)(b) of the Constitution disqualifies public servants from becoming members of municipal councils if such disqualification is prescribed by national legislation. National legislation prescribes no specific prohibition in this regard, hence it follows that senior managers are not *per se* excluded from serving on municipal councils.
 - (2) It should nevertheless be borne in mind that councillors will be remunerated and serve in either full-time or part-time capacities on municipal councils. Departments have therefore, in terms of the measures and principles enshrined in section 30 of the Public Service Act, 1994 and the Code of Conduct, a duty to carefully consider the position of senior

managers in this regard. Should a conflict arise between the duties and responsibilities of a senior manager and her/his activities as a councillor, departments are entitled to review their position and require her/him to either withdraw as a councillor or to resign from service.

- (3) Section 36 of the Public Service Act, 1994 contains certain provisions that limit the activities of senior managers and they must therefore ensure that they adhere to these.

- 11.11 Should a senior manager be elected to a municipal council, she/he should be required to inform designated persons of such election, the nature of their duties and responsibilities as a councillor, whether she/he will be required to perform such duties during official hours and details of her/his remuneration.
- 11.12 Should a senior manager be elected to a position as a full-time councillor, she/he will have to resign from the Public Service. As regards those who wish to take up part-time positions, they must ensure that they undertake their duties as a councillor as far as possible outside official hours of work. Specific approval has to be granted that the senior manager can retain her/his remuneration, as required by section 30 of the Public Service Act, 1994.
- 11.13 If a senior manager has to perform duties as a councillor during her/his official hours of work, they should apply for/take vacation leave on a basis of 1 day for every 8 hours of absence.
- 11.14 The position of members of the SANDF, SAPS, Correctional Services, state educational institutions, SASS and NIA must be managed in accordance with the applicable legislation that regulate their conditions of service.

12. OUTSIDE EMPLOYMENT

- 12.1 As mentioned above, section 30 of the Public Service Act, 1994, stipulates that public servants must place the whole of their time at the disposal of the State. They must not perform remunerative work outside their employment in the Public Service without permission of the relevant executing authority or her/his delegate. The Code of Conduct also stipulates that a public servant does not, without approval, undertake remunerative work outside her/his official duties or use office equipment for such work.
- 12.2 In considering requests to engage in outside employment, departments should establish whether the outside employment

would interfere with the proper performance of senior managers' duties and whether it would give rise to a conflict of interest.

- 12.3 Any outside/secondary work or unpaid activity should not place the senior manager in a conflict with her/his official duties, and must not adversely affect the efficiency or performance of the senior manager. Such work must be performed entirely after normal working hours.
- 12.4 Chapter 4 of the Regulations (disclosure framework) further requires of senior managers to disclose remunerated work outside the public service. By completing the prescribed form, the senior manager is not exempted from the statutory requirements of obtaining approval for performing remunerative work outside the public service.
- 12.5 Equipment like computers and fax machines at work is provided for official use only. Permission has to be obtained before such equipment can be used for private purposes.
- 12.6 Senior managers should not seek to engage in outside employment if that employment would place them in a conflict with their official duties or is likely to affect their efficiency in the performance of their official duties.
- 12.7 When applying for permission to engage in outside employment, senior managers should provide the following information:
 - (1) details of the proposed outside employment including the proposed hours of employment.
 - (2) whether the employment will adversely affect her/his efficiency and effectiveness in the performance of official duties; and
 - (3) whether it is likely to cause (or be perceived to cause) any conflicts or difficulties in relation to departmental requirements.

13. LABOUR RELATIONS

- 13.1 In performing their duties, senior managers must ensure equity in employment processes and manage staff fairly. They must further ensure that the workplace is free from discrimination and harassment. They should avoid acting in a way that is or could be seen to be unreasonable or could be construed as unlawful discrimination.

- 13.2 Senior managers must be attuned to detect unhappiness amongst staff. They should deal with complaints and grievances in a prompt and fair manner. They should ensure that the time frames prescribed by the grievance procedure are adhered to.
- 13.3 It is the responsibility of senior managers to ensure that the conduct of staff does not undermine service delivery of a department. Misconduct must therefore be dealt with and not be overlooked or swept under the carpet.
- 13.4 In dealing with the misconduct of staff, the senior manager must act promptly, fairly and consistently and according to the prevailing disciplinary procedure.
- 13.5 Senior managers must defend their department in labour disputes of staff members. This entails that the necessary assistance, be it legal or otherwise, be obtained to present a proper case on behalf of the department in arbitration or court. It also means that the senior manager should attempt to resolve the dispute before it reaches the arbitration or court stage. It is advisable that a supervisor do not represent a fellow employee unless she/he is a trade union representative.
- 13.6 Senior managers must strictly apply the principle of “no work, no pay” in instances where staff members participate in industrial or protest action. Failure to do so can seriously compromise the employer in negotiations.
- 13.7 Senior managers involved in negotiations with trade unions must ensure that they have the necessary mandates before entering into an agreement. In instances where the matter has financial implications, it must also be ensured that the necessary funds are available.
- 13.8 Although it is expected of senior managers involved in dealing with trade unions to promote and defend the views of the employer, they should do so in a manner that does not disrupt or undermine the relationship with the trade unions.

14. INTELLECTUAL PROPERTY

- 14.1 Government or a department retains the copyright of work produced by a senior manager during her/his employment. Refer to sections 5 and 21 of the Copyright Act 98 of 1978.

15. ACCESS TO INFORMATION AND ADMINISTRATIVE JUSTICE

- 15.1 One of the general aims of both the Promotion of Access to Information Act 2 of 2000 and the Promotion of Administrative Justice Act 3 of 2000 is to promote efficient, accountable, open and transparent administration.
- 15.2 The Promotion of Access to Information Act seeks to give effect to the constitutional right of access to any information held by the State. Requests for access to public records are dealt with by the respective information officers of the relevant public bodies that hold the records. In the public service the head of department is the information officer, and he or she may appoint deputy information officers. However, it should be noted that, for purposes of the Act, the Director-General of a provincial administration is regarded as the information officer of ALL departments in the province.
- 15.3 The information officer must—
- (1) ensure that the request for a record complies with the prescribed procedures;
 - (2) inform third parties to whom the information relates;
 - (3) determine whether any of the exemptions for non-disclosure applies; and
 - (4) thereupon refuse or grant the request.
- 15.4 A copy of the Act and the Regulations made under that Act can be found at www.gov.za/gazette/acts/2000/a2-00.pdf and www.doj.gov.za/reg/r223.pdf.
- 15.5 The **Promotion of Administrative Justice Act** aims to give effect to the constitutional rights of just administrative action. The Act—
- (1) sets out the rules and guidelines that administrators must follow when making decisions;
 - (2) requires administrators to give reasons for their decisions;
 - (3) requires administrators to inform people about their rights to review or appeal and to request reasons; and
 - (4) gives members of the public the right to challenge decisions of administrators in court.
- 15.6 A copy of the Act can be found at www.gov.za/gazette/acts/2000/a3-00.pdf.

16. CONCLUSION

- 16.1 This chapter is advisory in nature and may be altered from time to time to take account of changing circumstances. If a senior manager is in doubt about the appropriate course of action to be adopted in any circumstances, the matter should be discussed with her/his supervisors in the department, the Head of Department, the Executing Authority, and/or the Office of the Public Service Commission.