

STATE OF THE PUBLIC SERVICE IN GAUTENG:

Extent of Compliance with Constitutional Values and Principles Including the Values and Principles as set out in Section 195 of the Constitution

Custodian of Good Governance



Vision

A champion of public administration excellence in democratic government in South Africa

Mission

To promote the constitutionally enshrined democratic principles and values of the Public Service by-

- *Investigating, monitoring, evaluating the organisation, and personnel practices;*
- *Proposing measures to ensure effective and efficient performance;*
- *Issuing directions with regards to personnel procedures relating to the recruitment, transfers, promotions and dismissals;*
- *Advising on personnel practices; and*
- *Reporting on its activities.*

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LIST OF ACRONYMS AND ABBREVIATIONS

BAS	Basic Accounting System
COGTA	Department of Cooperative Governance and Traditional Affairs
CIPC	Companies and Intellectual Property Commission
COI	Conflicts of Interest
DPME	Department of Planning, Monitoring and Evaluations
DPSA	Department of Public Service and Administration
EA	Executive Authority
EPMDS	Employees Performance Management and Development System
FDF	Financial Disclosure Framework
FY	Financial Year
HoD	Head of Department
HR	Human Resource
MEC	Member of Executive Council
NACH	National Anti-Corruption Hotline
OSD	Occupational Specific Dispensation
PFMA	Public Finance Management Act
PMDS	Performance Management and Development System
PSC	Public Service Commission
PSCBC	Public Service Co-coordinating Bargaining Council
RDP	Reconstruction and Development Programme
RWOPS	Remunerated Work Outside Public Service
SMS	Senior Management Service

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CHAPTER ONE: INTRODUCTION

1.1. INTRODUCTION

The Public Service Commission (PSC) is a constitutional body established in terms of Chapter 10 of the Constitution and it is mandated by section 196(4) (a) to (e) of the Constitution, *inter alia*, to promote values and principles set out in section 195, throughout the Public Service and to report in respect of its activities and the performance of its functions. This includes any finding the PSC may make, directions and advice it may give, as well as to provide an evaluation of the extent of compliance with the values and principles set out in section 195.¹ These constitutional values and principles are not optional but a constitutional requirement applicable to all government departments, local government (municipalities) and state/public enterprises. However, the mandate of the PSC is to promote constitutional values and principles only in the Public Service, of which according to the Public Service Act, 1994 public service means the provincial and national government departments as well as government components.

More importantly, according to section 196(6) (a) *the PSC must report at least once a year (in terms of subsection (4) (e)) to the National Assembly; and (b) in respect of its activities in a province, to the Legislature of that province.*²

The PSC has over the past four years produced and tabled the “State of the Public Service in the Gauteng Province” report at the Gauteng Provincial Legislature. The report assesses the governance issues in respect of the Gauteng Departments in accordance with the constitutional values and principles as contained in section 195 of the Constitution. Section 195 of the Constitution prescribes that the public administration must be governed by the values and principles.³ In line with that the Parliament and the government departments have passed laws, regulations, and developed policies, and guidelines to ensure that public administration live by the constitutional values and principles. In assessing the extent of compliance with the constitutional values and principles, the PSC, in addition, used amongst others, the following legislations and the policy frameworks:

- Public Service Act, 1994 and Public Service Regulations, 2016;

¹ Constitution of the Republic of South Africa, 1996

² Constitution of the Republic of South Africa, 1996

³ Constitution of the Republic of South Africa, 1996

- Public Finance Management Act, 1999 and Treasury Regulations 2002;
- Human Resources Development Strategy and Human Resource Planning;
- Organisational Design and Macro Organising;
- Integrity and Ethics Management Strategy;
- White Paper on Transforming the Public Service Delivery, 1997;
- National Development Plan, 2030; and
- Mandate Paper 2018 (Budget Priorities of the South African Government).

The assessment against the constitutional values and principles was based on the information provided by the Executive Authorities (EAs) and Heads of Departments (HoDs) in all Gauteng Provincial Departments relating to the areas of ethical management, human resources management, labour relations and accessibility of information to the public. Therefore the findings and recommendations in this report are based on the information provided by the Departments. Consequently, the PSC cannot be held responsible for any inaccurate information submitted.

It should be mentioned that the PSC has also produced other reports covering service delivery to the citizens. The PSC has inspected services rendered at various institutions i.e. the schools, hospitals and clinics as well as conducting an investigation into Management of the Expanded Public Works Programme in the Gauteng Province. It is therefore important to read this report in conjunction with the other PSC reports.

Furthermore the PSC's report also complement the works undertaken by other Institutions Supporting Democracy particularly, the Auditor – General in ensuring there is accountability and improved governance in using the state resources as well as consequences for poor performance and misuse of the state resources.

2. PART I

2.1. INTRODUCTION

The primary aim of the integrity and ethics management is to regulate the behavior of officials in the departments and amongst others to manage and prevent conflict of interests, detect and prevent corrupt activities and investigate incidents of unethical behaviour.

The government has introduced various strategies and policies aiming at inculcating the ethical conduct amongst the public servants. This can be seen by elevation of ethical management in the Public Service Regulations, 2016 (PSR) which introduced provisions covering amongst others, prohibition of conducting business with an organ of state by the public servants, designation of ethics officers, establishment of the ethics committee to oversee ethical management and disclosure and verification of the interests by the designated employees.

The PSR has even gone further by requiring the Heads of Department (HoDs) to analyse ethics and corruption risks, developing and implementing the ethics management strategy in order to prevent and detect unethical conduct, establishing an information system to record all allegations of corruption and unethical conduct. It is against this background that the PSC continuously monitor the promotion of integrity and ethical management in the departments. There is emphasis that ethical leadership will ensure that there is effective control in the departments which will lead to improved governance and good performance. This will definitely translate into improved services rendered to the citizens.

The current assessment of the integrity and ethics management in the Gauteng departments covered the following areas:

- Anti-corruption and ethics management;
- Management of the financial disclosures involving senior managers and designated employees;
- Financial Misconduct Cases;
- Promotion of the Code of Conduct;
- Conducting Business with an Organ of State;
- Remunerated Work outside of the Employees' Employment; and
- Gift Management.

2.2. ANTI-CORRUPTION AND ETHICS MANAGEMENT

Regulation 22 of the PSR, 2016, requires the heads of department (HoDs) to analyse ethics and corruption risks as part of the department's system of risk management, develop and implement an ethics management strategy to prevent and deter unethical conduct and acts of corruption; establish a reporting system of allegations of corruption and other unethical conduct, recording of all allegations and referral of allegations of corruption to the relevant law enforcement agencies.

Table 1: Anti-corruption and ethics management

	Ethics and corruption risks report	Ethics management strategy	Database of Cases (Corruption & Unethical behavior)		
			Allegations of corruption	Cases Closed	Cases Outstanding
Agriculture	No	Yes	11	4	7
COGTA	Yes	No	13	6	7
Safety	Yes	Yes	3	2	1
Economic Dev.	Yes	Yes	1	1	
Education	No	No	Not specified	N/A	
e-Government	No	No	0	N/A	
Health	Yes	No	35	10	25
Human Settl.	Yes	Yes	No comment	No comment	Yes
Infrastructure	No	No	10 (reported)	7	3
Premier	Yes	No	N/A	N/A	N/A
Treasury	Yes	No	None	N/A	N/A
Roads	No	Yes	25	25	No
Social Dev	Yes	Yes	14	9	5
Sports	No	No	1	1	No

The PSC observed that there is variation regarding the implementation of the above Regulation in that whilst all the departments have databases on allegations of corruption reported, very few have actually developed and implemented an ethics management strategy which should be used in the prevention and deterrence of unethical behavior and acts of corruption. **Table 1** reflects that 8 out of 14 (57%) departments have analysed the ethics and corruption risks to enable departments to strengthen their internal controls and also put mechanisms in place to mitigate the ethics and corruption risks.

The Premier's Office has indicated that ethics risk assessments were conducted and are currently in the process of developing a consolidated ethics risk profile for the Province would be finalised in due course which would inform the comprehensive ethics management strategy.

The implementation of Regulation 22 of the PSR, 2016 should be taken seriously by the departments in view of the cases which are reported on the allegations of unethical conduct and acts of corruption. More importantly Regulation 13(c) of the PSR, 2016 prohibits employees from doing business with the state and this area on its own poses a high risk to the departments if it is not well managed. The PSC discovered that some of the officials have companies registered in the National Treasury Supplier Database as prospective suppliers in violation of Regulation 13(c) of the PSR, 2016.

Furthermore, the PSC noted that there is a low rate on referral of allegations of corruption to other law enforcement agencies (particularly in cases of fraud, embezzlement of state funds even where the employee has been found guilty).

The HoDs should ensure that there is seriousness in implementing the provisions of Regulation 22 of the PSR, 2016 to ensure that ethical conduct and leadership is entrenched in the departments.

2.3. NATIONAL ANTI-CORRUPTION HOTLINE (NACH)

The NACH was established in September 2004 and provides for the safe and anonymous reporting of corruption. The effectiveness of the NACH is dependent on the extent to which it enables feedback to the complainants. As such, there is a responsibility on the departments to ensure the timely investigation of cases referred to them and to provide comprehensive feedback to the PSC.

Table 2 below shows the total number of cases received by the PSC through the NACH and referred to Departments for investigation. It shows that the highest number of cases lodged through the NACH during the past three (3) financial years (2014/2015 to 2016/2017) is 165 in the 2015/2016 financial year. Out of the 165 cases referred to Departments in 2015/16 financial year, Departments managed to conclude and provide 53% (88) of feedback to the PSC and 47% of the cases is still outstanding. The PSC has noted a slow rate of feedback on cases referred to Departments for investigation. In 2016/2017 financial year, out of the 159 cases referred, 47% (74) thereof is still outstanding. On average since 2014/15 financial, 60% of the reported cases have been resolved.

The Province is also exploring means of ensuring speedily resolution of cases which amongst others include centralization of cases for investigation, capacitating the investigators, and improving whistle blowing policies as well as encouraging whistle blowers to report cases of fraud and corruption and also enhancing their protection.

Table 2: National Anti-Corruption Hotline

	2014/15							2015/16							2016/17						
	Cases referred	Feedback received	% Feedback received	Cases closed	% Cases closed	Outstanding cases	% Outstanding cases	Cases referred	Feedback received	% Feedback received	Cases closed	% Cases closed	Outstanding cases	% Outstanding cases	Cases referred	Feedback received	% Feedback received	Cases closed	% Cases closed	Outstanding cases	% Outstanding cases
Agriculture	1	1	100%	1	100%	0	0%	2	2	100	2	100	0	0	2	1	50%	1	50%	1	50%
COGTA	20	19	95%	19	95	1	5%	27	27	100	27	100	0	0	56	56	100%	56	100%	0	0%
Community Safety	10	10	100	10	100	0	0	17	1	6%	1	1%	16	94%	11	6	55%	6	55%	5	45%
Economic Development	2	2	100	2	100	0	0	1	1	100	1	100	0	100%	1	0	0%	0	0%	1	100%
Education	27	19	70	19	70	8	30	48	21	44%	21	44%	27	56%	34	4	12%	4	12%	30	88%
e-Government	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Infrastructure	4	4	100	4	100	0	0	4	2	50%	2	50%	2	50%	5	3	60%	3	60%	2	40%
Health	18	11	61	11	61	7	39	19	13	68%	13	%	6	32%	16	5	31%	5	31%	11	69%
Human Settlement	9	6	67	6	67	3	33	4	1	25%	1	25%	3	75%	5	1	20%	1	20%	4	80%
Legislature	0	0	0	0	0	0		1	1	100	1	100	0	0	1	1	100%	1	100%	0	0%
Premier	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Roads and Transport	7	4	57	4	57	3	43	29	10	%	10	%	19	%	15	6	40%	6	40%	9	60%
Social Development	7	6	86%	6	86%	1	14%	9	8	89%	8	89%	1	11%	12	2	17%	2	17%	10	83%
Sports	1	1	100	1	100	0	0	4	1	25%	1	25%	3	75%	1	0	0%	0	0%	1	100%
Treasury	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	106	83	78%	83	78%	23	22%	165	88	53%	88	53%	77	47%	159	85	53%	85	53%	74	47%

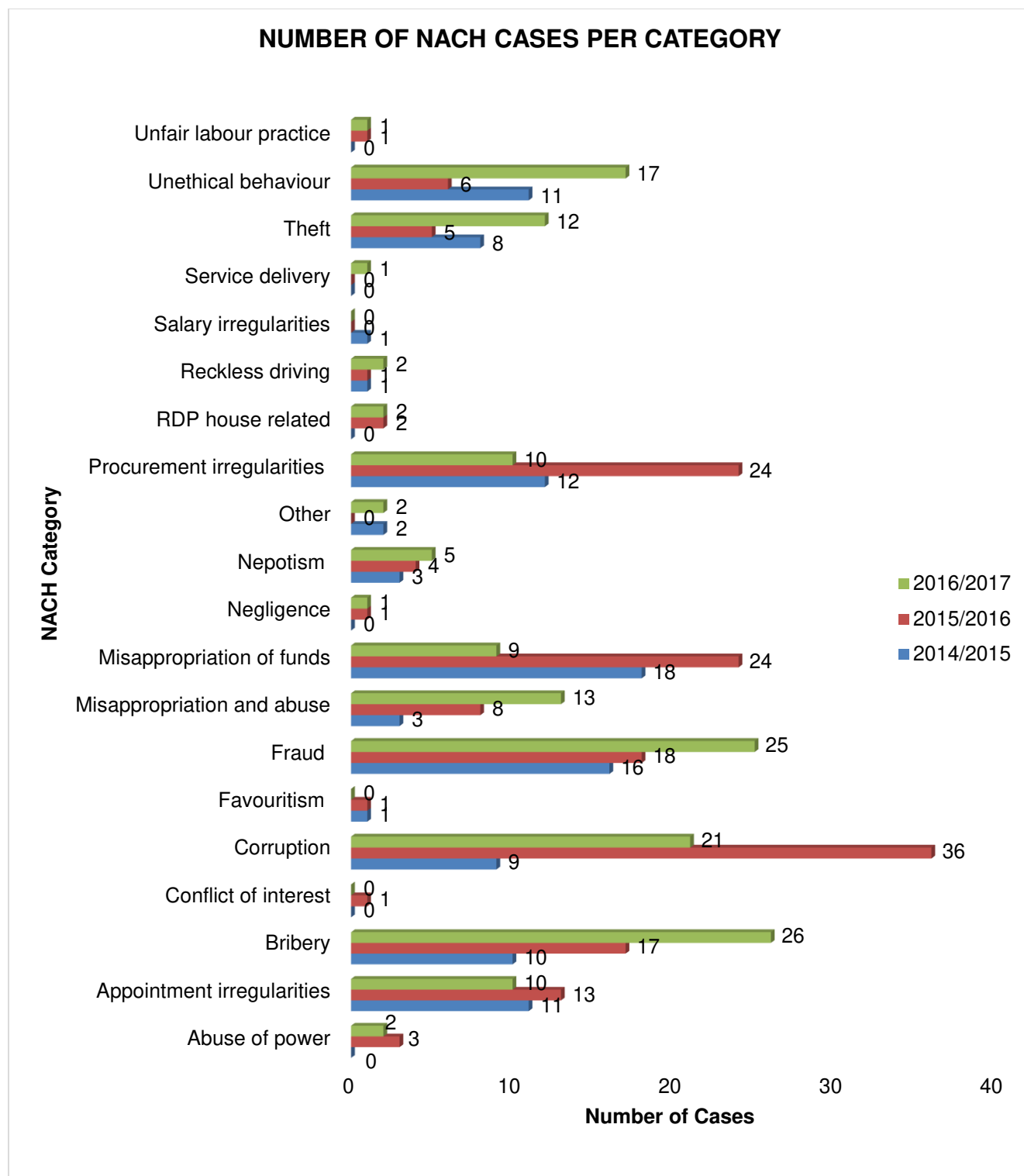


Figure 1: Types of NACH Cases reported

Figure 1 above further provides the types of cases lodged in the past three (3) years. The figure demonstrates that cases relating to corruption were the most reported in 2015/2016 financial year. The corruption related to the cases including but not limited to the following:

- Illegal selling of RDP houses/ land by Municipality Councilors;
- Illegal operation of tavern by members of the public;
- Illegal connection of electricity/ water by members of the public; and
- Employment of “ghost” educators at certain schools.

The second most reported cases through the NACH are: fraud, misappropriation of funds, bribery and procurement irregularities. Cases that were the least reported in all the financial years included cases relating to the conflicts of interest, negligence, service delivery and unfair labour practice.

The PSC also observed that the whistleblowers would at times and for fear of victimisation, request the investigating officer(s) to contact them in order to provide detailed information on allegations of corruption. Whereas in other cases the PSC was requested to intervene in service delivery issues (e.g. delays in finalizing application for taxi permits).

2.4. COMPLAINTS LODGED WITH THE PSC THROUGH ITS COMPLAINTS RULES

Table 3: Complaints lodged through the PSC's Rules

Department/ Institution	Nature of Complaint	Outcome
2014/2015		
Health/ Emergency Management Services	Alleged irregular appointment	<ul style="list-style-type: none"> • Allegations substantiated • Feedback/ progress on the implementation of recommendations provided.
Health/ Carletonville Hospital	Alleged irregular appointment	<ul style="list-style-type: none"> • Allegations unsubstantiated • Feedback/ progress on the implementation of recommendations provided.
Health/ Far East Rand Hospital	Alleged fraud and irregular payments of over-time	<ul style="list-style-type: none"> • Allegations unsubstantiated • Feedback/ progress on the implementation of recommendations provided.
Infrastructure Development	Alleged irregular payment of acting allowance	<ul style="list-style-type: none"> • Allegations substantiated • Feedback/ progress on the implementation of recommendations not submitted by the Department.

Department/ Institution	Nature of Complaint	Outcome
2015/2016		
Education	Alleged irregular appointment	<ul style="list-style-type: none"> Allegations unsubstantiated.
Economic Development	Alleged irregular appointment	<ul style="list-style-type: none"> Allegations substantiated. Recommendations of disciplinary action implemented by the Department
Community Safety	Irregular promotions	<ul style="list-style-type: none"> Allegations substantiated. Feedback/ progress on the implementation of recommendations not submitted by the Department.
2016/2017		
Health: PTA West Hospital	Irregular appointments	<ul style="list-style-type: none"> Allegations substantiated Feedback/ progress on the implementation of recommendations provided.
Health: Tembisa Hospital	Misuse of state resources	<ul style="list-style-type: none"> Allegations substantiated. Recommendations of disciplinary actions against the affected official was implemented by the Department
Health: PTA West Hospital	Irregular promotion	<ul style="list-style-type: none"> Allegations substantiated. Feedback/ progress on the implementation of recommendations provided.
Roads and Transport	Appointment irregularities and maladministration	<ul style="list-style-type: none"> Investigation in progress.
DID	Alleged irregular appointments	<ul style="list-style-type: none"> Allegations unsubstantiated.
DID	Alleged irregular appointment	<ul style="list-style-type: none"> Allegations unsubstantiated.
Health (Mamelodi Hospital)	Alleged incorrect administration of medicine to patients/ maladministration	<ul style="list-style-type: none"> Allegations substantiated. Feedback/ progress on the implementation of recommendations provided.
Education	Alleged maladministration (selling of posts)	<ul style="list-style-type: none"> Allegations unsubstantiated.
Treasury	Alleged procurement irregularities	<ul style="list-style-type: none"> Matter closed due to lack of information provided by the complainant.
Health	Unethical behaviour/ poor service delivery by a nursing sister	<ul style="list-style-type: none"> Allegation substantiated. Feedback/ progress on the implementation of recommendations provided.
Roads and Transport	Alleged tender irregularities	<ul style="list-style-type: none"> Allegations unsubstantiated.

Table 3 above provides an overview of cases lodged with the PSC by the Gauteng departments in the past three (3) financial years. The cases were investigated by the PSC and reports with findings and recommendations were forwarded to the relevant Executive Authorities for implementation of recommendations made. The table above shows that the most prevalent cases

reported to the PSC in the past 3 years relate to human resources practices, specifically in the recruitment and selection processes. In this regard twelve (12) cases were investigated and 11 cases were concluded by the PSC.

The PSC has however noted with a concern the non-implementation/ lack of feedback relating to the implementation of its recommendations despite follow-ups made. This undermines the PSC's efforts in promoting integrity and ethical conduct in the departments, and the improvement of governance. In addition, the lack of feedback by departments also discourages the complainants/ whistleblowers in reporting allegations of unethical conduct and corrupt activities.

The Premier's Office is seized with the responsibility of overseeing effective and efficient functioning of the departments and it will therefore take upon itself in ensuring that the PSC's recommendations are implemented by the affected departments.

2.5. SUBMISSION OF FINANCIAL DISCLOSURES

An important consideration in the promotion of integrity in the public service is the extent to which conflict that may exist between a public servant's private interests and public duties are managed. Regulation 18 to 21 of the PSR, 2016 makes provisions for the disclosure of interests by the senior managers and designated employees to disclose all their particulars of interests to the relevant heads of department and executive authorities in the case of the heads of department. In the case of senior managers the disclosures should be made by April of each year and reach PSC by 31 May of each year.

On the other hand, in respect of the designated employees the date of disclosures is determined by the Minister for the Department of Public Service and Administration's (MPSA). The MPSA has subsequently issued a Directive on the Determination on other Categories of Designated Employees to disclose their Financial Interests and the designated employees are as follows: salary levels 11, 12 and 13 including both occupational specific dispensation (OSD) and non-occupational specific dispensation, all employees in the supply chain management and finance units, ethics officers and employees administering financial disclosures.

Regulation 19 of the PSR, 2016 prescribes the nature of interests to be disclosed by the SMS members and designated employees which includes the following: shares; loan accounts; income generating assets; trusts; directorship and partnerships; remunerated work outside the

employee's employment in his or her department; consultancies and retainerships; sponsorships; gifts and hospitality from a source other than a family member; ownership and other interests in immovable property; and vehicles.⁴ In line with that, senior managers and designated employees are required to disclose all the above-mentioned interests using e-disclosure system. It is worth noting that any employee who fails to comply with the provisions of Regulation 18 of the PSR, 2016 on disclosure of **all** particulars of interests can be charged with misconduct in terms of Regulation 9(5) of the PSR, 2016 read with section 16A of the Public Service Act, 1994.

- **Disclosure by the Senior Management Service (SMS)**

SMS are entrusted with public resources (*stewards of public resources*), so their integrity should not to be doubted.⁵ Therefore, the financial disclosure framework, requires all senior managers in the public service to submit their financial disclosure forms annually to their HoDs and HoDs to the Executive Authorities (EAs) through the e-Disclosure System. The HoDs and EAs in turn are required to submit through the e-Disclosure System financial disclosures to the PSC by 31 May of each year.

Upon receipt, the PSC scrutinises the financial disclosures to identify potential and actual conflict of interests and make recommendations to the EAs. In order to ensure the proper scrutiny of the disclosures, the PSC examined the Companies, Intellectual Property Commission (CIPC), Deeds Registry Office's, e-Natis, National Treasury Supplier's databases and verification through the Gauteng Provincial Treasury Basic Accounting System (BAS) to determine potential and actual conflict of interests.

The PSC informs the EAs of the findings and recommendations made after the verification of the interests disclosed by the SMS members. The EAs are required to provide feedback on the actions taken in respect of the PSC's findings and recommendations in accordance with the PSR, 2016. The EAs have 30 days to provide feedback upon receipt of the PSC's report.

⁴ Department of Public Service and Administration (2016). Public Service Regulations, Pretoria: Government Printers

⁵ Department of Public Service and Administration (2016). Public Service Regulations, Pretoria: Government Printers

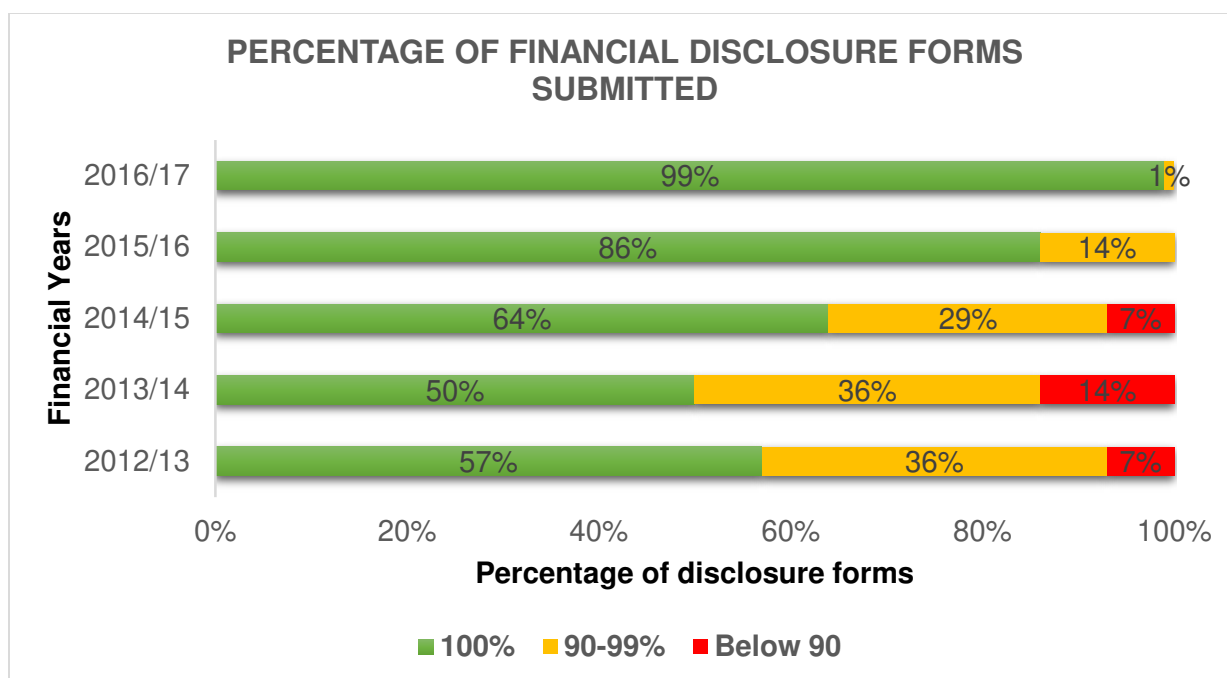


Figure 2: Percentage of financial disclosures submitted

Table 4: Percentage of financial disclosures submitted per department

	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	97%	100%	100%	100%	100%
Community Safety	97%	100%	0%	100%	100%
Education	100%	100%	99%	100%	90%
Economic Development	98%	96%	100%	97%	100%
e-Government	100%	98%	100%	100%	100%
Health	100%	97%	97%	100%	100%
Human Settlement	100%	100%	100%	100%	100%
Infrastructure Development	0%	100%	98%	100%	100%
COGTA	97%	47%	100%	100%	100%
Premier	100%	98%	100%	100%	100%
Roads and Transport	100%	98%	95%	98%	100%
Social Development	100%	100%	100%	100%	100%
Sports	97%	85%	97%	100%	100%
Treasury	100%	100%	100%	100%	100%

As shown in Figure 2 and Table 4, the Gauteng Provincial Administration, has never achieved 100% submission rate over the past five financial years. For the 2016/17 financial year, 794 (99%) out of 804 senior managers submitted the financial disclosure forms to the PSC within the prescribed timeframe, whilst 10 (1%) did not comply with regulation 18 of the PSR, 2016. The non-submission of the financial disclosure forms relates to the technical error in the e-disclosure systems which DPSA should immediately attend in to ensure that the employees are not

negatively affected. The PSC's mandate is to promote sound and consistent public administration practices, as a result, all the systems and processes (through laws and policies) put in place should ensure that effectiveness and efficiency is achieved at all times.

- **Conflict of interest in respect of the SMS Members**

According to the DPSA Directive on Conducting Business with the Organ of State conflict of interest refers to conflict between the public duties and private interests of an employee, in which the employee has private interests which could improperly influence him/her, and/or negatively impact on his/her disposable time to work, and/or negatively impact on his/her official obligations or official duties, and/or negatively impact on the public interest⁶.

Also according to the Directive on Conducting the Business with the State, private interests of the employee and public duties should be managed to prevent improper influence. The senior managers who have companies that have an "in business" and in deregistration" status pose potential conflict of interest. In terms Regulation 13(i) of the PSR, 2016, read with the "Directive on other Remunerative Work Outside the Employee's Employment in the Relevant Department as Contemplated in Section 30 of the Public Service Act, 1994" stipulate that an employee shall only perform remunerated work, if he or she has permission in terms of section 30 of the Public Service Act, 1994. Employees are also prohibited from performing such work during official work hours; and use official equipment or State resources for such work.

It is therefore important that senior managers who have companies "in business and in deregistration process" are continuously monitored in order to manage conflict of interests.

⁶ Directive on Conducting business with the Organ of State issued by the Department of Public Service and Administration, 2017.

Table 5: Number of officials with companies

NUMBER OF OFFICIALS WITH COMPANIES																
	2013/14				2014/15				2015/16				2016/17			
	In Business	In Deregistration	In Business & Deregistration	Doing business with Gauteng Government	In Business	In Deregistration	In Business & Deregistration	Doing business with Gauteng Government	In Business	In Deregistration	In Business & Deregistration	Doing business with Gauteng Government	In Business	In Deregistration	In Business & Deregistration	Doing business with Gauteng Government
Agriculture	6	19		0	9	6		0	4	4	0	0	3	2	1	0
COGTA	7	9		0	6	6		1	4	5	4	0	0	6	2	0
Safety	7	13		0	5	9		0	5	5	3	0	3	1	3	0
Economic Dev	11	24		1	24	19		0	11	8	4	0	9	9	3	0
Education	15	39		0	14	14		1	8	9	7	1	7	1	3	1
e-Government	3	18		0	5	4		0	3	4	0	0	2	2	2	0
Health	27	44		0	29	21		0	15	13	8	0	19	14	6	1
Human Settlement	11	28		0	10	11		0	3	4	3	0	6	8	6	0
Infrastructure	10	29		0	19	10		0	11	10	1	0	7	12	2	0
Premier	7	11		0	10	11		0	4	6	1	1	5	7	2	0
Roads	7	32		0	8	11		0	8	6	1	0	4	7	0	0
Social Dev	4	9		0	7	5		0	3	2	1	0	2	4	1	0
Sports	3	8		0	8	7		0	3	1	4	0	6	3	1	0
Treasury	8	24		0	11	6		0	6	5	6	0	7	4	5	0
TOTAL	126	307	0	1	165	140	0	2	88	82	43	2	80	80	37	2

According to Table 5 above, for the 2016/17 financial year, a total of 197 senior managers had active companies that could do business, meaning the number of senior managers with active companies decreased by 4% compared to the previous financial year. The PSC requested the Gauteng Provincial Treasury to verify if any of the companies registered under the SMS members did not tender for business in 2016/17 financial year. The Gauteng Provincial Treasury reported that according to the Basic Accounting System (BAS), two officials were found to have conducted business with the Gauteng provincial government departments and were paid accordingly. These senior managers have therefore contravened the provisions of Regulation 13 (c) of the PSR, 2016 and the Directive on Conducting Business with an Organ of State and disciplinary steps should be taken in terms of Regulation 9(5) of the PSR, 2016 read with section 16A of the Public Service, Act, 1994.

According to Regulation 13(c) of the PSR, 2016 an employee shall not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is in an official capacity as a director of a company listed in schedule 2 and 3 of the Public Finance Management Act.

The PSC has established that there are 14 senior managers in Gauteng Departments who are contravening the provisions of Regulation 13 (c) of the PSR, 2016 and Directive on Conducting Business with an Organ of State in 2016/17 financial year, since the companies registered under their names were listed on the National Treasury Supplier database, as shown in Table 6 below. The primary objective of registering the company in the National Treasury suppliers' database is to enter into a contract with the state to render services being requested for.

Table 6: Employees with companies that are on the National Treasury Suppliers Database

COMPANIES OF THE OFFICIALS REGISTERED ON NATIONAL TREASURY DATABASE	
Department	Supplier Database
Agriculture	0
COGTA	1
Community Safety	1
Economic Development	3
Education	1
e-Government	1
Health	5
Human Settlements	0
Infrastructure Development	1
Premier	0
Roads and Transport	0
Social Development	0
Sports	1
Treasury	0

- **Implementation of the Directive on Conducting Business with any Organ of State by other levels of Employees in the Gauteng Departments**

In terms Regulation 13(c) of the PSR, 2016 read with the Directive on Conducting with Business with any Organ of State provides that an employee shall not conduct business with any organ of the State or be a director of a public or private company conducting business with an organ of the State, unless such employee is in an official capacity a director of a company listed in schedule 2 and 3 of the Public Finance Management Act, 1999. The employees were given until 31 January 2017 to resign from companies doing business with the state according to the DPSA circular dated 23 August 2016 and were also expected to provide feedback thereof to the DPSA by 7 March 2017, failing which the employee will face disciplinary actions (for failing to resign from the said companies).

In implementing the above Directive, of the 14 Gauteng departments, 10 requested their employees to submit proof of resignation from the companies that are conducting business with the State and 31 employees submitted the proof thereof. The departments of COGTA, Education, Health, Human Settlements, Infrastructure Development, and Sports, Arts, Recreation and Culture did not take any actions against employees who failed to provide the proof of resignation from the companies conducting business with the State. The Department of Roads and Transport has instituted disciplinary actions against the defaulting officials.

It should be noted that the prohibition to conduct business with the state became effective in August 2016, and at the time of writing the report the departments indicated that they are putting measures to monitor if employees are not doing business with the state. Whist the following departments indicated that they have measures in place: Community Safety; Economic Development; Health; Human Settlements; Infrastructure Development; Provincial Treasury; and Social Development.

All departments are expected to put in place credible mechanisms in order to ensure that the provisions of Regulation 13(c), PSR, 2016 are adhered to.

- **Disclosure of the Financial Interests by the Designated Employees**

The Minister for DPSA also determined the dates for disclosure and verification of interests by the designated employees which was June to August 2017. The MPSA has since postponed the dates to 30 November 2017, to finalise the disclosures and the verification process for the 2016/17 financial year due to the request by the departments that they were not yet ready.

At the time of writing the report, the disclosure and verification of interest disclosed by the designated employees was still in progress. However Departments such as Community Safety, e-Government, Office of the Premier, Provincial Treasury, Roads and Transport, Social Development and Sports have made significant progress in respect of the disclosures and verification process of the designated employees' interests as shown in Table 7 below. Meanwhile Departments of Health and Education are still lagging behind due to the higher number of the employees in these departments. 3592 out of 9998 (34%) employees have disclosed their interests.

Table 7: Disclosure of Interests by the Designated Employees

DISCLOSURE OF INTERESTS BY THE DESIGNATED EMPLOYEES			
Department	Disclosure By Officials		Systems to verify interests and establish COI available?
	Disclosed	Outstanding	
Agriculture	120	27	Yes
COGTA	43	13	Yes
Community Safety	76	0	No
Economic Dev.	125	6	No
Education	777	2148	Yes
E-Government	152	1	No
Health	848	7579	No
Human Settlements	227	10	Yes
Infrastructure Dev.	176	201	No
Premier	100	3	No
Treasury	279	9	Yes
Roads & Trans.	265	0	No
Social Dev.	313	0	Yes
Sports	91	1	Yes

The Department should ensure that the due date of 30 November 2017, determined by the MPSA is met regarding the disclosure and verification of the disclosed interests of the designated employees.

2.6 REMUNERATED WORK OUTSIDE THE EMPLOYEES' EMPLOYMENT

Regulation 13(i) of the PSR, 2016, read with the “Directive on other Remunerative Work Outside the Employee's Employment in the Relevant Department as Contemplated in Section 30 of the Public Service Act, 1994” stipulate that an employee shall only perform remunerated work, if he or she has permission in terms of section 30 of the Public Service Act, 1994. Employees are also prohibited from performing such work during official work hours; and use official equipment or state resources for such work.

According to Table 8, the senior managers performing remunerated work decreased in 2016/17 financial compared to the previous financial year.

Table 8: Percentage of senior managers doing RWOPS

PERCENTAGE OF SMS DOING RWOPS					
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	10%	3%	7%	5%	8%
COGTA	17%	0%	0%	0%	0%
Community Safety	17%	4%	0%	0%	0%
Economic Development	33%	4%	5%	8%	3%
Education	12%	4%	1%	8%	1%
e-Government	14%	0%	0%	0%	0%
Health	19%	4%	0%	12%	8%
Human Settlements	29%	0%	2%	0%	2%
Infrastructure Dev.	26%	2%	0%	2%	5%
Premier	22%	2%	0%	3%	0%
Roads and Transport	24%	0%	0%	0%	0%
Social Development	3%	9%	0%	2%	7%
Sports	21%	0%	0%	0%	0%
Treasury	13%	2%	0%	3%	2 %

Table 9: Other levels of employees doing RWOPS

NON-SMS EMPLOYEES DOING RWOPS			
Department	RWOPS Register?	Record on PERSAL	Hours undertaken
Agriculture	Yes	Yes	Not specified
COGTA	Yes	No	No specified
Comm. Safety	None	N/A	N/A
Economic Dev.	Yes	No	Over weekends
Education	None	N/A	N/A
e-Government	Yes	No	4hrs
Health	Yes	Yes	8 to 24 hours. Night time and during weekends mainly
Human Settl.	Yes	No	After hours and weekends
Infrastructure Dev.	None	No	N/A
Premier	Yes	No	N/A
Prov. Treas.	Yes	Yes	No comment
Roads & Trans.	Yes	No	2 hours per week
Social Development	Yes	Yes	Hours range from 4 - 80 hours
Sports	Yes	No	Official 1 = 8 hours; Official 2 = 16 hours.

The monitoring of the performance of remunerated work outside employees' employment remains a concern in that no proper records were kept by the departments of Community Safety; Education; and Infrastructure Development as shown in Table 9 above. Whilst 3 departments namely Agriculture and Rural Development; Health; and Provincial Treasury had the prescribed

registers in terms of the RWOPS Directive. The nature of remunerated work ranged from lecturing, tutoring, modeling, recycling of tires, etc. It was indicated that the officials perform such work after hours and on weekends.

The PSC's assessment reveals the nature of the remunerative work performed by some employees is related to their official functions and this may inevitable lead to conflicts of interest (misuse of the resources and assets) and the employees' private interests' negatively impacting on the public interest. For example, in the Department of Agriculture, some officials (in veterinary services) are performing remunerative work outside their official work as veterinary specialists or treating small animals. Another example is the medical practitioners appointed by the Department of Health and who performed remunerative work in their private practices.

It is therefore imperative for the Executive Authorities to exercise their discretion in a rational manner to avoid creating conflicts of interest between the official duties of the employee and the remunerated work outside the employees' employment.

The record management and monitoring of the remunerated work outside the employment by the departments should improve. The MEC should hold the managers overseeing employees performing remunerated work outside employment accountable for not complying with the provisions of Regulation 13(i) of the PSR, 2016.

2.7 PROMOTION OF THE CODE OF CONDUCT

Regulation 23(1) of the PSR, 2016, requires the Ethics Officer to amongst others promote integrity and ethical behavior in the department as well as advise employees on ethical matters. The PSC noted that most departments promoted the code of conduct, however it was mostly during the induction of the new employees. The PSC in its 2015/16 State of the Public Service report, recommended that all employees should be taken through the Code of Conduct in view of the fact that there were changes to the Code of Conduct as contained in the PSR, 2016. The PSR, 2016 introduced new provisions to name the few, the elevation of ethical management by developing and implementing ethics management strategy, the prohibition of employees from doing business with the state, disclosure of interests by the designated employees which provisions need rigorous engagements to ensure common understanding and effective implementation thereof.

Table 10: Promotion of the Code of Conduct

PROMOTION OF THE CODE OF CONDUCT			
	No. Of Workshops 2016/17	Proof Of Declaration Signed?	No. Officials Who Attended
Agriculture	4	Yes	58
COGTA	2	Yes	43
Community Safety	21	Yes	790
Economic Dev	3	Yes	94
Education	0	No	0
E-Government	1	No	96
Health	38	Yes	1601
Human Settlements	11	Yes	428
Infrastructure Dev	32	Yes	1069
Premier	1	Yes	21
Treasury	3	Yes	196
Roads and Transport	0	N/A	0
Social Development	1	Yes	68
Sports	3	Yes	130
TOTAL	120	11	4594

The only departments that made significant efforts in promoting code of conduct are: Health; Human Settlements; and Infrastructure Development of the fourteen departments. The departments of Roads and Transport and Education did not conduct any workshops on the Code of Conduct. As reflected in Table 10 only 4594 out of 166 268 employees in the Gauteng Departments received training in the code of conduct contained in the PSR, 2016. Taking into account the changes in the code of conduct and several Directives issued by the DPSA in inculcating ethical management in the departments, this is not acceptable.

The Office of the Premier in the meantime has printed new codes of conduct for all employees and also partnered with the Gauteng City Region Academy (GCRA) to roll out training to all employees on the code of conduct.

It is incumbent upon the Ethics Officers and the Ethics Committees that the ethical behavior is inculcated in the departments as required in terms of Regulation 23 of the PSR, 2016. This will ensure that there is an improvement in accountability and governance in the departments.

2.8 GIFT MANAGEMENT

Regulation 13(h) of the PSR, 2016 which provides that an employee shall not receive any gift from any person in the course and scope of his or her employment, other than from a family member, to the cumulative value of R350.00 per year, unless prior approval is obtained from the relevant executive authority, should be read with Regulation 13(a) which prohibits an employee from receiving any gratification as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 in return for performing or not performing his or her official duties. Furthermore Regulation 13(b) also prevents an employee from engaging in any transaction or action that is in conflict with or infringes on the execution of his or her official duties.

Table 11: Gifts received in 2016/17 financial year

GIFTS RECEIVED IN 2016/17 FINANCIAL YEAR		
	Type of Gifts	Gift Value
Agriculture	Dog hamper; Wine glasses	Not specified
COGTA	Nil	Nil
Comm. Safety	Not specified	Not specified
Econ. Dev.	Hyundai Glasses	R 120.00
	FNB diary	R 75.00
	Gift Card from Old Mutual	R 1 200.00
Education	Cellphone; Book; Calendar; Framed photo;; Gift basket; Soccer match ticket; Overseas trip; Wine; Wine and olive box; Whiskey; Fruit basket; Gift basket; Watch; Sports attire	R 36 147.00
e-Government	Nil	Nil
Health	Cash donations; Groceries; Hospital equipment; Hospital beds; Computers, Clip boards; Printer, etc.	R 785 047.00
Human Settlement	Wines, Whiskey and Gift vouchers.	R 12 234.00
Infrastructure Dev	Nil	Nil
Premier	Nil	Nil
Treasury	Diary; Ticket to attend the Nedbank Golf Challenge; Calendar and diary; Invite to attend the Cape Town International Jazz Festival.	R 51 141.00
Roads and Transport	Jazz tickets; Lap-top bag; Notebook; Umbrella; Test drive at Audi; Invite to Mariah Carey Concert; Beach bag and pamper session; Costars, diaries and pens; Cook book; Pamper Spa Day; SA Golf Challenge; Dinner and show ; Leather bag; All expenses paid Club Event; Music Show Ticket; Plant tour.	R83 926.00
Social Development	Soccer kit sponsorship; 1000 Touch; Gift voucher; Chinese biscuits; Incentive voucher (1 night stay at hotel); 24x330 ml 15 cases of Coke; Chocolate basket;	R 15 580.30
Sports,	Nil	Nil

As reflected in Table 11, the total amount of gifts received by 8 departments out of 14 in the Gauteng Province is R966 700.00. The Department of Health is leading with the gifts or sponsorships that were offered to its various institutions as it received a total of R803 817.00 in gifts or donations. The gifts range from soccer kits, gifts vouchers, one night stay at the hotel, to name the few. The acceptance of gifts though appears innocent remains an ethical risks which should be closely monitored particularly where there is no clear approval process to be followed.

The PSC noted that out of 14 departments, the departments of: Economic Development; Education; E-Government; Health; Human Settlements; Provincial Treasury; Social Development; and Sports, Arts, Culture and Recreation have put in place the approval processes of accepting gifts which exceed R350.00 or more in value.

Furthermore, the departments of Economic Development; Education; Health; Provincial Treasury; and Sports, Arts, Culture and Recreation audit their gift registers annually in order to eliminate conflicts of interest.

In addressing the identified shortcomings identified, the Premier's Office would be embarking on the awareness campaigns on gift management and remunerated work outside the employees' employment and furthermore, review the departmental policies and procedures on gift management and proper controls would be put in place to eliminate conflict of interest.

Therefore it is recommended that all the employees who have been found to have violated the provisions of the Public Service Regulations, 2016 on the ethical management should be held accountable in terms of section 16A of the Public Service Act, 1994 read with Regulation 9(5) of the PSR, 2016.

PART II – FINANCIAL MISCONDUCT

2.9 INTRODUCTION

Section 85(1) of the Public Finance Management Act (PFMA)⁷, 1999, read with Chapter 4 of the Treasury Regulations, 2002, requires accounting officers of departments to, as soon as the disciplinary proceedings on cases of financial misconduct are completed, report the outcome thereof to, amongst others, the PSC.

The PFMA prescribes that any person who acts against sections 38, 39, 40, 41, or 42 requirements and who undermines the financial management and internal control system of the department, commits a financial misconduct, thus disciplinary and criminal proceedings must be instituted in terms of Chapter 10 of the PFMA. According to Treasury Regulations, departments are therefore required to report completed cases of financial misconduct to the relevant Executive Authorities, Department of Public Service Administration (DPSA) and the PSC. It should be noted that financial misconduct includes, but not limited to, theft, financial mismanagement (i.e. irregular expenditure, fruitless and wasteful expenditure and unauthorised expenditure), fraud, corruption and gross negligence.

2.10 NUMBER OF FINALISED CASES OF FINANCIAL MISCONDUCT

According to the Public Finance Management Act and Treasury Regulations all the departments are required to report, as soon as the disciplinary proceedings in cases of financial misconduct are finalised, to the PSC on the outcomes of the cases.⁸ The number of finalised cases of financial misconduct is one of the most important indicator to monitor both ethical behavior and fiscal discipline in the public service.

⁷ Republic of South Africa. The Public Finance Management Act No.1 of 1999.

⁸ National Treasury, (1999). The Public Finance Management Act (No 1 of 1999). Pretoria: Government Printers

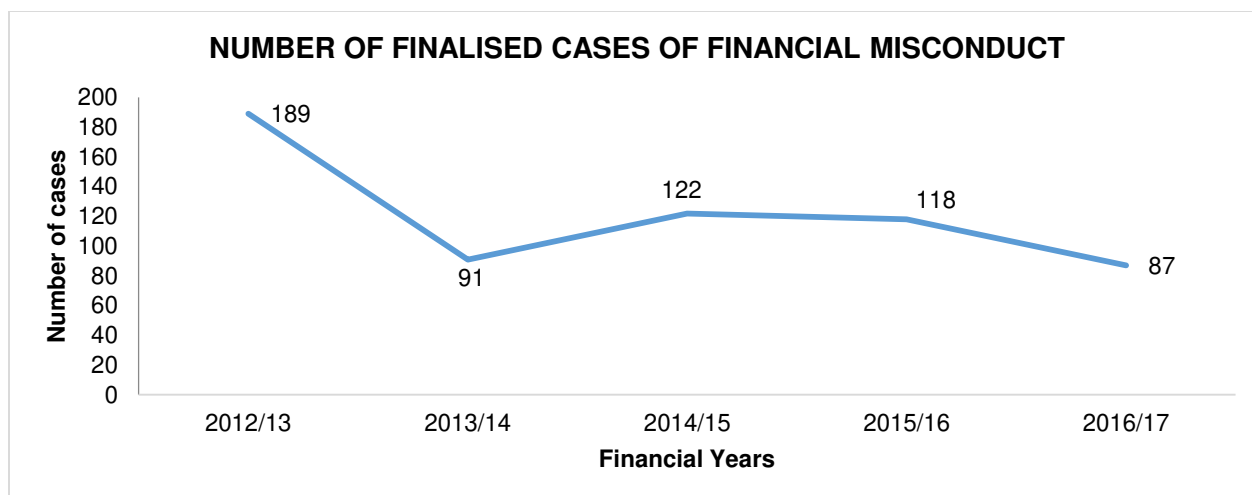


Figure 3: Number of finalised cases of financial misconduct

Table 12: Number of finalised cases of financial misconduct per department

NUMBER OF FINALISED CASES OF FINANCIAL MISCONDUCT PER DEPARTMENT					
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	-	-	-	-	1
CoGTA	-	-	-	-	0
Community Safety	-	2	-	-	-
Infrastructure Development	-	9	23	11	-
Economic Development	-	0	3	0	22
Education	17	5	5	9	-
e-Government	4	-	6	-	-
Health	164	60	80	91	59
Human Settlements	-	-	-	-	4
Premier	-	-	-	-	-
Sport	3	1	-	-	-
Roads and Transport	1	5	3	-	1
Social Development	-	3	2	7	-
Treasury	-	6	-	-	-
TOTAL	189	91	122	118	87

Figure 3 provides a summary of the total number of financial misconduct cases finalised during the past five financial years. Table 12 provides a breakdown of the total number of finalised cases of financial misconduct per department. In the past five years, Gauteng provincial government departments have reported a total of 607 finalised cases of financial misconduct, 31% of the cases were reported in 2012/13 financial year. In the 2016/17 financial year, the cases of financial misconduct reported decreased by 26% compared to the previous financial year. The majority of cases were reported by the Department of Health (68%), Department of Education (22%),

Department of Human Settlements (5%); and the other fraction was reported by the Department of Agriculture (1%) as well as Department of Roads and Transport (1%).

2.11 TYPES OF FINANCIAL MISCONDUCT REPORTED

Table 13: Types of financial misconduct reported

	2012/2013						2013/2014						2014/2015						2015/2016						2016/2017											
	Corruption		Financial mismanagement		Fraud		Gross negligence		Misappropriation and abuse		Theft		Corruption		Financial mismanagement		Fraud		Gross negligence		Misappropriation and abuse		Theft		Corruption		Financial mismanagement		Fraud		Gross negligence		Misappropriation and abuse		Theft	
Agriculture											2																							1		
Com. Safety																																				
Education			17													5																6	1	4	10	1
E-Gov.							4									6																				
Economic Dev.																3																				
Health	2	9	12		20	121			1	2		9	48			3	6		2	69	1					4	1	2	83					3	4	52
Human Settl.																																	3			
DID							2	2	1		2	2		12	1		6	4	3						2	2	1	3								
CoGTA																																				
Premier																																				
Treasury										6																										
Roads						1			4	1							3														1					
Soc. Dev.											3								2									7								
Sports				2	1						1																									
TOTAL	2	26	12	2	21	126	2	7	8	7	17	50		29	7	3	10	73	4	1		8	6	3	3	86	1		7	1	4	17	5	52		

2.12 AMOUNT OF MONEY INVOLVED IN CASES OF FINANCIAL MISCONDUCT

Table 14: Amount of money involved in cases of financial misconduct

AMOUNT OF MONEY INVOLVED IN CASES OF FINANCIAL MISCONDUCT					
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	R 0.00	R 0.00	R 0.00	R 0.00	R 248 146.74
COGTA	R 0.00	R 0.00	R 0.00	R 0.00	
Safety	R 0.00	2	R 0.00	R 0.00	R 0.00
Infrastructure	R 0.00	R 295 667.00	R 2 269 389.12	R1 162 182.15	R -
Economic Dev	R 0.00	R 0.00	R 17 065 314.99	R 0.00	R 0.00
Education	R 117 022.00	R3 291 636.16	R 515 893.30	R574 765.59	R 9 159 857.06
e-Government	R 84 543.53	R -	R566 800 000.00	R 0.00	R 0.00
Health	R 16 535 320.59	R 85 227.13	R 121 894.08	R509 596. 69	R 362 908.03
Human Settle	R 0.00	R 0.00	R 0.00	R 0.00	R171 541 909.88
Premier	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Sport	R 8 021 405.04	R 130 002.22	R 0.00	R 0.00	R 0.00
Roads and Transport	R 7 400.00	R4 500 000.00	R 767 112.85	R 0.00	R 17 000 000.00
Social Development	R 0.00	R 64 824.71	R 56 448.05	R62 639.41	R 0.00
Treasury	R 0.00	R 242 728.66	R 0.00	R 0.00	R 0.00
TOTAL	R 24 765 691.16	R8 610 085.88	R1 026 797 889.38	R2 309 183.84	R198,312,821.71

As shown in Table 14 above, the Department which reported the highest amount of money .i.e. R566 800 000.00 on finalised cases of financial misconduct in the past 5 years is e- Government in 2014/2015 financial year. This amount was followed by the amount reported by the Department of Human Settlements with R171 541 909.00 in 2016/2017 financial year and the Department of Roads and Transport with R17 000 000.00.

2.13 AMOUNT OF MONEY REPORTED AS NO LOSS TO STATE BY DEPARTMENTS

Table 15: Amount of money reported as no loss to the state

AMOUNT OF MONEY REPORTED AS NO LOSS TO STATE					
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
COGTA	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Community Safety	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Infrastructure Dev	R 0.00	R 33 282.00	R 1 714 173.04	R1 161 732.15	R 0.00
Economic Development	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Education	R 74 000.00	R 3 287 136.16	R 515 893.30	R192 298.30	R 0.00
e-Government	R 84 543.53	R 0.00	R 518 000 000.00	R 0.00	R 0.00
Health	R 98 895.39	R 24 447.39	R 47 125. 95	R 84 648.78	R 68 137. 57
Human Settlements	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Premier	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Sport	R8 000 000.00	R 0.00	R 0.00	R 0.00	R 0.00
Roads and Transport	R0.00	R 0.00	R 0.00	R 0.00	R 0.00
Social Development	R 0.00	R 0.00	R 15 000.00	R 0.00	R 0.00
Treasury	R 0.00	R 5 000.00	R 0.00	R 0.00	R 0.00
TOTAL	R 8 257 438.92	R 3 349 865.55	R 520 292 192.29	R1 438 679.23	R 68 137. 57

2.14 AMOUNT OF MONEY RECOVERED BY THE DEPARTMENTS

Table 16: Amount of money recovered by the departments

AMOUNT OF MONEY RECOVERED BY THE DEPARTMENTS					
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	R 0.00	R 0.00	R 0.00	R 0.00	R 248 146.74
COGTA	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Community Safety	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Infrastructure Dev	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Economic Development	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Education	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
e-Government	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Health	R100 466. 96	R4 438.40	R 6 506.32	R40 334.32	R 34,282.06
Human Settlements	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Premier	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Sport	R21 405.04	R 0.00	R 0.00	R 0.00	R 0.00
Roads and Transport	R0.00	R 0.00	R 0.00	R 0.00	R 0.00
Social Development	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Treasury	R 0.00	R191 085.29	R 0.00	R 0.00	R 0.00
TOTAL	R121 872.00	R195 523.69	R6 506.32	R40 334.32	R282 428.80

As shown in Table 16 above, out of the amount of R 17 614 946.52 that was owed to the departments/ State an amount of R 186 028.06 was reported as recovered. The PSC revisited the departments which have not been recovering the money from the employees found guilty. The outcome indicated that the recovery processes were not rigorously implemented by the departments in that minimal amount was recovered at the time. The PSC would embark on the project to assess if the recovery processes are improving or not.

2.15 AMOUNT OF MONEY NOT RECOVERED BY THE DEPARTMENTS

Table 17: Amount of money not recovered by the departments

AMOUNT OF MONEY NOT RECOVERED BY THE DEPARTMENTS					
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
COGTA	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Community Safety	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Infrastructure	R 0.00	R 262 385.00	R 555 216.08	R450.00	R 0.00
Economic Development	R 0.00	R 0.00	R 17 065 314.99	R 0.00	R 0.00
Education	R 43 022.00	R 4 500.00	R0.00	R 382 467.29	R 9,159,857.06
e-Government	R 0.00	R 0.0	R 48 800 000.00	R 0.00	R 0.00
Health	R 16 335 958.24	R 56 341.34	R 68 261.81	R384 613.59	R 260 488.40
Human Settlements	R 0.00	R 0.00	R 0.00	R 0.00	R171 541 909.88
Premier	R 0.00	R 0.00	R 0.00	R 0.00	R 0.00
Sport	R 0.00	R 130 002.22	R 0.00	R 0.00	R 0.00
Roads and Transport	R 7 400.00	R 4 500 000.00	R 767 112.85	R 0.00	R 17 000 000.00
Social Development	R 0.00	R 64 824.71	R 41 448.05	R62 639.41	R 0.00
Treasury	R 0.00	R 46 643.37	R 0.00	R 0.00	R 0.00
Total	R 16 386 380.24	R 5 064 696. 64	R 67 236 129.63	R830 170.29	R197 962 255.34

The Public Finance Management Act and Treasury Regulations require of all the Accounting Officers to take effective and appropriate steps to collect all monies due to the department from the officials found guilty of financial misconduct.⁹ This implies that the accounting officers have a duty to recover and collect all monies lost to the department from the officials found guilty of financial misconduct.

⁹ National Treasury, (1999). The Public Finance Management Act (No 1 of 1999). Pretoria: Government Printers; and National Treasury, (2002). Treasury Regulation (No 23463 of 2002). Pretoria: Government Printers;

2.16 EMPLOYEES CHARGED WITH FINANCIAL MISCONDUCT

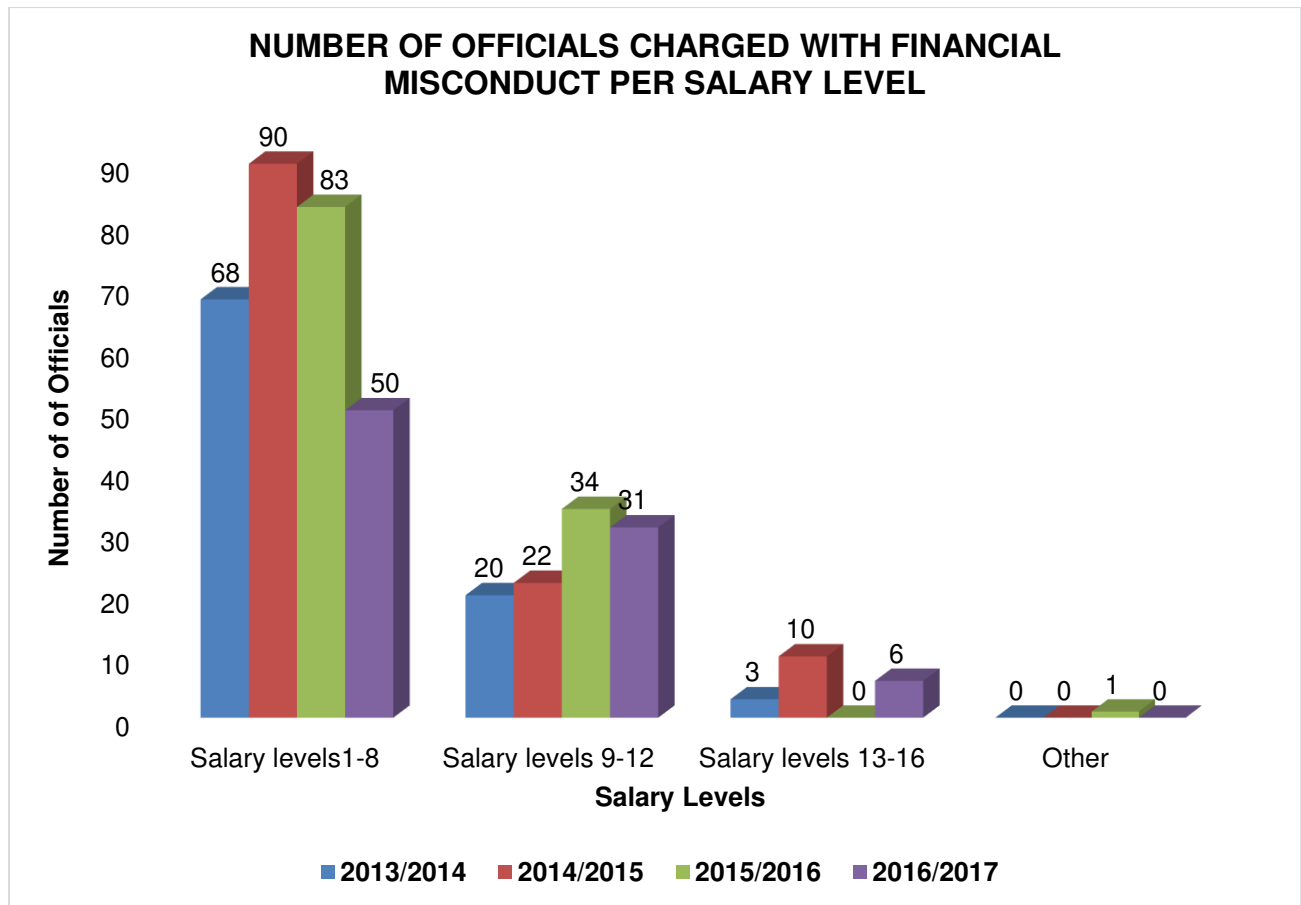


Figure 4: Employees charged with financial misconduct per salary level

Figure 4 above shows that in comparison to the 2015/16 financial year, where no senior officials were implicated in financial misconduct, six (6) senior officials were charged with financial misconduct in 2016/2017 financial year. The highest number of senior managers charged with financial misconduct was reported in 2014/2015 financial year with 10 cases. The involvement of SMS members in financial misconduct cases still remains a worrying factor for the PSC.

2.17 CRIMINAL PROCEEDINGS INSTITUTED

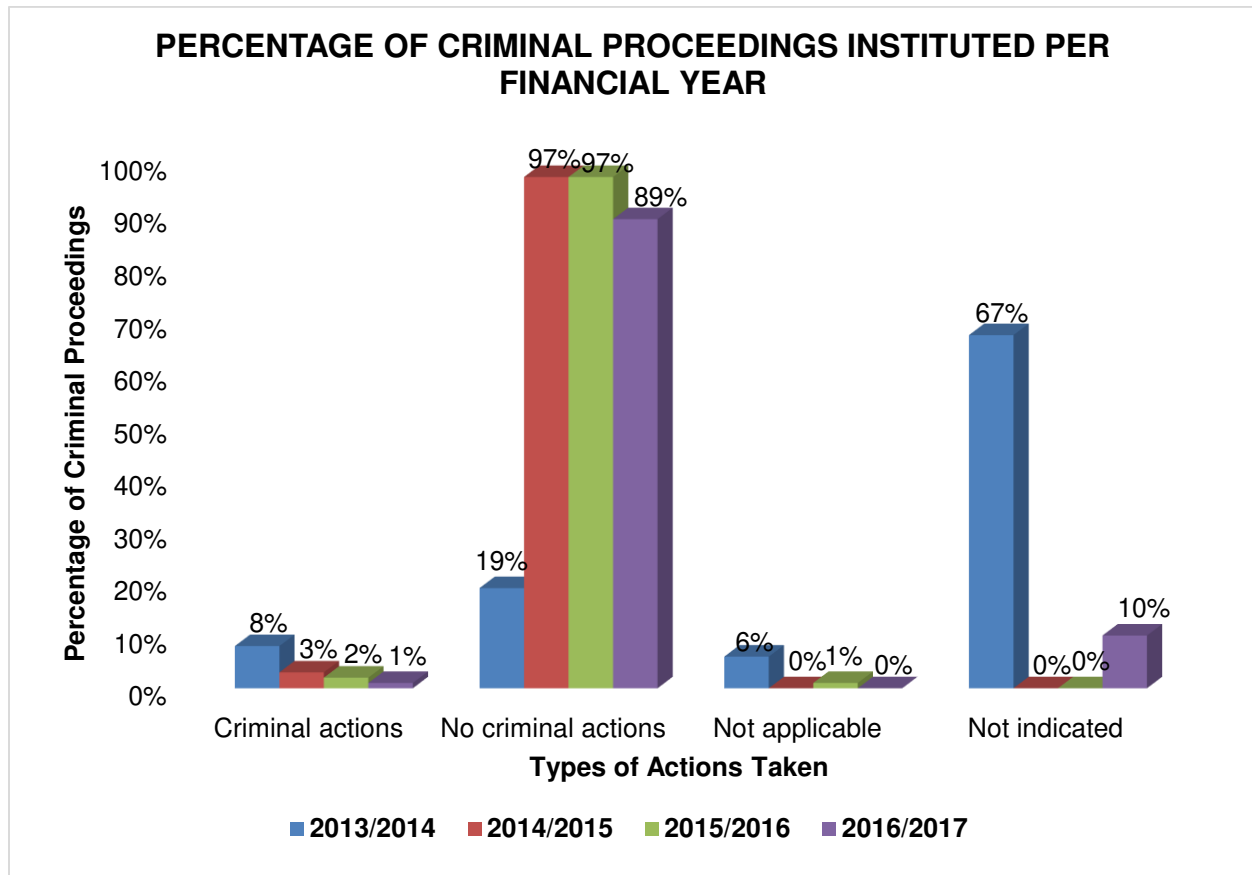


Figure 5: Criminal proceedings instituted

The figure above shows that criminal actions are barely taken by Departments against the employees found guilty of financial misconduct. According to Figure 5 above, criminal actions were mostly taken in 2013/2014 financial year, with 8%, which was 7 out of 88 employees that were found guilty of financial misconduct. During the 2016/2017 financial year, only 1 (1%) case was reported (by the Department of Roads and Transport) to have been referred for criminal proceedings. Following the submission of reports by Departments, the Department of Human Settlements indicated that further actions (criminal proceedings) were instituted on three (3) cases. The 3 cases involved amounts of R4 607 471.88, R132 020 400.00 and R32 000 000.00.

2.18 SANCTIONS IMPOSED TO OFFICIALS FOUND GUILTY

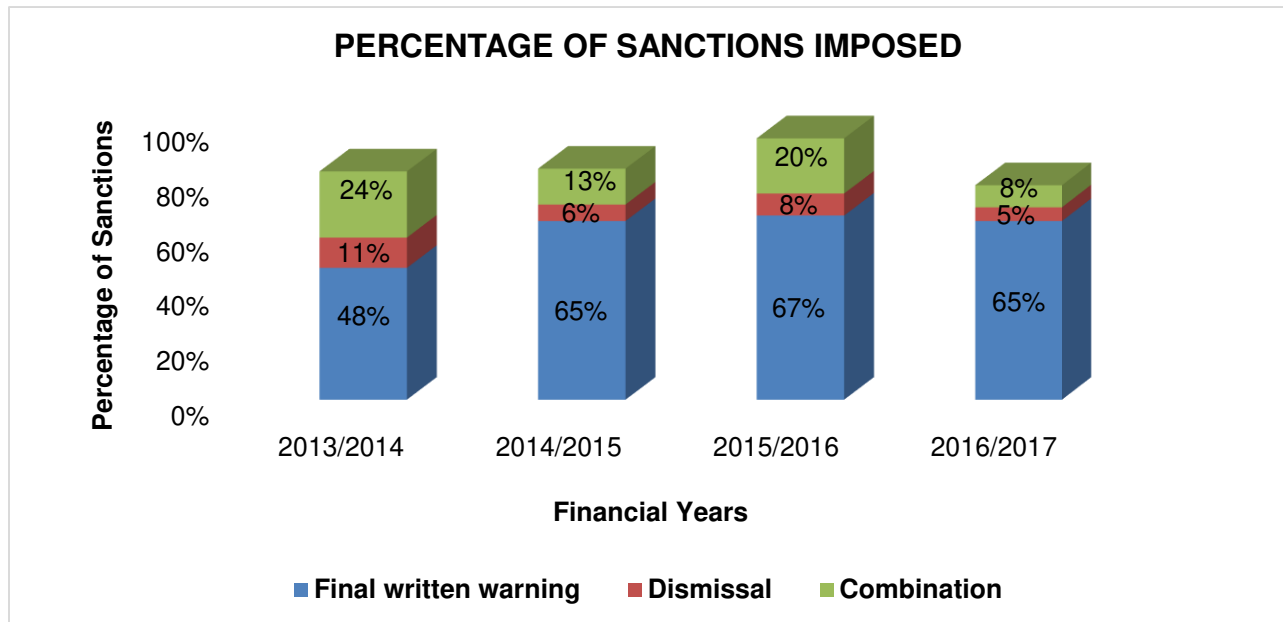


Figure 6: Sanctions Imposed

The above figure shows that for the past four (4) financial years, a sanction of a “*Final written warning*” was mostly pronounced. This was followed by a “*Combination*” of sanctions. A sanction of a dismissal was reported the lowest in 2016/2017 financial year with 5%.

2.19 FINANCIAL MISCONDUCT CASES REPORTED IN 2016/17

2.19.1 Outcomes of the Disciplinary Cases Reported

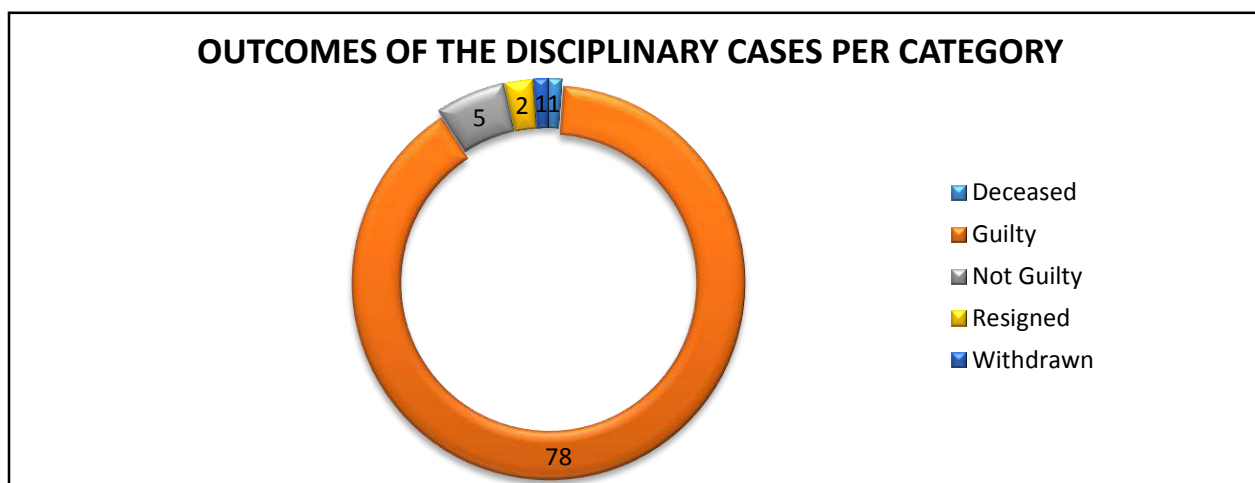


Figure 7: Outcomes of the Disciplinary Cases Reported

Figure 7 shows a breakdown of the outcome of disciplinary cases on financial misconduct reported by Departments. The figure shows that out of the 87 cases reported, 78 employees were found guilty of financial misconduct, two (2) employees resigned before the completion of disciplinary proceedings. The Departments however indicated that the monies owed by the implicated employees will be recovered through their pension funds. Six percent (6%) of the employees were found not guilty.

2.19.2 Sanctions Imposed

The figure below shows the sanctions imposed on employees found guilty of financial misconduct in the 2016/2017 financial year.

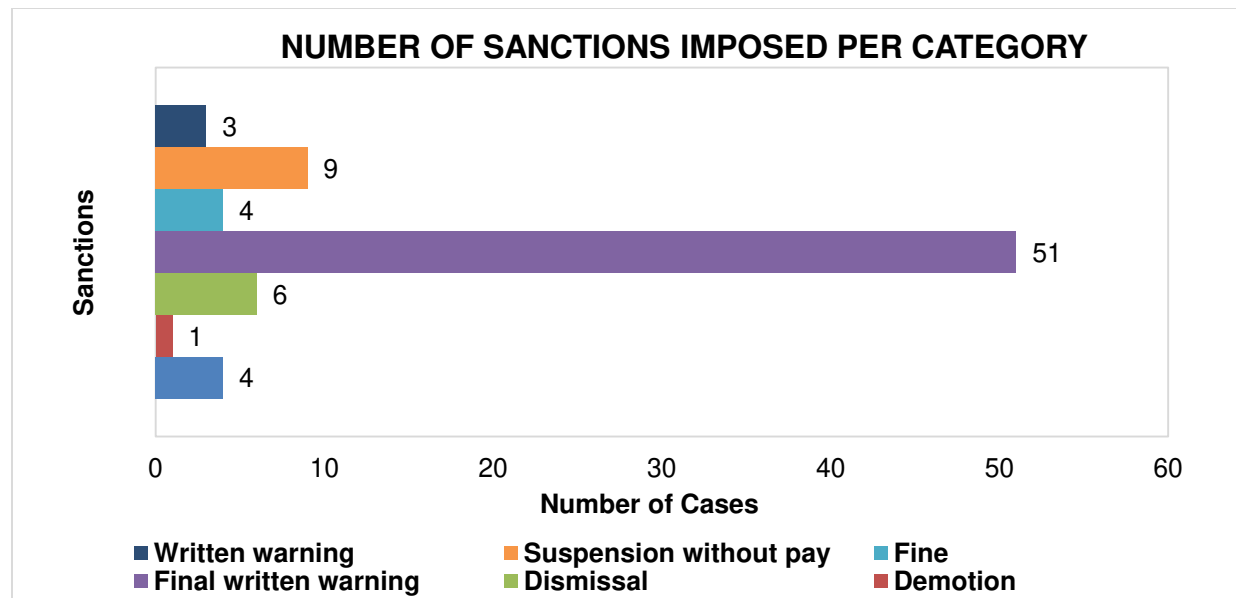


Figure 8: Sanctions imposed 2016/17 financial year

Figure 8 above shows that out of the 78 employees that were charged and found guilty of financial misconduct during the 2016/2017 financial year, a sanction of a “*Final written warning*” was imposed on 51 (65%) employees. This sanction was followed by 9 (12%) suspensions without pay. A sanction of a “*Dismissal*” was imposed on 6 (8%) cases. Only 1 (1%) employee was imposed with a sanction of a “*Demotion*”. A “*Combination*” of sanctions were imposed on 4 cases. N.B - A “*Combination of sanctions*” refers to a situation where the chairperson of the disciplinary hearing pronounced two sanctions against an employee, such as a final written warning and suspension without pay, as provided for in clause 7.4(a) (v) of the Disciplinary Code and

Procedures for salary levels 1-12 and in clause 2.7 (4) (a) of the Disciplinary Code and Procedures for SMS members.

2.19.3 Criminal Proceedings Instituted

Figure 9 below illustrates further action taken against employees charged and found guilty of financial misconduct in the 2016/2017 financial year. The figure below shows that criminal proceedings were instituted only on 1 case (1%). No further actions in terms of criminal actions were instituted on 77 (86%) cases.

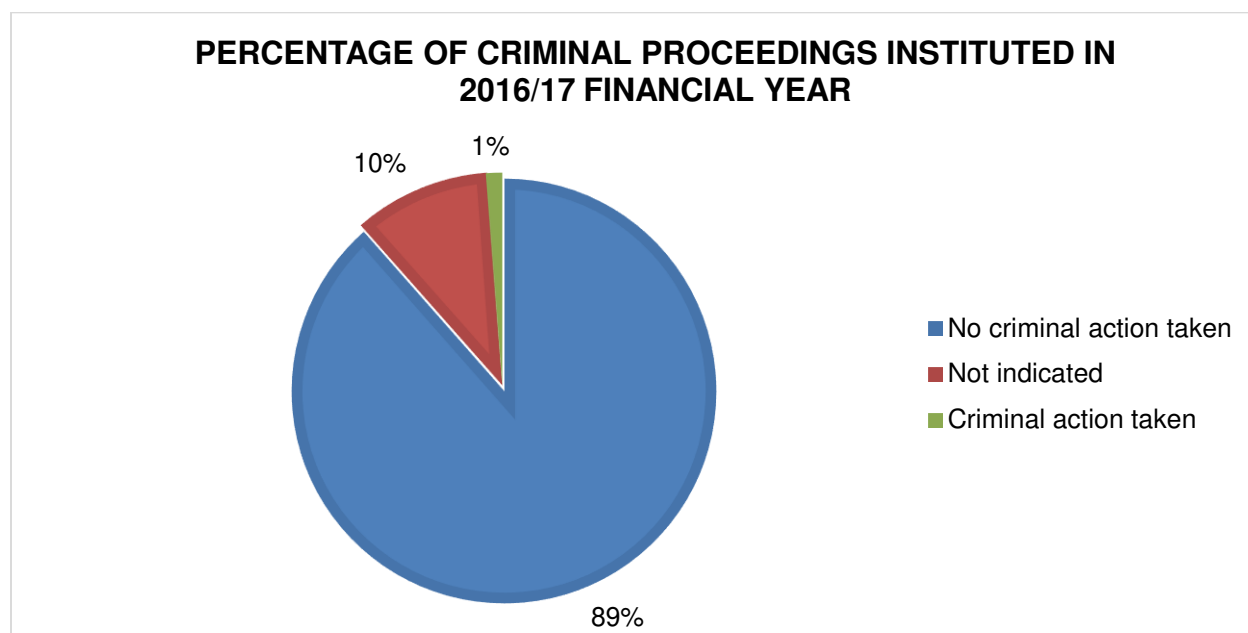


Figure 9: Criminal Proceedings instituted in 2016/17 financial year

The table below reflects all employees who were found guilty of financial misconduct and sanctions issued were either a final written warning, suspension, dismissal, demotion or a combination of sanctions (e.g. final written warning and suspension) in the 2016/2017 financial year.

2.19.4 Employees Found Guilty of Financial Misconduct and Amount Involved

Table 18: Employees found guilty of financial misconduct and amount involved

Salary level	Number of employees per salary level			Amount involved per salary level			Recovery of money per salary level			Amounts considered as a no loss			Amounts owed		
	2-8	9-12	13-16	2-8	9-12	13-16	2-8	9-12	13-16	2-8	9-12	13-16	2-8	9-12	13-16
Agriculture	-	-	1	-	-	R248 146. 17	-	-	R248 146. 17	-	-	-	-	-	0
Education	4	*13	1	R151 343.00	R6 833 245.92	R1 480 385.00	0	0	0	0	0	0	R151 343.00	R6 833 245.92	R1 480 385.00
Health	43	15	-	R345 207. 88	R17 699.13	-	R59 846. 02	R9 426.60	-	R24 855. 46	R8 272.53	-	R260 488.40	0	-
Human Sett.	-	1	1	-	R2 914 038.00	R4 607 471.88	-	-	0	-	-	0	-	R2 914 038.00	R4 607 471.88
Roads	-	-	1	-	-	R17 000 000.00	-	-	0	-	-	0	-	-	R17 000 000.00
Total	47	29	4	R496 550.88	R9 764 983.05	R23 336 003.05	R59 846. 02	R9 426.60	R248 146. 17	R24 855. 46	R8 272.53	0	R411,849.40	R9 747 283.93	R23 087 856.88
Grand Total	80			R 33 597 536. 98			R 317 418.79			R33 127.99			R 33,246,990.21		

* Number included employees who resigned during/after disciplinary procedures.

2.19.5 Employees Not Found Guilty of Financial Misconduct and Amount Involved

Table 19: Employees found not guilty of financial misconduct 2016/17 financial year

Department	Salary level/ number of employees			Amount involved			Amount considered as a no loss to the State			Amount not recovered/ owed to the State		
	2-8	9-12	13-16	2-8	9-12	13-16	2-8	9-12	13-16	2-8	9-12	13-16
Education	2	*2	-	R8 770.00	R 686 113.14	-	0	0	0	R8 770.00	R 686 113.14	-
Health	1	-	-	R1.02	-	-	R1.02	-	-	0	0	0
Human Settlements	-	-	2	-	-	R164 020 400.00	-	-	-	-	-	R164 020 400.00
TOTAL	3	*2	2	R8 771. 02	0	R164 020 400.00	R1.02	0	0	R8 770.00	R 686 113.14	R164 020 400.00
Grand Total	7			R164 715 284.16			R1.02			R 164 715 283.14		

* Number included employees who resigned during/after disciplinary procedures.

Table 18 shows the number of employees found guilty of financial misconduct in 2016/2017 financial year and the monies (R33 246 990.21) owed to the State as a result of such cases. It is, however, noted that there is a significant amount of money (R164 715 283.14, Table 19) in cases where employees were found not guilty of financial misconduct.

The PSC has further noted with concern the low pace of recovery of money by the departments in cases involving senior officials, as compared to the lower levels (salary levels 2-12) in the Departments. Out of the 80 cases in which a guilty verdict was pronounced by the presiding officers in 2016/2017 financial year, four (4) cases involved senior officials and the amount involved in the misconduct is R 23 087 856.88. The amount reported as recovered was R28 146.17 (see Table 18 from the Department of Agriculture).

In comparison to the amount owed by implicated employees on salary levels 2 to 12, which is R 10 159 133.33, the amount owed by senior officials (levels 13 to 14) of Departments is much higher. The amount was reported to be R23 087 856.88, even though the number of senior officials involved is the lowest (i.e. 4 senior officials).

2.19.6 Observations

The PSC has noted with concern the discrepancies in the reporting of financial misconduct cases by Departments as compared to other Constitutional bodies such as the Auditor-General (AG). The Table below shows departments of Sport, Arts, Culture and Recreation and Economic Development reported a *nil return* to the PSC. The PSC has however noted the following in respect of the completed cases of financial misconduct cases reported as pending/ finalised by the AG in the 2016/2017 financial year annual report:

- The Department of Sport, Arts, Culture and Recreation had cases of irregular expenditure which involved an amount of R148 670 000.00. According to the AG's report, disciplinary actions were taken in some of the cases and investigations were in progress on others. The report further shows an amount of R860 000.00 was incurred as fruitless and wasteful expenditure due to legal costs, penalties, invoice prices inflated and VAT charges by non-VAT registered suppliers. Lastly, an amount of R17 937 000.00 was incurred as unauthorised expenditure due to compensation of employees and goods and services. This matter was reported as still under investigation.

- The AG reported that the Department of Economic Development has incurred an amount of R747 000.00 as fruitless and wasteful expenditure. In this case, disciplinary actions were taken by the Department against implicated officials. This amount was however not reported to the PSC by the Department.

The non-compliance by the above Departments in reporting the finalised cases of misconduct to the PSC constitute a violation of section 85 of the PFMA. Following the above findings, the Departments were requested to provide the PSC with comments regarding these discrepancies and however failed to do so. The accounting officers who reported inaccurate information the PSC should be held accountable by the EAs. In addition the accounting officers cannot simply let the employees found guilty of misconduct get away without initiating the process of recovering money taking into account the fiscal constraint being experienced by the government.

Table 20: Financial Misconduct Cases Reported in the 2016/17 Annual Reports

CASES OF FINANCIAL MISCONDUCT REPORTED IN THE DEPARTMENTAL ANNUAL REPORTS				
	Findings by the Auditor - General	Fruitless and Wasteful Expenditure	Unauthorised Expenditure	Comments
Agriculture	Irregular expenditure to the amounts of R9 548. 000.00 and R66 358.000.00 incurred as a result of non-compliance with the prescripts are under investigation	NIL	NIL	The Department to provide update on the investigation.
Comm. Safety	Irregular expenditure of R1 033.000.00 was incurred as a result of non-compliance with section 38(1)(c)(ii) of the PFMA and Treasury Regulation 9.1.1, non-approval of the deviation and connected suppliers conducted business with the Department and all these matters are still under investigation.	NIL	NIL	The Department to provide update on the investigation.
COGTA	R2, 655, 000, 00 incurred as the irregular expenditure due to non-compliance with the procurement processes on the following: maintenance, advertising, travel and accommodation, furniture, Operating leases and all matters under investigation.	Condoned amount of R154 000 of fruitless and wasteful expenditure	NIL	The Department to provide update on the investigation.
Economic Development	NIL	Fruitless and wasteful expenditure to the amount of R747.000.00 was incurred and disciplinary steps were taken as well as the cancellation of the contract.	NIL	Consistent reporting both to the AG and PSC encouraged.
Education	<ul style="list-style-type: none"> Irregular expenditure of R301. 643.000.00 and R92 900.00 was incurred as a result of non-compliance with supply chain process and other prescripts and the investigation is still under way. 	An amount of R3 485.000.00 was incurred as fruitless and wasteful expenditure due court order. It would be written off.	R80 911.000.00 incurred as unauthorized expenditure and no disciplinary steps and	The Department to provide update on the investigation.

CASES OF FINANCIAL MISCONDUCT REPORTED IN THE DEPARTMENTAL ANNUAL REPORTS				
	Findings by the Auditor - General	Fruitless and Wasteful Expenditure	Unauthorised Expenditure	Comments
			criminal proceedings to be taken. Expenditure awaiting authorisation.	
E-government	<ul style="list-style-type: none"> Furthermore irregular expenditure of R124.331.000.00 was not condoned by National Treasury as a result of non-compliance with the procurement processes. 	NIL	NIL	One case referred to the State Attorneys and one case reported to the South African Police Service.
Health	NIL	NIL	NIL	None
Human Settlements	R556 299.000.00 was incurred as the irregular expenditure of which R294 762.00 was condoned. Irregular expenditure was incurred as a result of the non-compliance with the prescripts including those of supply chain management processes, non-approval of deviations and all these matters are still under investigation.		Nil	The Department to provide update on the investigation.
Infra. Dev.	Irregular expenditure of R184.578.000.00 was incurred as a result of the disqualification of the bidder, months to months contracts, non-compliance with the supply chain management processes and the investigations are underway.	NIL	NIL	The Department to provide update on the investigation.
Premier	None	NIL	NIL	Reporting correct.
Roads and Transport	Nil	NIL	NIL	None
Social Dev.	NIL	NIL	NIL	Reporting correct.
Sports,	Irregular expenditure to the amount of R148 670.000 was incurred as a result of minimum threshold not indicated, awarding of	An amount of R860 000.00 was incurred as fruitless and wasteful expenditure	R17 937.000.00 was incurred	Consistent reporting both to the AG and PSC encouraged.

CASES OF FINANCIAL MISCONDUCT REPORTED IN THE DEPARTMENTAL ANNUAL REPORTS				
	Findings by the Auditor - General	Fruitless and Wasteful Expenditure	Unauthorised Expenditure	Comments
	contracts, supply chain management procedures not followed, unsolicited bids procedures not followed and irregular appointments. Disciplinary steps were taken in some of the matters and investigations are also underway.	due to legal costs, penalties, invoice prices inflated and VAT charged by non-VAT registered suppliers. Part of the amount of the amount has been condoned and the remaining amount still under investigation.	as the unauthorized expenditure due to compensation of employees and goods and services. The matter is still under investigation.	
Treasury	NIL	NIL	NIL	Reporting correct.

3. PART I

3.1. INTRODUCTION

The PSR, 2016, Regulation 25(3) calls for the Heads of Department to promote efficient, economic and effective use of resources in order to improve the functioning of the departments and to apply working methods such as re-allocation, simplification and co-ordination of work and eliminate unnecessary functions and systems. Furthermore Regulation 29 of the PSR, 2016 also requires the executive authorities to assess the efficiency and effectiveness of the departments' service delivery objectives using the assessment tools determined by the Minister. Inevitably, the quality of human resource at hand determines the capacity of the organisation or department to deliver on its mandate and proper human resource planning as informed by their organisational strategic objectives and goals becomes essential.¹⁰

The DPSA's Human Resource Planning Strategic Framework, also guides the department to meaningfully plan the human resources needed for the current and future periods. The core objective of the human resource strategic framework is to build an efficient and effective Public Service through the establishment of policies, structures, and operational processes for developing capable and high performing employees.¹¹

In assessing compliance with this framework, PSC used the following indicators: approved organisational structures; approved human resources plans; performance management; and sound labour relations.

3.2. APPROVED ORGANISATIONAL STRUCTURE

According to Regulation 25(2) of the PSR, 2016, an executive authority shall determine the department's organisational structure in terms of its core mandate and support functions.

¹⁰ Department of Public Service and Administration (1994) Public Service Act, Proclamation 103 published in GG 15791 of 3 June 1994, Pretoria: Government Printers, and Department of Public Service and Administration (2016). Public Service Regulations, Pretoria: Government Printers

¹¹ DPSA, (2008) Department of Public Service and Administration). Human Resource Planning Strategic Framework Vision 2015 for the Public Service. Pretoria: Government Printers

Table 21: Approved organisational structure per department

DEPARTMENT	DPSA APPROVED ORG. STRUCTURE
Agriculture	✓
COGTA	✗
Community Safety	✗
Economic Development	✓
Education	✓
e-Government	✗
Health	✗
Human Settlements	✓
Infrastructure Development	✓
Premier	✓
Roads and Transport	✓
Social Development	✓
Sports	✓
Treasury	✓

The PSC checked if the departments have the DPSA approved organisational structures. As shown in the table 21, for the 2016/17 financial year, ten (10) departments have DPSA approved organisational structures and the other four (4) departments do not have approved organisational structures.

In scrutinizing the human resource plans, the PSC has identified the following structural challenges:

Human Settlements – *there is misalignment between the approved organisational structure and the structure loaded on PERSAL.*

e-Government – *the department is still operating using the old structure (Department of Finance). However, it should be noted that the department is still consulting with the Department of Public Service and Administration.*

Community Safety – *the organisational structure has not yet been reviewed holistically, the reviews that were conducted were done individually per functional area.*

Education – *the approved organisational structure is not aligned with PERSAL. Also it was noted that, the line managers in the department have*

limited knowledge and understanding of functions performed by their respective business units.

Social Development – *the approved organisational structure does not meet the departmental priorities and objectives. It was also noted that the structure is not aligned with the legislative mandate (social welfare services) and there is inadequate capacity for community development.*

Economic Development – *Most of the newly created posts on the current approved structure cannot be filled because the department is still waiting for approval of the revised organisational structure from the Department of Public Service and Administration; and that affects service delivery.*

Agriculture – *The department is relying on the contract employees to mitigate capacity constraints; and also the structure is not aligned to the new departmental mandate, and reporting models.*

Roads and Transport – *the current structure cannot accommodate the results of the implementation of the Resolution 3 of 2009 (translation of employees who are above the applicable salary level). It was also noted that the department requires additional capacity to implement the Gauteng 25 year integrated master plan (ITMP25) and that the department is struggling to fill critical posts because there are posts that are out of adjustment and the department is struggling to recruit more suitable incumbents.*

Office of the Premier - *The current organisational structure is under review to accommodate functions migrated from the Department of Economic Development and former Department of Finance. It was further noted that the current organisational structure does not cater for all the departmental mandates, and some of the posts and organisational components are not included in the structure.*

- COGTA –** *There is misalignment between the skills and the deployment of staff to the identified posts due to the fact that the tasks are allocated based on the needs and not on the operational requirements of the department as per the departmental mandate. Also there are delays in the approval of the COGTA structure after the demerger.*
- Provincial Treasury –** *there were delays in the implementation of Treasuries Generic structures and also in the consultation process and feedback from the Department of Public Service and Administration and this may impact negatively on service delivery.*
- Infrastructure Development -** *the number of critical core technical and support positions within the approved structure is inadequate or insufficient to cater for the capacity requirement for both infrastructure delivery projects, maintenance projects, infrastructure procurement, property management, Expanded Public Works Programme (EPWP) projects and programme one support functions.*
- Sports –** *the organisational structure does not support the mandate of the department, as the workload of the department has increased. The structure is also being reviewed so that it will be in line with Treasury budget allocations.*
- Health –** *the organisational structure was last approved in 2004. The finalisation of the revised organisational structure was delayed amongst others by the national process of generating the generic structures for health department and the generic model was adopted in 2015. Health completed the revised structure in August 2015 and submitted same to the Premier's Office and no response was received after the submission.*

The PSC has observed that continuous reviewing of organisational structures which are not aligned to the long term vision of the government (NDP Vision 2030) often creates unintended results such as:

- Impacting negatively on the continuity of the service delivery programmes;
- Create instability in managing labour relations (which can be witnessed by higher number of grievances in the filling of posts, irregular appointments, matching and placement of staff not properly done, confusion in the reporting lines); and
- Makes human resource planning inefficient and ineffective which is against the provisions of the Public Service Act, 1994 and PSR, 2016.

A case in point is the Department of Health which is operating on the 2004 organisational structure despite the fact that in 2009 Health was merged with the Department of Social Development and in 2011 the department split from the Department of Social Development. The instability created in the Department of Health has affected its service delivery programmes resulting in unprecedented matters such as inability to pay the service providers (e.g. ±R2 billion owed to the National Health Laboratory Services); high litigation costs emanating largely from medical negligence by its staff members (resulting in the attachment of the critical assets of the department due to court orders not honoured), questionable decision making processes at the highest level. The previous interventions at the department of Health made by the Provincial and National government has not yet turned around the aforementioned challenges.

3.3. APPROVED HUMAN RESOURCE MANAGEMENT PLANS

In terms of Regulation 26, PSR, 2016 the executive authority is required to prepare and implement a human resource plan for his or her department.¹²

The PSC noted that for the 2016/17 financial year all the fourteen departments had approved human resource management plans.

The PSC assessed the extent of compliance with the provisions of the PSR, 2016 in preparing the human resource plans. This is because the Public Service Regulations prescribes that when preparing a human resource plan the executive, amongst others, shall (a) *assess the human resources necessary to perform his/her department's functions*, (b) *assess existing human resources by race, gender, disability, age and any other relevant criteria*; and (c) *identify gaps*

¹² Department of Public Service and Administration (2016) Public Service Regulations

between what is required under sub-regulation (2) (a) and what exists under sub-regulation (2) (b) and prioritise interventions to address the identified gaps.

3.4. WORKFORCE ANALYSIS

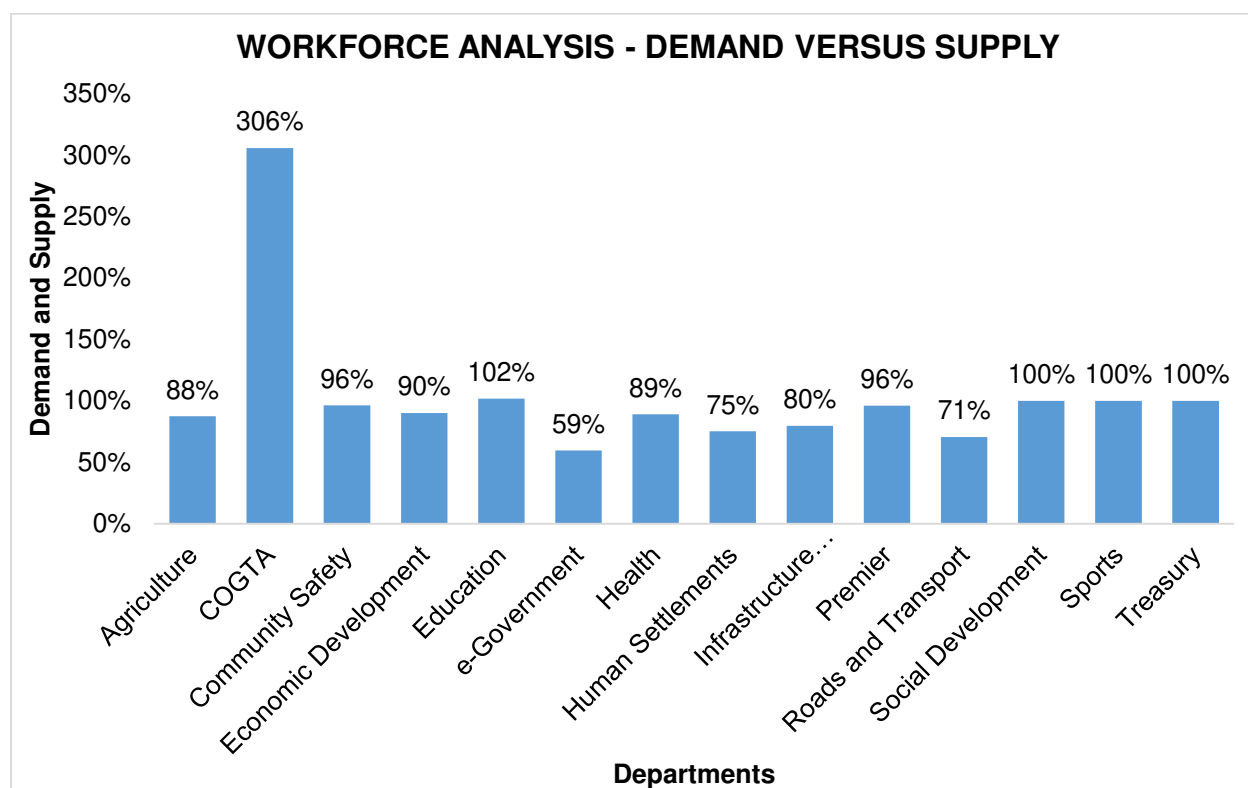


Figure 10: Workforce analysis demand vs supply

As shown in figure 10, the supply of human resource is more than the demand (needed human resources) for both the Departments of Cooperative Government and Traditional Affairs and Education. The figure also shows that there are only three departments (Social Development, Sports; and Provincial Treasury) which have human resource supply that matches with the human resource demand required to perform the departmental functions. The other departments (Agriculture, Community Safety, Economic Development, Health, Human Settlements, Infrastructure Development, Premier, Roads and Transports; and e-Government) have human resource supply which is less than the required to perform their departmental functions and e-Government has the lowest supply of all.

However, if one looks at the number of employees employed as stipulated in the human resource management plan against the number of vacant posts (vacancy rate); the workforce analysis on the human resource management plan does not make sense. It is impossible for the Department of Cooperative Government and Traditional Affairs to have employees that are three (3) times more than required yet the department reported a sizeable number of vacant posts (a total of 214 for the 2013/14, 164 for the 2014/15, 155 for 2015/16; and 146 for 2016/17 financial years). Similarly, the Department of Education has supply of 102% of employees against the required employees in terms of the human resource plan yet the department reported a high number of vacant posts in the previous financial years (8010 for 2013/14, 9219 for 2014/15, 8830 for 2015/16; and 9940 for 2016/17 financial years).

The same thing could be said about the Department of Social Development, Department of Sports; and Gauteng Treasury. They all indicated in their human resource plans that they have all the employees required to perform their departmental functions yet at the same time they reported a number of vacant posts between 2013/14, 2014/15, 2015/16; and 2016/17 financial years. Also the human resource plan shows that there is inadequate capacity yet the workforce analysis says the opposite. This means that, the human resource plan is not the reflection of what is being implemented in the department. This could be attributed to the fact that, in preparing human resource plan the workforce analysis was not conducted properly.

3.5. AGE ANALYSIS

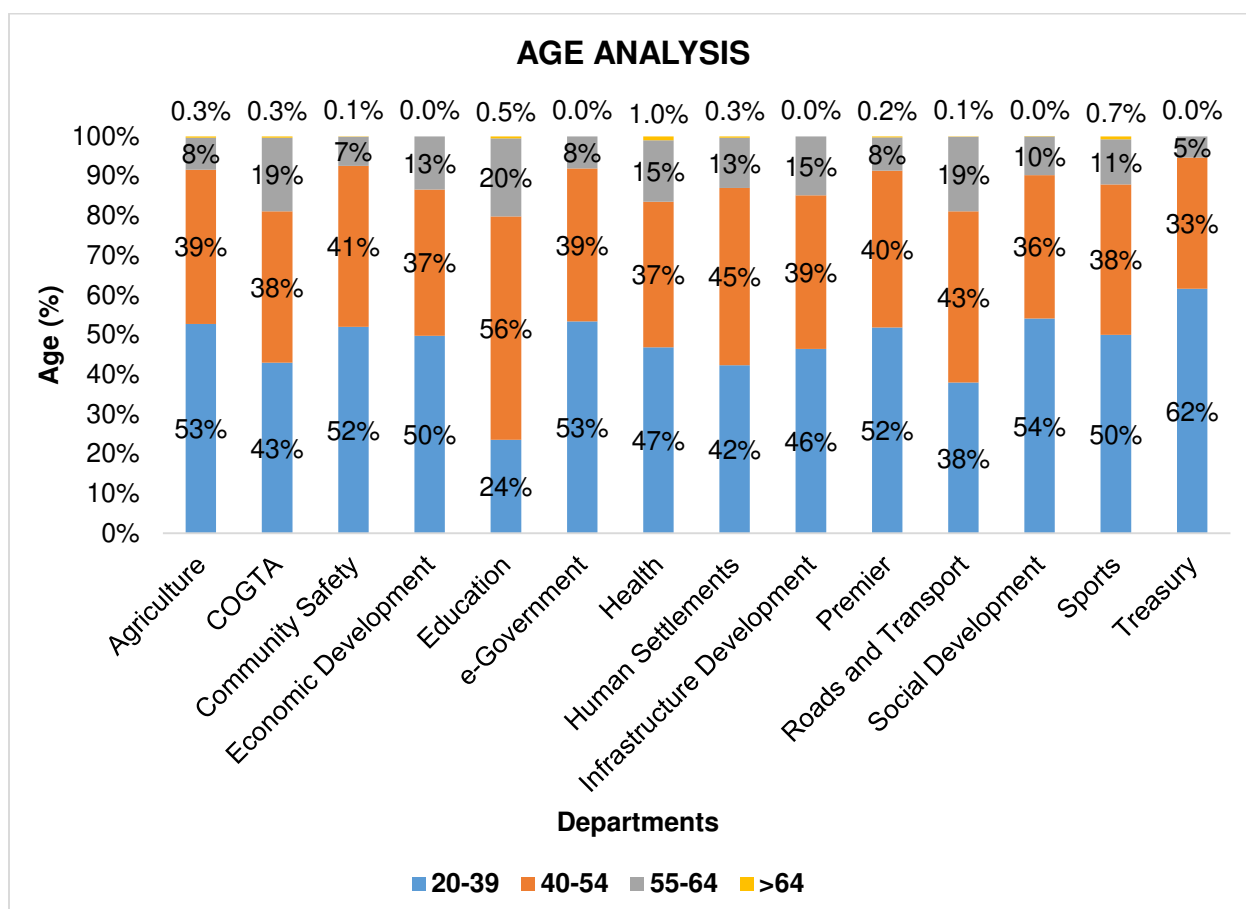


Figure 11: Age analysis of human resources

As per the age analysis provided in the human resource plans, 17% (27690) of the officials in Gauteng provincial government departments are at the retirement age (55-64); and 1% (1078) are above the prescribed retirement age (more than 64 years of age). The majority (47%) of the employees are between the ages of 40 to 54 and the other fraction (35%) is between 20 – 39 years of age.

As shown in the figure, the Department of Education has the highest percentage of officials in the retirement age which is 20% (15679), followed by the Department of Roads and Transport which is 19% (352); and Department of Cooperative Government and Traditional Affairs 19% (126). In addition to that, Department of Health has the highest number of employees that are above the retirement age (more than 64 years of age) which is 667 and followed by the Department of Education with 396 employees above the retirement age.

The figure also shows that, Gauteng Treasury has the highest percentage of young employees between 20 - 39 years of age (62%) and also has the lowest percentage of officials at between 55 – 64 years of age (5%). Followed by the Department of Agriculture with 53% of employees between 20 – 39 years of age and 8% for the employees between 55 – 64 years of age.

It is necessary for the departments to have a balanced generational mix to enable effective succession planning when older employees exit the public service.

3.6. VACANCY RATE

According to the norms and standards as set by the Department of Public Service and Administration, any vacancy rate beyond 10% is considered high and unacceptable. Thus meaning the only acceptable vacancy rate, is the vacancy rate that is 10% or below.

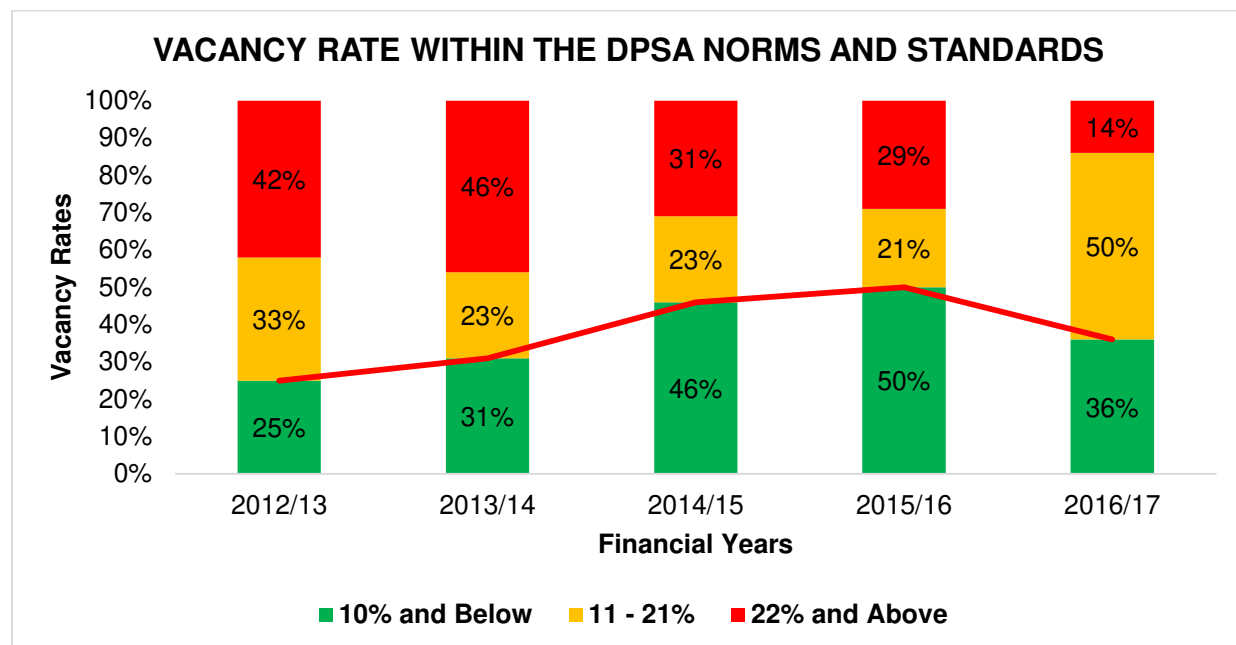


Figure 12: Vacancy rate (PERSAL)

Firstly, the PSC has noted with concern that there is a variation in terms of the vacancy rates reported. The vacancy rate reported by the departments are lower than the vacancy rate on the PERSAL system. For example, according to the PERSAL report, a total of 185115 posts were vacant whilst the departments reported a total of 16842 vacant posts for the 2016/17 financial year. This therefore implies that, the executive authorities prepare the human resources plans for their departments, outside the PERSAL system. Meaning the PERSAL is used as public service payment system and not for human resource management and planning.

According to the PERSAL system, for the 2016/17 financial year 9 of the 14 (64%) departments had an unacceptable vacancy rate (which was above the prescribed rate in terms of the DPSA norms and standards). The only departments that had acceptable vacancy rates were the Departments of Community Safety, Health, Human Settlements, Sport; and Gauteng Treasury.

Figure 12, also shows that the percentage of departments with unacceptable vacancy rate has increased by 16% compared to the 2015/16 financial year. What is concerning is that, more than half of the departments in Gauteng provincial government are not complying with the norms and standards set by the Department of Public Service and Administration. Except in the 2015/16 financial year where half of the departments in Gauteng had a vacancy rate that falls within the prescribed rate.

This means that the departments that have a high and unacceptable vacancy rates are not complying with the Human Resource Planning Strategic Framework and section 195 (1) (h) of the Constitution, on *good human resource management and career development practices, to maximise human potential, must be cultivated*.¹³

¹³ Constitution of the Republic of South Africa

Table 22: Total number of vacant posts per department

NUMBER OF VACANT POSTS AS REPORTED BY THE DEPARTMENTS AND PERSAL										
	2012/13		2013/14		2014/15		2015/16		2016/17	
	Dept.	PERSAL	Dept.	PERSAL	Dept.	PERSAL	Dept.	PERSAL	Dept.	PERSAL
Agriculture	144	320	108	335	106	205		83	74	112
COGTA	192	623	214	204	164	164		155	146	342
Community Safety	250	225	215	181	184	185		150	102	102
Economic Development	103	151	210	247	125	157		132	47	82
Education	2277	6721	8010	7591	9219	8933		8830	9940	9940
e Government	378	386	329	331	231	614		65	119	119
Health	5152	5350	5951	8668	5396	9104		8360	4242	5372
Human Settlements			50	208	7	278		214	20	91
Infrastructure Development	1476	1467	693	848	668	874		802	274	690
Premier	98	88	76	78	44	228		111	24	86
Roads and Transport	2174	2188	987	988	999	1198		940	854	878
Social Development	265	1242	237	1115	229	1214		911	917	917
Sports	78	177	71	71	67	1214		49	39	41
Treasury	63	76	76	84	37	159		168	44	96

3.7. VACANCY PERIOD 2016/17 FINANCIAL YEAR

According to Regulation 65(7) of the PSR, 2016, a funded vacant post shall be advertised within six months after becoming vacant and be filled within twelve months after becoming vacant.

As discussed above, a total of 16842 posts were vacant during the 2016/17 financial year. It is important to assess how long the posts have been vacant.

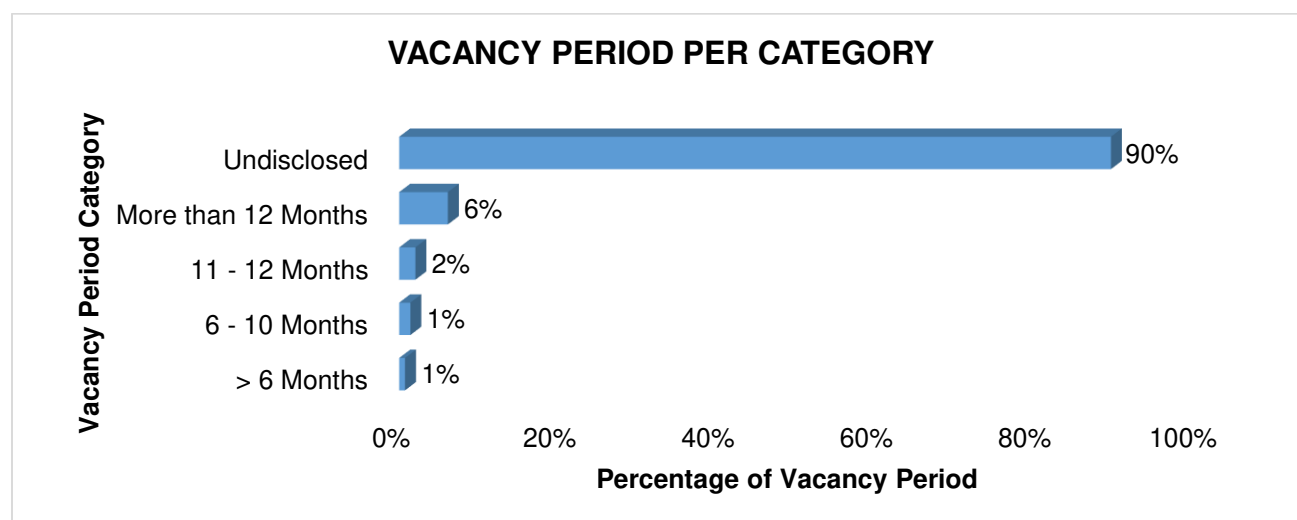


Figure 13: Vacancy Period

The majority of the vacant posts (15103), were not disclosed to enable an assessment of how long they have been vacant. Most of those posts were reported by the Departments of Education (9940), Health (4242), Social Development (917); and COGTA (4). This implies that, the above mentioned departments have vacant posts and may be unaware of how long they have been vacant.

Amongst the vacant posts reported in the 2016/17 financial years, it was noted that a total of 15103 (6%) posts have been vacant for more than a year and were reported by the Departments of Roads and Transport (670), COGTA (123), e-Government (90); and others. It was also noted that, a total of 1034 (2%) posts have been vacant for a period between 11 months to 12 months and were reported by the Departments of Infrastructure Development (205), Roads and Transport (68), Human Settlements (20), Sports (18), Community Safety (12); and others. When posts are vacant it implies that the officials in the affected departments have to undertake or perform additional responsibilities in acting capacity. This is not the best human resource practice as envisaged in section 195 (1)(h) of the Constitution.

3.8. DURATION OF THE ACTING PERIOD

Regulation 63 (1) and (2) of the PSR, 2016 provides that an employee directed to perform other functions in terms of section 32(1) of the Act shall perform functions so directed for a period not exceeding 12 consecutive calendar months and an employee should have the necessary competency for the post to which he or she is appointed to act.

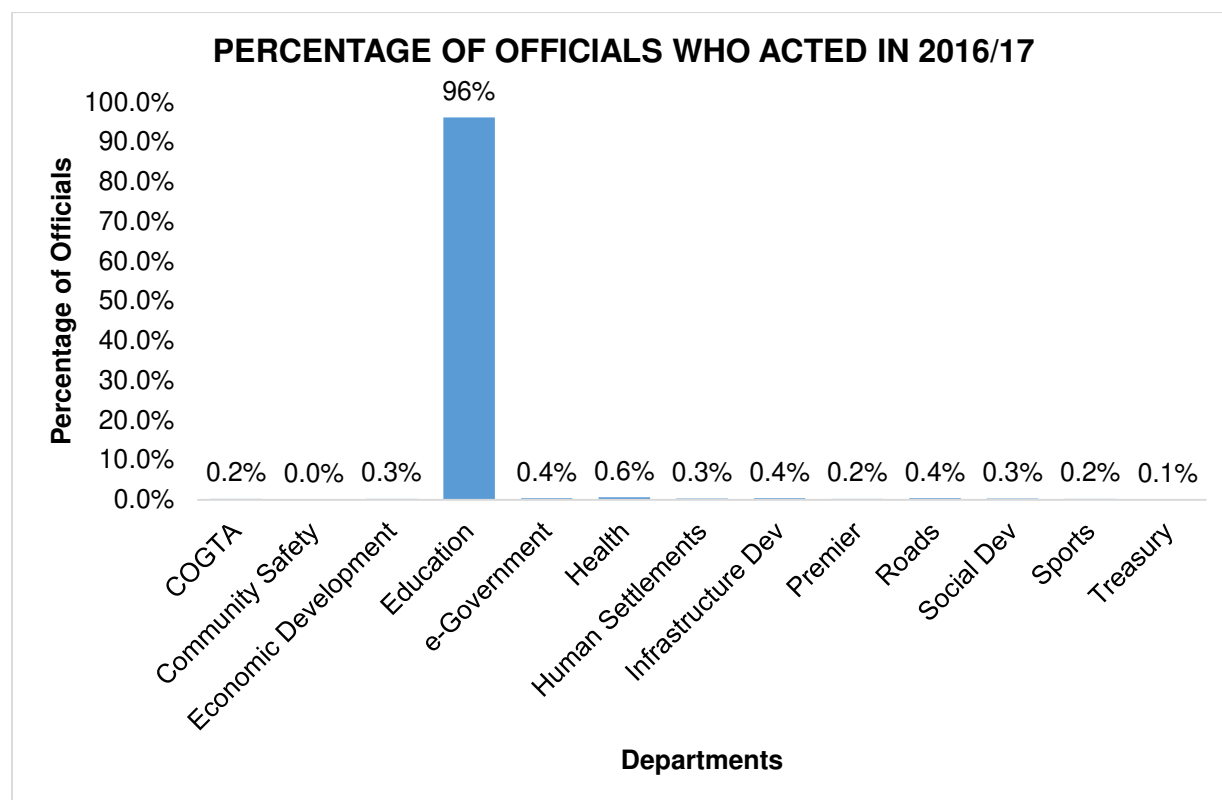


Figure 14: Percentage of officials who acted in 2016/17 financial year

As noted previously, more than fifteen thousand posts were reported vacant for the 2016/17 financial year. The Department of Education had the highest number of employees who acted during the 2016/17 financial year i.e. out of a total of 3585 officials who acted, 3447 (96%) of those officials were reported by the Department of Education.

The duration for acting was not disclosed in 98% (3496) of officials who acted in 2016/17 financial year. Most of those officials were reported by the Department of Education (3447), Department of Health (23), e-Government (14), COGTA (7); and Department of Social Development (5).

Table 23: Duration of the acting period

DURATION OF THE ACTING PERIOD								
	1 - 3 Months	4 - 5 Months	6-7 months	8-9 months	10 -11 Months	Undisclosed	12 Months or more	Total
Agriculture	6	3	5	1	0		0	15
COGTA	0					7		7
Community Safety	0	0	0	0	0	0	0	0
Economic Development	0	9	0	0	0	0		9
Education						3447		3447
e-Government	0		0	0	0	14	0	14
Health						23		23
Human Settlements	0	2	5	0	0		4	11
Infrastructure Dev	5	4	3	2	0		1	15
Premier	1	0	3	1	0		2	7
Roads	8					5		13
Social Dev	7	1	3	0	0	0	0	11
Sports	1	1	6	0	0		0	8
Treasury	4	1	0	0	0		0	5

In scrutinising the data provided, the PSC noted that:

- 0.2% (7) officials acted for a period between 12 or more than 12 months.
- Four (4) of those officials were reported by the Department of Human Settlements, two (2) from the Office of the Premier; and one (1) from the Department of Infrastructure Development in violation of Regulation 63 of the PSR, 2016.

3.9. RECRUITMENT AND TERMINATIONS

Figure 15 below, shows the percentage of officials recruited and officials who terminated their services with the Gauteng provincial government departments.

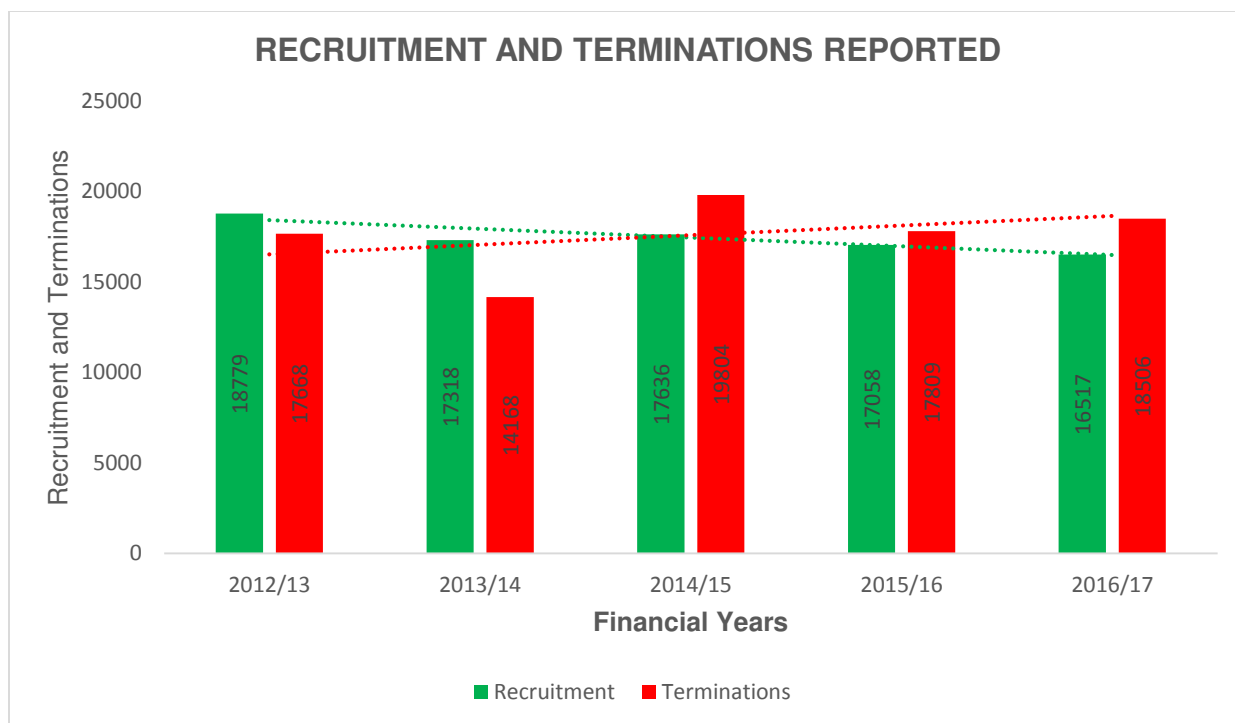


Figure 15: Recruitment and terminations reported in past five years

As shown in figure 15, in the past three financial years, the Gauteng departments lost more officials than they were recruiting. It was also noted with concern that, there is a dipping trend in terms of the officials recruited considering the high vacancy rate in the departments and high unemployment rate in the country. For the 2016/17 financial year, the recruitment decreased by 2% compared to the recruitment reported in the 2015/16 financial year. Whilst on the other hand, the terminations increased by 2% compared to terminations reported in the 2015/16 financial year.

In the past five financial years, a total of 87308 of the officials were recruited in Gauteng departments, and more than the half (44335) of those officials were recruited by the Department of Health, followed by the Department of Education 31917 (37%). However, in terms of the terminations, the Department of Education reported 53% (46352) and Department of Health reported 38% (33696) of the total 87955 terminations reported in the past five years. The highest number in the Department of Health is attributed to contract employment as the department provides experiential learning particularly in the medical field. Also in terms of the 'small departments', Department of Community Safety recorded the highest number of officials recruited (5596) and officials who terminated their services with the department (4152).

3.10. REASONS FOR TERMINATIONS

As shown in figure 16 below, the majority of officials (38134) left the Gauteng departments because their employment contracts ended. Most of those officials were reported by the Department of Education (19590), Department of Health (13811), Department of Community Safety (3804), Office of the Premier (396), e-Government (216) and all other departments reported numbers less than hundred.

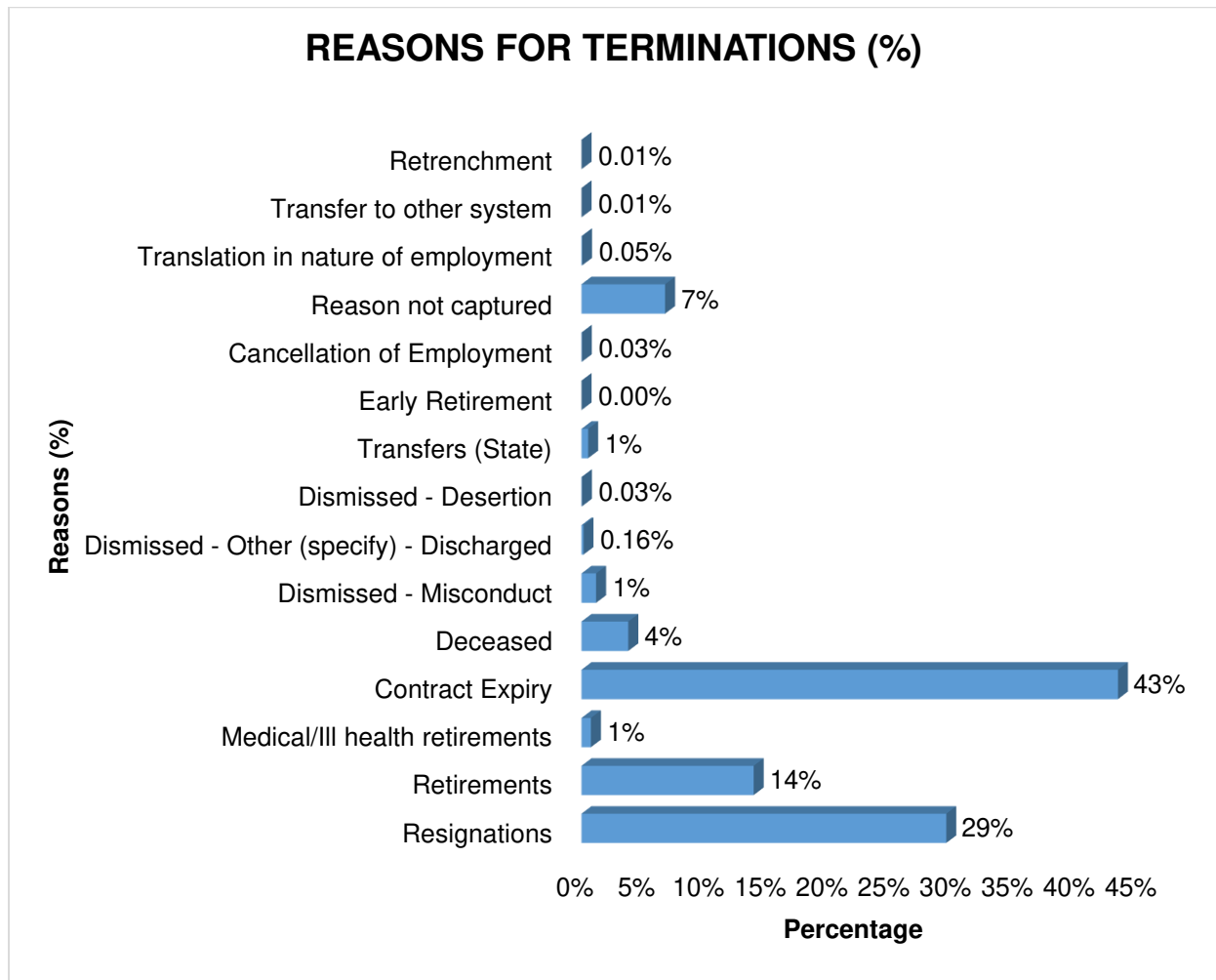


Figure 16: Reasons for terminations

The figure also shows that a sizable number (25898) of officials left the Gauteng departments through resignations and most of them were reported by the Department of Health (12681), Department of Education (11615), Department of Social Development (371), Department of Community Safety (264), Department of Roads and Transport (206), Department of Infrastructure

Development (193), e-Government (127), Office of the Premier (101) and other departments reported less than hundred.

The other reason for termination was retirement which counted for 14% (12227) of the total terminations reported in the past five years. Most of those retirements were reported by the Department of Education (6701), Department of Health (4856), Department of Roads and Transport (199), Department of Infrastructure Development (182), Department of Social Development (138), and the other departments less than hundred.

3.11. FEMALE EMPLOYEES AT SENIOR MANAGEMENT

In terms of the equity, in 2009, the Cabinet took a decision that there should be at least 50% of the women at the Senior Management level.¹⁴

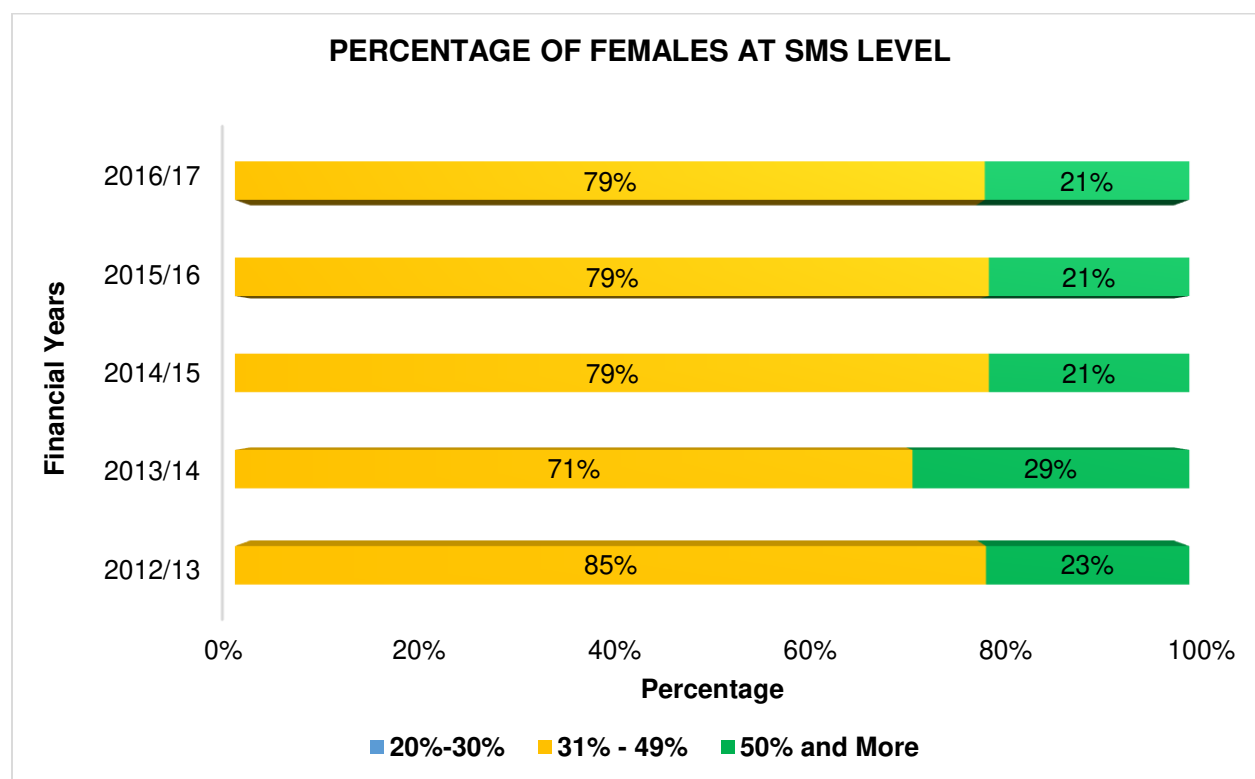


Figure 17: Percentage of female employees at senior management

¹⁴ Cabinet Resolution

Table 24: Percentage of female employees at senior management per department

PERCENTAGE OF FEMALES AT SMS LEVEL PER DEPARTMENT					
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	49%	46%	40%	37%	41%
COGTA	42%	53%	40%	40%	34%
Community Safety	48%	50%	42%	48%	50%
Economic Development	33%	39%	47%	52%	47%
Education	40%	42%	41%	44%	45%
e-Government	36%	42%	53%	47%	43%
Health	35%	40%	44%	45%	47%
Human Settlements		42%	50%	50%	48%
Infrastructure Development	43%	49%	46%	39%	39%
Premier	48%	43%	43%	45%	60%
Roads and Transport	49%	44%	40%	39%	46%
Social Development	61%	61%	60%	60%	65%
Sports	59%	51%	48%	47%	35%
Treasury	43%	47%	44%	47%	49%

As shown in figure 17 and table 24, the Gauteng departments are not complying with the Cabinet resolution. This is based on the fact that, according to PERSAL, less than five (5) departments are achieving this equity target (at least 50% of women at SMS level) each financial year; and that has been the case for the past five financial years. For the 2016/17 financial year, Departments of Community Safety, Office of the Premier; and Social Development complied with the Cabinet Resolution. Notably, in the past five financial years Department of Social Development is the only department in Gauteng that has consecutively achieved more than 59 percent on this equity target.

The strategies that have been applied by other Gauteng departments are not effective in terms achieving this equity target thus the departments need to extract lessons from the strategy used by the Department of Social Development.

3.12. EMPLOYEES WITH DISABILITIES

According to the 2006 Strategy for the Public Service, people with disabilities form between 5 and 12 per cent of the South African population. Thus, the Disability Code of Good Practice,

employment of people with disabilities is part of a broader equality agenda for people with disabilities to have their rights recognised in the labour market where they experience high levels of unemployment and often remaining in low status jobs or earn lower than average remuneration. The Cabinet approved that the 2% target is the minimum standard set for the Public Service.

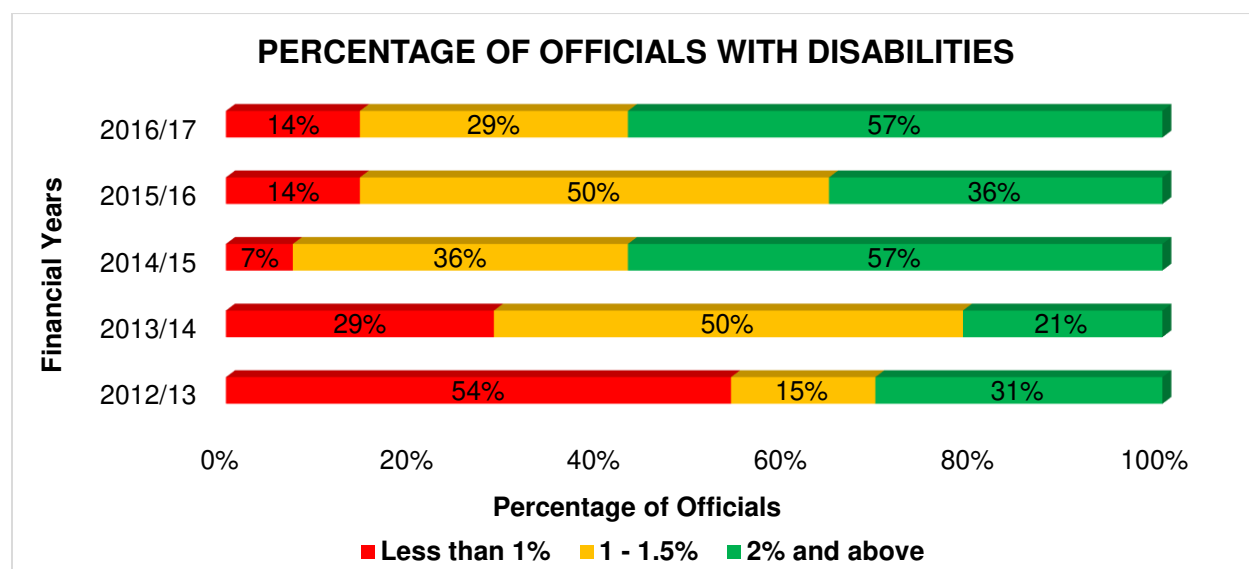


Figure 18: Percentage of employees with disabilities

Table 25: Percentage of people with disabilities per department

PERCENTAGE OF EMPLOYEES WITH DISABILITIES PER DEPARTMENT					
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	1.18%	0.78%	0.78%	0.91%	1.02%
COGTA	1.13%	1.48%	1.48%	1.07%	1.49%
Community Safety	1.55%	1.49%	1.55%	1.41%	1.79%
Economic Development	1.72%	0.74%	2.94%	1.92%	3.73%
Education	0.00%	1.46%	2.73%	2.27%	3.65%
e-Government	3.76%	3.49%	3.63%	3.37%	4.16%
Health	0.13%	0.33%	0.31%	0.26%	0.52%
Human Settlements		0.22%	1.25%	1.15%	2.08%
Infrastructure Development	0.45%	0.46%	1.25%	0.81%	0.95%
Premier	2.16%	3.32%	2.94%	1.85%	1.74%
Roads and Transport	0.54%	0.58%	0.60%	0.35%	0.48%
Social Development	0.00%	1.95%	1.77%	1.39%	3.46%
Sports	0.29%	0.48%	1.63%	1.05%	1.03%
Treasury	0.48%	0.81%	2.14%	1.75%	2.06%

On average, in the past five financial years the Gauteng departments has achieved 1.5% of people with disabilities. The highest average performance achieved was 2.01% which was achieved in 2016/17 financial year followed by 1.97% achieved in 2014/15 financial year. 6 out of 14 departments achieved the disability target in the Gauteng. The reasons for the failure to meet equity targets ranged from lack of proper recruitment strategies, non-availability of reasonable accommodation of people with disabilities and retention strategies.

The PSC observed the following in respect of the human resources planning:

- There is a need to approach the human resource planning holistically considering all the dynamics in the public service. As the assessment revealed that there is decrease in the recruitment of new personnel and the major reasons for this is the fiscal constraints due to slow economic growth, and lack of appropriately qualified scarce skills.
- The Department of Planning, Monitoring and Evaluation has already given direction on the budget prioritisation for 2018. It therefore calls for the departments to innovatively plan for the human resources required to deliver services.
- The department cannot afford to have bloated personnel which will not be able to deliver on the priorities of the government hence retraining and development of the existing employees becomes more important.
- The departments can no longer afford to maliciously comply with the development and approval of the human resource plans if these plans are not proposing credible solutions to address the fundamental challenges confronting human resources practices. For example, as discussed earlier, some of the departments in the Gauteng Province have recurring human resources challenges such as non-existing organisational structures, unreliable information on posts in the PERSAL, incurring irregular expenditure in the compensation of employees, lack of critical skills in key departments with the potential of alleviating unemployment rate (i.e. Infrastructure Development and Roads and Transport), non-achievement of set equity targets.
- DPSA should therefore also assess the effectiveness and efficiency of the human resource plans submitted by the departments.

PART II – PERFORMANCE MANAGEMENT AND DEVELOPMENT SYSTEM

3.13 INTRODUCTION

Section 195 (1) (f) of the Constitution prescribes that the public administration must be accountable. Accountability entails that the employees understand that the overall organisational performance should honestly mirror the individual performance and also accepting the consequences thereof (for good or poor performance). The planning cycle of a department (strategic planning session to conclusion of annual performance plan) has a bearing on the employees' performance.

The employees should honestly engage and reflect on their overall performance to ensure the credibility of the performance management and development system. Whilst the Performance Management and Development System Policy (PMDS), 2003, emphasized that the monetary reward would be awarded to employees who performed effectively and excellently. However, the PSR, 2016 in Regulations 72 and 73 elaborates extensively on the performance management of the employees and rewarding performance. Notably the PSR, 2016 introduced non-financial incentives if deemed appropriate. The PSR, 2016 has also set timeframes for the conclusion of the performance agreements and assessments of the employees. The PSR, 2016 should also be read with the DPSA Directive on the Performance Management and Development System for Employees other than Employees who are Members of the Senior Management Service (SMS) and the 2017 Incentive Policy Framework.

It should be noted that the employees were using the abolished PSR, 2001 when concluding their performance agreements and during the 2016/17 financial year, the PSR, 2016 came into effect.

3.14 DEPARTMENTAL PLANS TABLED AT THE LEGISLATURE

The performance agreements of all employees in the departments including the HoDs are formulated based on the approved departmental annual performance plan as informed by the strategic plan and medium term strategic plan of the department.

Table 26: Departmental plans tabled at the Gauteng Provincial Legislature

DEPARTMENTAL PLANS TABLED AT THE LEGISLATURE			
	Approved Strategic Plan	Medium Term Strategic Plan	Annual Performance Plan
Agriculture	✓	✓	✓
COGTA	✓	✗	✓
Safety	✓	✓	✓
Economic Dev	✓	✓	✓
Education	✓	✓	✓
e-Government	✓	✓	✓
Health	✓	✓	✓
Human Settl.	✓	✓	✓
Infrastructure	✓	✓	✓
Premier	✓	✓	✓
Roads	✓	✓	✓
Social	✓	✓	✓
Sports	✓	✓	✓
Treasury	✓	✓	✓

The PSC checked if the departments tabled their approved strategic plan, medium term strategic plan; and annual performance plans at the Gauteng provincial legislature. As shown in Table 25, all other departments reported that the plans were tabled at the legislature, except the Department of Cooperative Government and Traditional Affairs that did not table the medium term strategic plan.

3.15 PERFORMANCE AGREEMENTS CONCLUDED

As discussed above, performance management and development is a tool used to ensure accountability in relation to the achievement of pre-determined goals and objectives in the public service. It is operationalised using the performance agreements signed by both the supervisor and supervisee. This implies that performance agreement is a cornerstone for performance management at the individual level, and accordingly all the employees are required to enter into and sign performance agreements within three calendar months of their date of appointment and thereafter within two months of the beginning of each financial year.¹⁵

¹⁵ Public Service Regulations, 2016

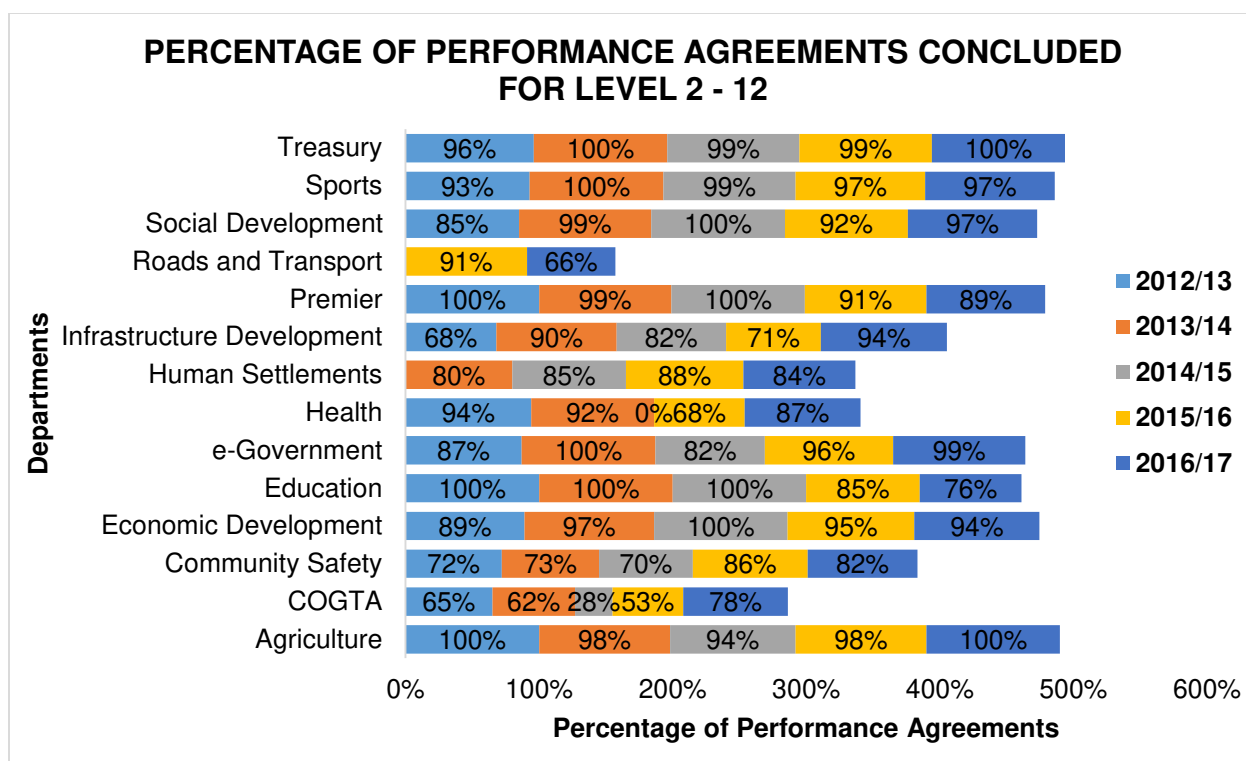


Figure 19: Percentage of performance agreements concluded level 2 -12

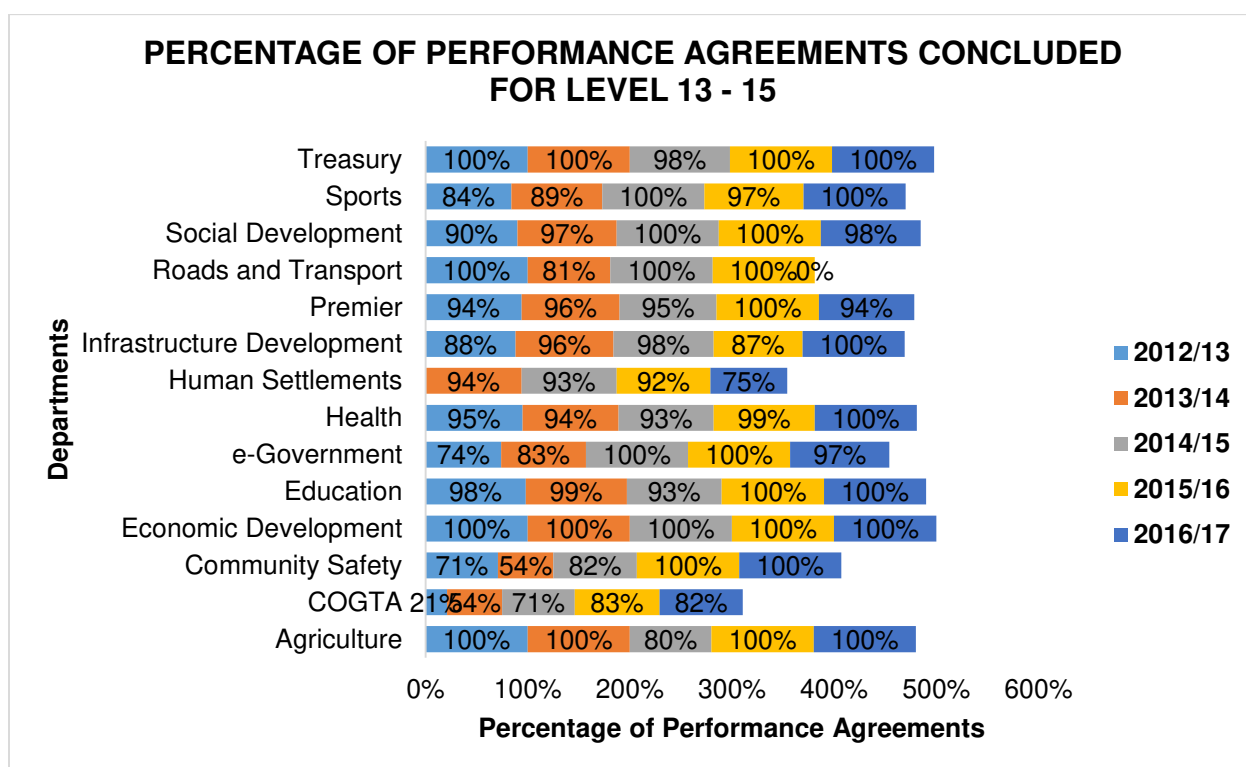


Figure 20: Percentage of performance agreements concluded for level 13 -15

♦ **Employees at Salary Level 2 - 12**

As shown in Figure 19, in the 2016/17 financial year, only two departments (Department of Agriculture and Gauteng Treasury) complied with the PSR in terms of concluding performance agreements. The rest of the departments did not comply with the provisions of the PSR, 2016 and the Performance Management and Development System (PMDS) because not all employees concluded performance agreements. The lowest percentage of performance agreements concluded was reported by the Department of Roads and Transport (66%). Also not complying with the provisions of section 195 (1) (f) of the Constitution, which prescribes that the public administration must be accountable and (h) on ensuring good human resource management and career development practices in order to maximise human potential. If the employees are not completing their performance agreements, therefore performance assessments cannot be effectively conducted due to lack of the signed performance agreements.

♦ **Employees at Salary Level 13 - 15**

According to Figure 20, eight departments (Agriculture, Community Safety, Economic Development, Education, Health, Infrastructure Development, Sports; and Treasury) complied with the PSR, 2016 and PMDS in respect of the 2016/17 financial year and the other six departments did not comply fully.

Non-conclusion of the performance agreements could be attributed to cases of newly appointed senior managers (three months waiting period). However if there was deliberate failure by the senior managers to ensure that the performance agreements are signed, it would therefore mean lack of accountability and there should be consequences thereof.

3.16 PERCENTAGE OF PERFORMANCE ASSESSMENTS CONCLUDED

In relation to performance assessments, the Public Service Regulations, prescribes that an employee must be assessed by his or her supervisor for each performance cycle.¹⁶ Therefore, in relation to that the Public Service Commission, assessed the percentage of performance assessments conducted for both cycles – bi-annual assessments and annual assessments.

♦ **Bi-Annual Assessments**

¹⁶ Public Service Regulations, 2016

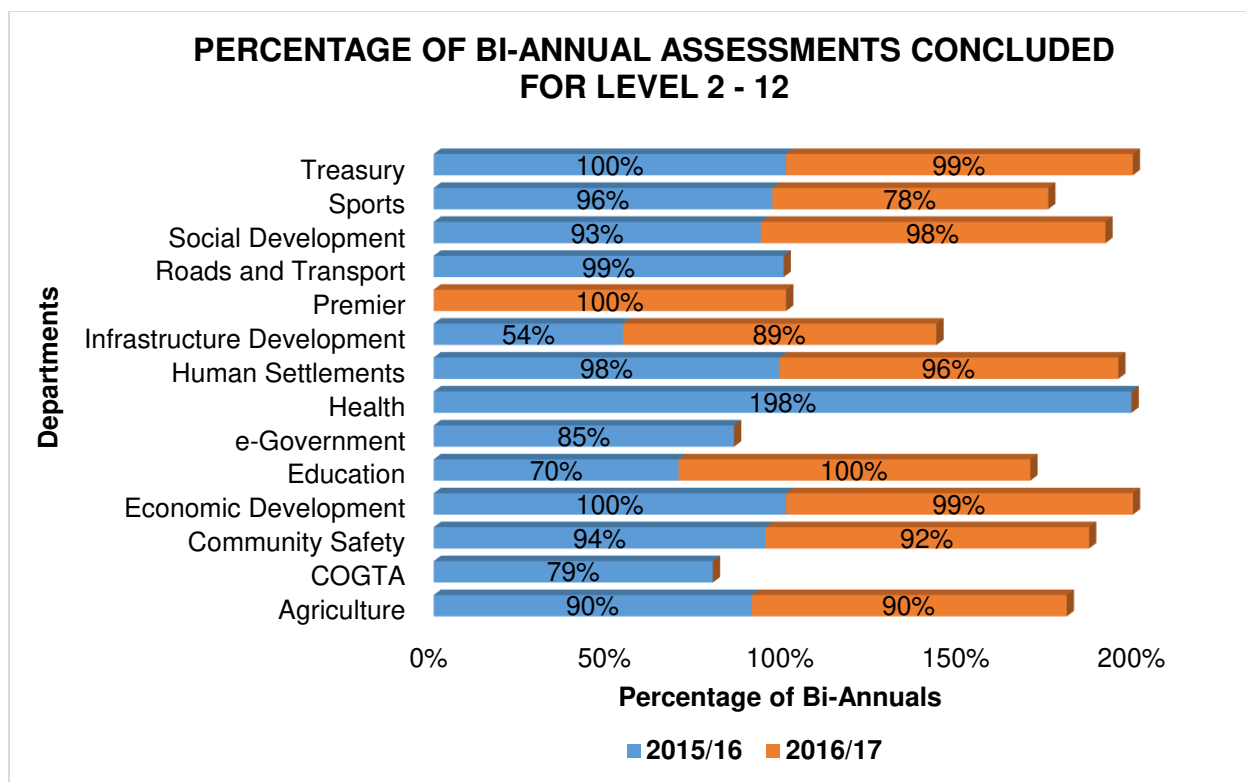


Figure 21: Percentage of biannual assessments concluded level 2 -12

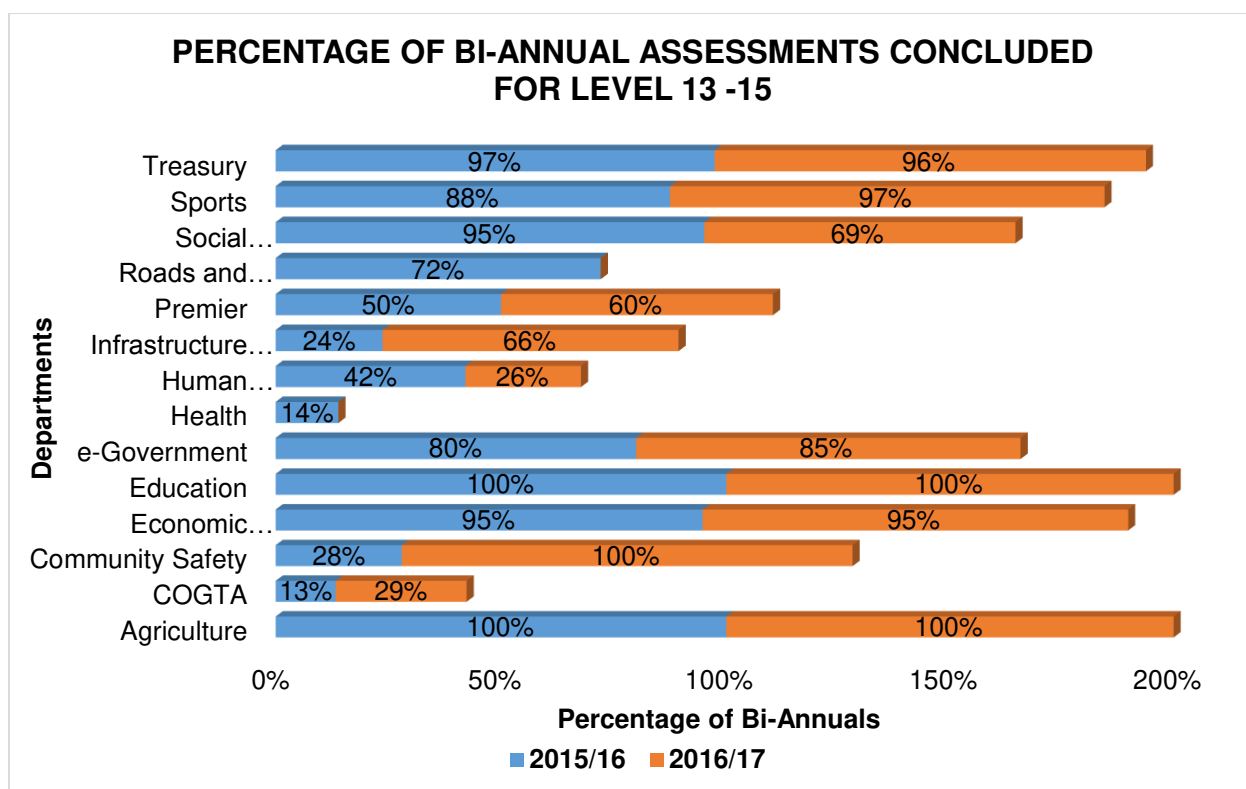


Figure 22: Percentage of bi-annual assessments concluded for level 13 -15

♦ **Employees at Salary Level 2 - 12**

As shown in Figure 21, for the 2016/17 financial year, only two departments (Department of Education and Office of the Premier) complied with the regulations and assessed all the employees at salary level 2 – 12 who completed their performance agreements. On the other hand, the other twelve (12) departments did not comply fully with the regulations, because not all the employees who concluded their performance agreements were assessed as required. Departments of Health, e-Government, COGTA; and Roads and Transport did not comply at all since none of the officials that concluded performance agreements with the departments were assessed during the bi-annual assessment cycle.

♦ **Employees at Salary Level 13 - 15**

As shown in Figure 22, for the 2016/17 financial year, only three departments (Department of Agriculture, Community Safety; and Department of Education) that assessed all the senior managers who completed their performance agreements. Meaning the other department partially complied (less than 100%) with the regulations, since the department did not assess all the senior managers. The Departments of Health and Roads and Transport did not comply with the regulations because none of the senior managers who completed their performance agreements were assessed during the bi-annual assessment cycle.

◆ Annual Assessments Conducted

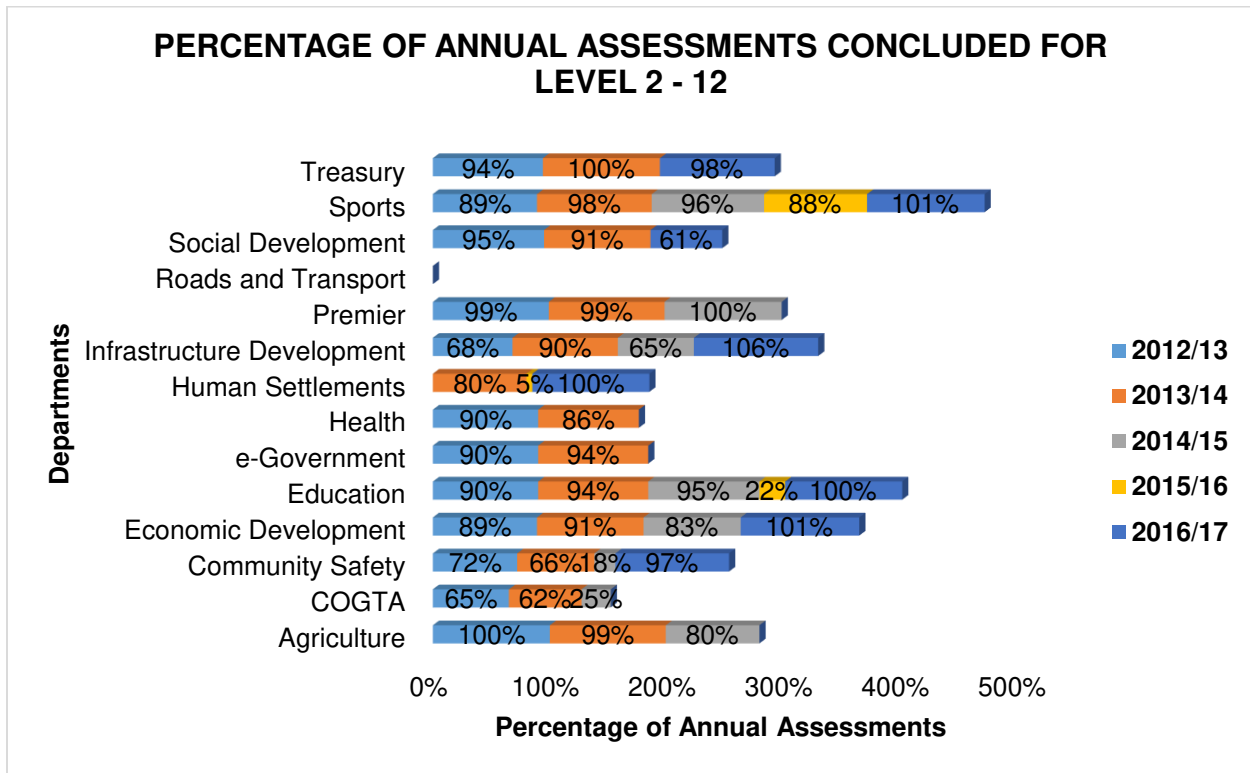


Figure 23: Percentage of annual assessment conducted for level 2 -12

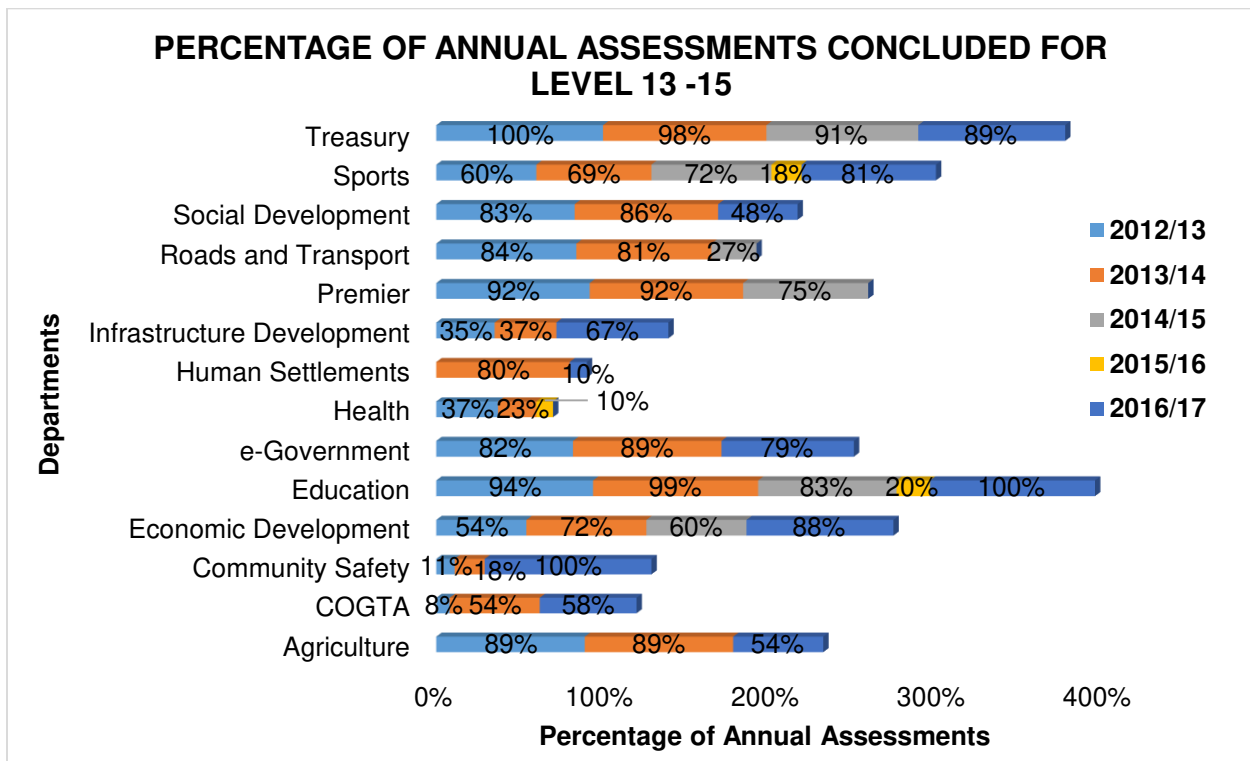


Figure 24: Percentage of annual assessments for level 13 -15

♦ **Employees at Salary Level 2 - 12**

As shown in figure 23, for the 2016/17 financial year, Department of Education assessed all the officials who concluded their performance agreements with the department. However, three departments (Sports, Infrastructure Development; and Economic Development) assessed more officials than the number of officials who concluded their performance agreements. If the officials did not complete their performance agreements, then the questions would be on what basis those officials were assessed.

♦ **Employees at Salary Level 13 - 15**

As shown in figure 24, for the 2016/17 financial year, it was only Department of Education that assessed all the senior managers who completed their performance agreements with the departments. The other departments complied partially because not all the senior managers were assessed during the annual assessment cycle.

It should be noted that at the time of reporting for the period under review some of the departments were still busy with the performance assessments. Nonetheless, low percentage of the performance assessments (both bi-annual and annual assessments) completed is the reflection of how performance management is conducted in the department. It is virtually impossible to assess the performance of officials who did not complete their performance agreements.

3.17 PERFORMANCE AGREEMENTS FILED WITH THE DPME

Chapter 4 of the Senior Management Services (SMS) Handbook on (PMDS) senior managers, including Heads of Department (HoDs), are required to enter into Performance agreements (PAs) with their Executive Authorities (EAs) by the 31 May of each year. The HoDs are required to file their signed performance agreements with the Department of Planning, Monitoring and Evaluation (DPME) by 30 June annually.

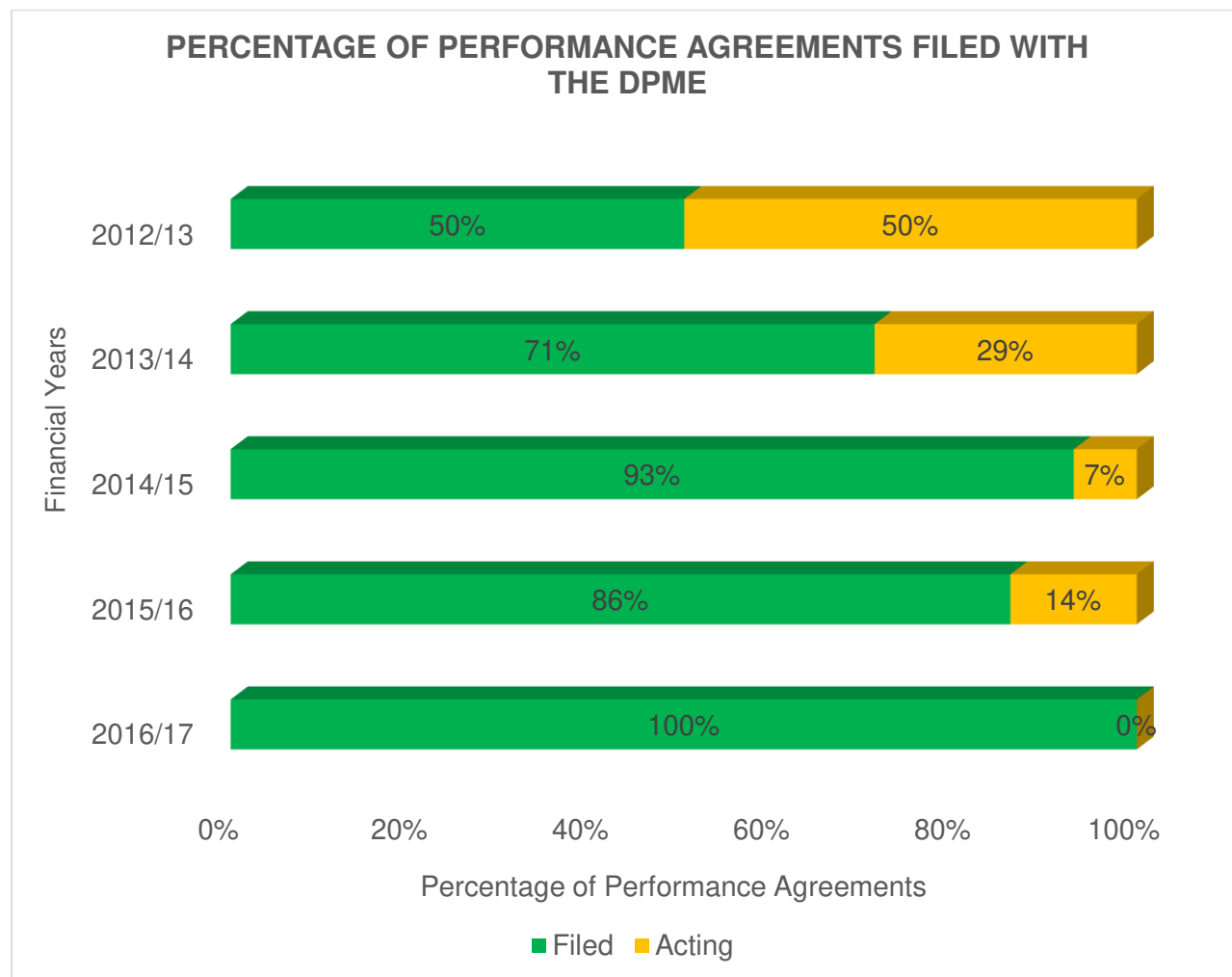


Figure 25: Percentage of performance agreements filed with the DPME

Figure 25 and Table 26 show that the Gauteng departments have never achieved 100% in terms of the filing of the HoDs performance agreements due to high mobility rate at the level of the HoDs.

Table 27: Performance agreements filed with DPME

PERFORMANCE AGREEMENTS FILED WITH DPME PER DEPARTMENT					
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	Acting	Acting	Yes	Yes	Yes
Community Safety	Yes	Yes	Acting	Acting	Yes
Education	Yes	Yes	Yes	Yes	Yes
Econ. Dev.	Acting	Acting	Yes	Yes	Yes
e-Government	Yes	Yes	Yes (Acting)	Acting	Yes
Health	Acting	Yes	Yes (Acting)	Yes	Yes (Acting)
Human Settlement	Acting	Acting	Yes	Yes	Yes
Infrastructure Dev.	Acting	Yes	Yes	Yes	Yes
COGTA	Acting	Acting	Yes	Yes	Yes
Premier	Yes	Yes	Yes	Yes	Yes
Roads & Transport	Acting	Yes	Yes	Yes	Yes
Social. Dev.	Yes	Yes	Yes	Yes	Yes (Acting)
Sports	Yes	Yes	Yes	Yes	Yes
Treasury	Yes	Yes	Yes	Yes	Yes

3.18 HEADS OF DEPARTMENTS EVALUATION

In 2009/10 financial year, the Cabinet took a decision that the function of evaluating the HoDs should be assigned to the Department of Planning, Monitoring, and Evaluation (DPME). DPSA has issued circulars to the executive authorities and HoDs on the conclusion of the evaluations for the HoDs for the 2010/11, 2011/12, 2012/13 2013/14 and 2014/15 financial years. But DPSA did not provide guidance in respect of the 2015/16 and 2016/17 financial years on HoD evaluation creating uncertainty in managing the HoDs' assessments and rewarding performance.

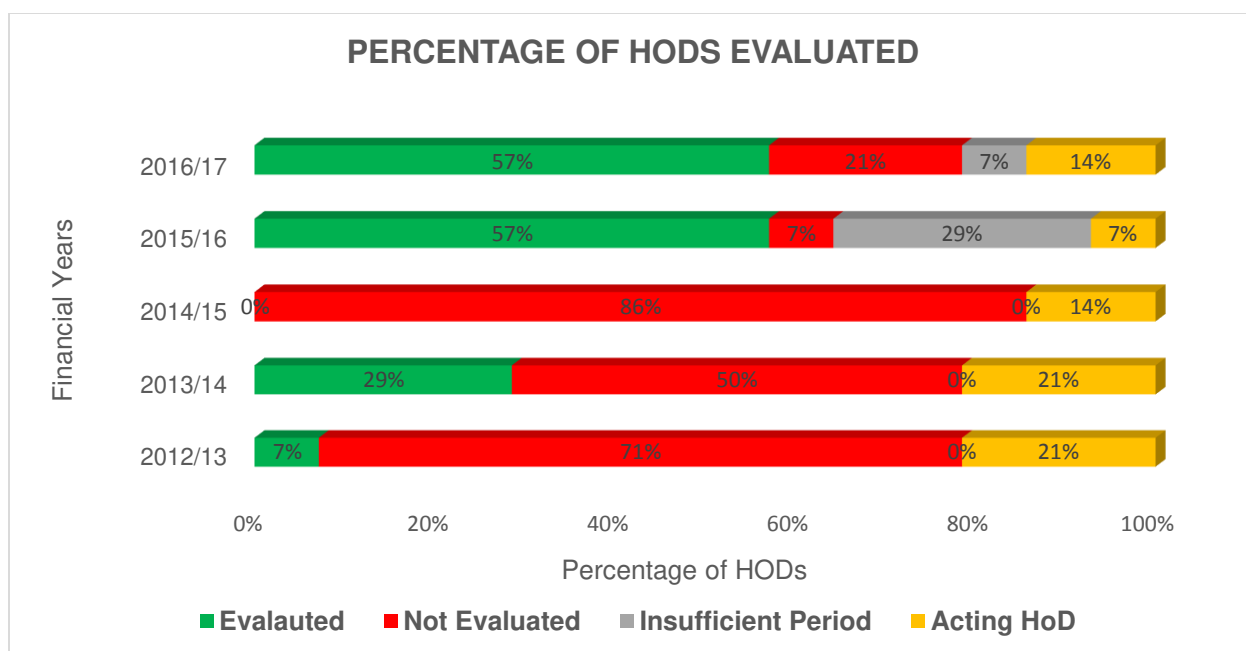


Figure 26: Percentage of HoDs evaluated

Table 28: HoD Evaluation

HOD EVALUATION PER DEPARTMENT					
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	Acting HoD	No	No	Yes	No
Community Safety	No	No	Acting	Insufficient Period	Yes
Education	Yes	Yes	Yes	Insufficient Period	Yes
Economic. Dev.	Acting HoD	Acting	No	Yes	Yes
e-Government	No	No	Acting	Yes	No
Health	No	No	No	Insufficient Period	Acting
Human Settlements	No	Acting	No	Insufficient Period	No
Infrastructure Dev.	No	No	Yes	Yes	Yes
COGTA	Acting HoD	Acting	No	No	Yes
Premier	No	No	No	Yes	Yes
Treasury	No	Yes	Yes	Yes	Yes
Roads & Transport	No	Yes	Yes	Yes	Yes
Social Development	No	Yes	Yes	Yes	Acting
Sports	No	No	No	Acting	Insufficient Period

As shown in figure 26 and table 28, not all the Heads of Departments who qualify for evaluations are evaluated in Gauteng. For example, on average 79% of the performance agreements were filed in the past five years but only 30% of the Heads of Departments were evaluated.

3.19 QUARTERLY PERFORMANCE REPORTS

Also, the PSC checked whether the departments have tabled their quarterly performance reports at the Gauteng Provincial legislature through various portfolio committees.

Table 29: Quarterly performance reports

QUARTERLY PERFORMANCE REPORTS				
	Quarter One	Quarter Two	Quarter Three	Quarter Four
Agriculture	✓	✓	✓	✓
COGTA	✓	✓	✓	✓
Community Safety	✓	✓	✓	✓
Economic Dev	✓	✓	✓	✓
Education	✓	✓	✓	✓
e-Government	✓	✓	✓	✓
Health	✓	✓	✓	✓
Human Settlements	✓	✓	✓	✓
Infrastructure	✓	✓	✓	✓
Premier	✓	✓	✓	✓
Roads and Transport	✓	✓	✓	✓
Social Development	✓	✓	✓	✓
Sports	✓	✓	✓	✓
Treasury	✓	✓	✓	✓

As shown in table 29, all the Gauteng departments tabled their quarterly performance reports to their relevant portfolio committees in the Gauteng Provincial Legislature.

Surely accountability in departments is weakened when there is no basis upon which to hold employees accountable due to employees not concluding performance agreements and employees not assessed. This compromises the development of employees as their developmental gaps are not effectively identified. It also lead to unnecessary grievances being lodged in respect of ineffective performance management and development. Ultimately, service delivery programmes are not achieved according to set time frames. The high mobility rate at the HoD level poses major performance risks in that there is high possibility that the departments' planned targets may not be achieved within the set timeframes or not achieved at all.

4.1 INTRODUCTION

Section 196(4)(f)(ii) of the Constitution, and section 35 of the Public Service Act, mandates the PSC to investigate grievances of employees in the Public Service concerning official acts or omissions, and recommend appropriate remedies. Also in terms of Section 11 of the PSC Act, 1994, the PSC has issued the *Public Service Commission Rules on Referral and Investigation of Grievances of Employees in the Public Service* to regulate its processes.¹⁷ ¹⁸*The Rules for Dealing with Grievances of Employees in the Public Service*¹⁹ and the *Rules for dealing with Grievances of Members of the Senior Management Service, including Heads of Departments*²⁰ regulate the procedural aspects that employees should comply with when lodging formal grievances.

4.2 GRIEVANCES LODGED

In terms of the Grievance Rules, Heads of Department (HoD) are required to report to the PSC on a six monthly basis on the resolution of grievances.²¹ This enables the PSC to monitor and report on grievances in the public service.

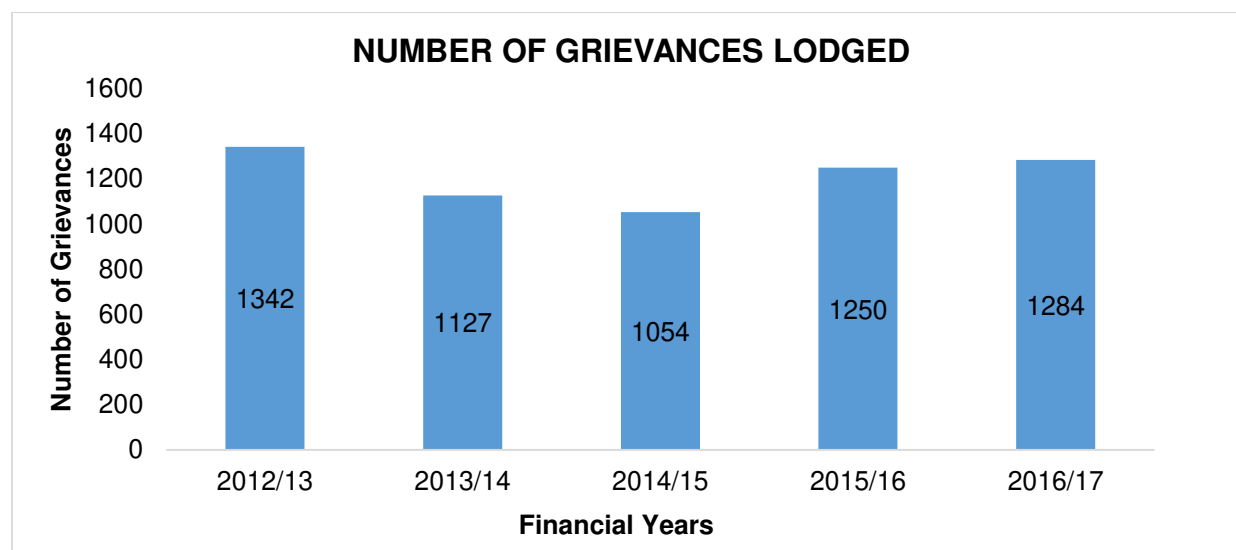


Figure 27: Grievances Lodged

¹⁷ Government Gazette number 40359 dated 21 October 2016

¹⁸ Public Service Commission Act,

¹⁹ Rules for dealing with grievances of employees in the Public Service, Government Gazette No. 7722, Vol. 457 No. 25209 on 25 July 2003

²⁰ Chapter 10 of SMS Handbook

²¹ Rules for dealing with grievances of employees in the Public Service, Government Gazette No. 7722, Vol. 457 No. 25209 on 25 July 2003

Table 30 Number of grievances lodged per department

NUMBER OF GRIEVANCES LODGED PER DEPARTMENT					
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	8	25	9	29	17
COGTA	20	0	3	6	13
Community Safety	23	10	12	28	33
Economic Development	4	6	4	15	4
Education	648	535	415	474	617
e-Government	17	17	34	22	12
Health	443	345	407	395	401
Human Settlements	20	5	10	43	48
Infrastructure Development	34	54	36	59	45
Premier	9	4	7	101	5
Roads and Transport	53	81	37	40	33
Social Development	50	34	52	13	27
Sports	11	9	19	14	24
Treasury	2	2	9	11	5

As shown in figure 27 and table 30, in the past five financial years a total of 7174 grievances were lodged, and the highest proportion of those grievances was lodged in the 2012/13 financial year followed by the number of grievances lodged in 2016/17 financial year. There was a 1% increase in terms of the grievances lodged in the 2016/17 financial year compared to the 2015/16 financial year.

The grievances recorded in most departments followed a stationary trend but it is noted that the number of grievances recorded by the Department of Education increased with 30.1% from 474 in the 2015/16 financial year to 617 in the 2016/17 financial year.

The number of grievances recorded by the Office of the Premier decreased with 95% from 101 in the 2015/16 financial year to 5 in the 2016/17 financial year. The decrease is due to the fact that 105 grievances were resolved in 2015/16 and 22016/17 financial years. The majority of the grievances were inherited from former Finance department's Units which joined Premier's Office.

4.3 PERCENTAGE OF EMPLOYEES LODGING GRIEVANCES.

Figure 28 and Table 30 below, show the percentage of grievances lodged in relation to the number of employees in the department in the past five years.

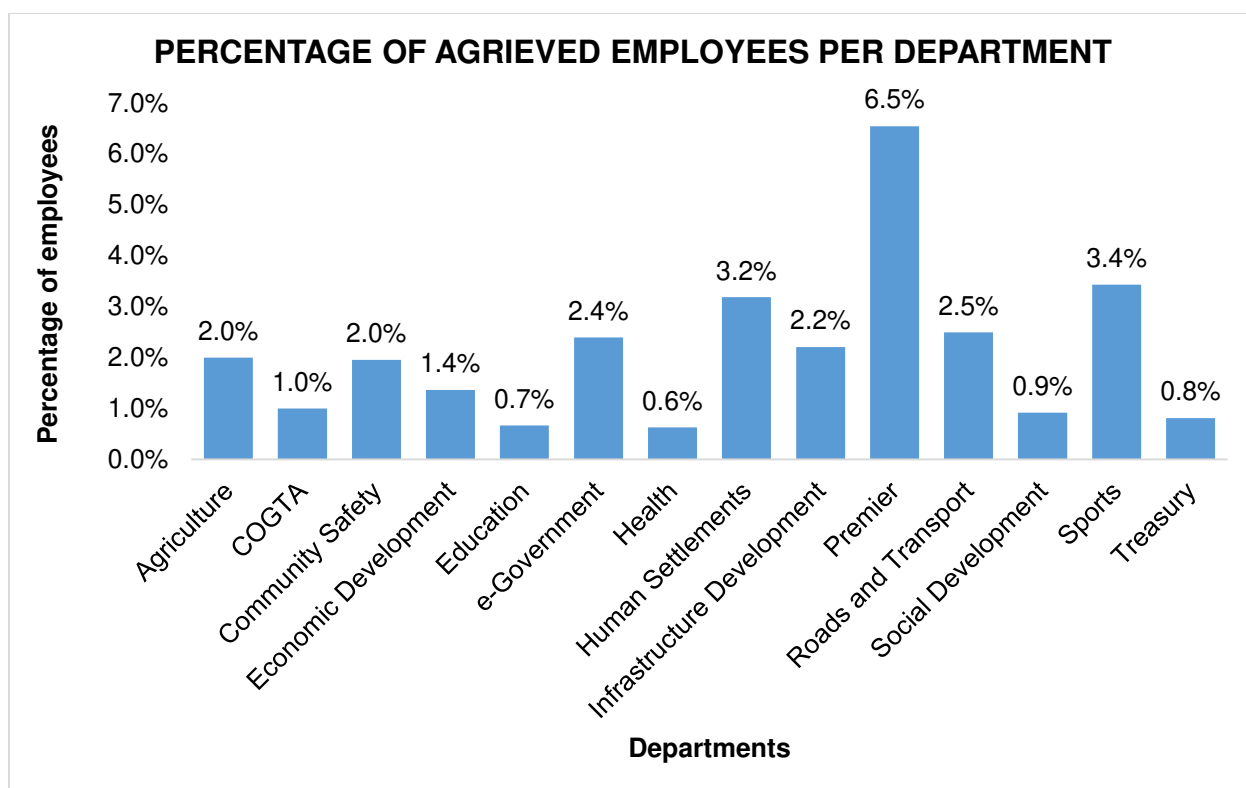


Figure 28: Percentage of aggrieved employees per department

Table 31: Percentage of employees who lodged grievances per department

PERCENTAGE OF AGGRIEVED EMPLOYEES IN THE PAST FIVE YEARS					
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	1%	3%	1%	3%	2%
COGTA	2%	0.0%	0.4%	1%	2%
Community Safety	2%	1%	1%	2%	3%
Economic Development	1%	1%	1%	3%	1%
Education	1%	1%	1%	1%	1%
e-Government	1%	1%	4%	3%	2%
Health	1%	1%	1%	1%	1%
Human Settlements	0.0%	1%	1%	5%	6%
Infrastructure Development	2%	3%	2%	3%	2%
Premier	4%	2%	3%	24%	1%
Roads and Transport	3%	4%	2%	2%	2%
Social Development	1%	1%	1%	0.3%	1%
Sports	3%	2%	4%	3%	4%
Treasury	0.5%	0.4%	1%	1%	1%

As shown in Figure 28 and Table 31, the Office of the Premier has the highest percentage of grievances in relation to the total number of employees in the department over the past five years (6.5%), followed by the Department of Sport (3.4%), Department of Human Settlements (3.2%), Department of Roads and Transport (2.5%), e-Government (2.4%), Department of Agriculture (2.0%); and Department of Community Safety (2.0%). Notably, the percentage of employees lodging grievances are increasing with financial years in the Department of Human Settlements, Department of Community Safety, and COGTA starting from 2014/15 financial year onwards. This could mean that there is something in the above-mentioned departments that the employees are increasingly unhappy about.

For the 2016/17 financial year, employees on salary levels 2 to 7 (production levels) lodged 828 (64.5%) of the total number of grievances recorded. Employees on salary levels 8 to 12 (middle management) lodged 408 (31.8%) of the total number of grievances recorded, whilst employees on salary levels 13 and 14 (SMS members) lodged 14 (1.0%) of the total grievances recorded.

The percentage of grievances recorded in respect of male employees was 43% and for female employees it was 56%. The gender of 1% of employees who submitted grievances could not be determined.

The percentages are not in keeping with the provincial composition per gender in that the Gauteng provincial departments employ 30% males and 70% females.

4.4 CAUSES OF GRIEVANCES

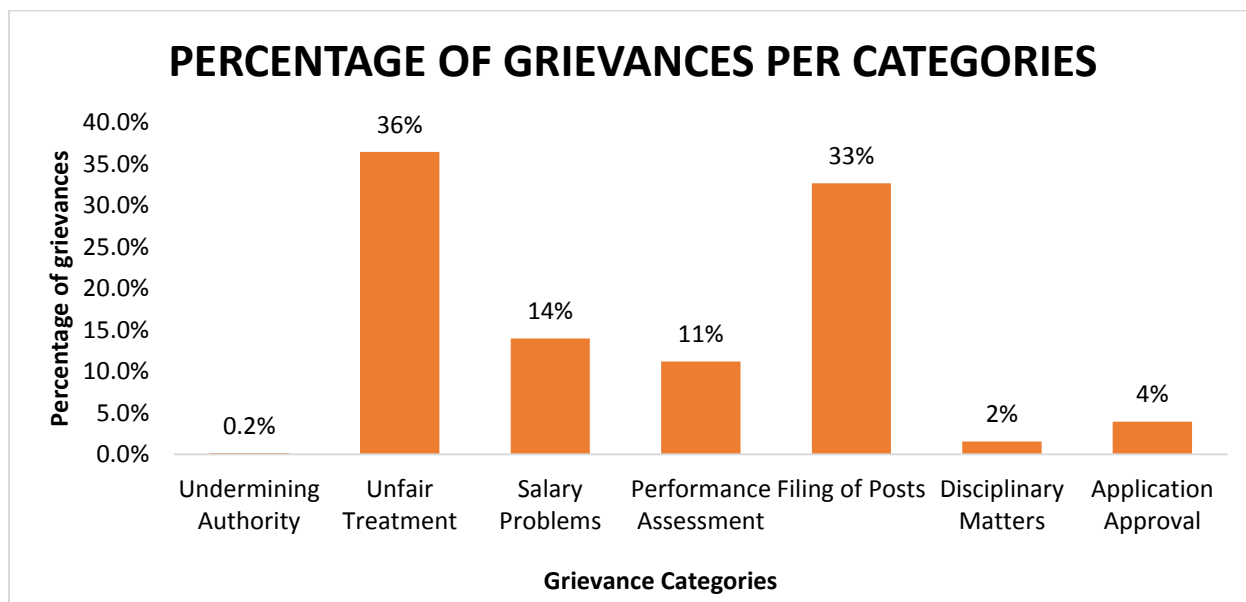


Figure 29: Percentage of grievances per category

Table 32: Number of grievances per category

NUMBER OF GRIEVANCES PER CATEGORY				
	2013/14	2014/15	2015/16	2016/17
Undermining Authority	8	0	0	0
Unfair Treatment	454	307	484	459
Salary Problems	157	182	155	159
Performance Assessment	92	131	167	133
Filing of Posts	362	344	388	434
Disciplinary Matters	15	44	3	10
Application Approval	29	46	53	57

As shown in figure 30 and table 32, the majority of the grievances were related to unfair treatment and filing of posts. Unfair treatment relates, amongst others, to verbal abuse, humiliation, physical violence, victimization, harassment whilst filing of posts relates to dissatisfaction with the recruitment procedures that were followed or not followed during the shortlisting, interviews, placement and transfer process.

This means that employees feel that they are not treated fairly in Gauteng and recruitment and selection processes are not adhered to in the filling vacant posts in the departments. This is a cause for concern because grievances related to harassment could result in liabilities in terms of the provisions stipulated in section 60 of the Employment Equity Act, 1998.

4.5 GRIEVANCES FINALISED WITHIN PRESCRIBED TIMEFRAME

According to the Grievance Rules, departments (including the executive authority) have 30 days to deal with a grievance in respect of employees at levels 2 to 12, and 45 days in respect of members of the senior managers.²² These periods may be extended by mutual agreement in writing.²³ Adherence to the time limits set out in this procedure, is a requirement, unless parties agree to extend it in writing.²⁴

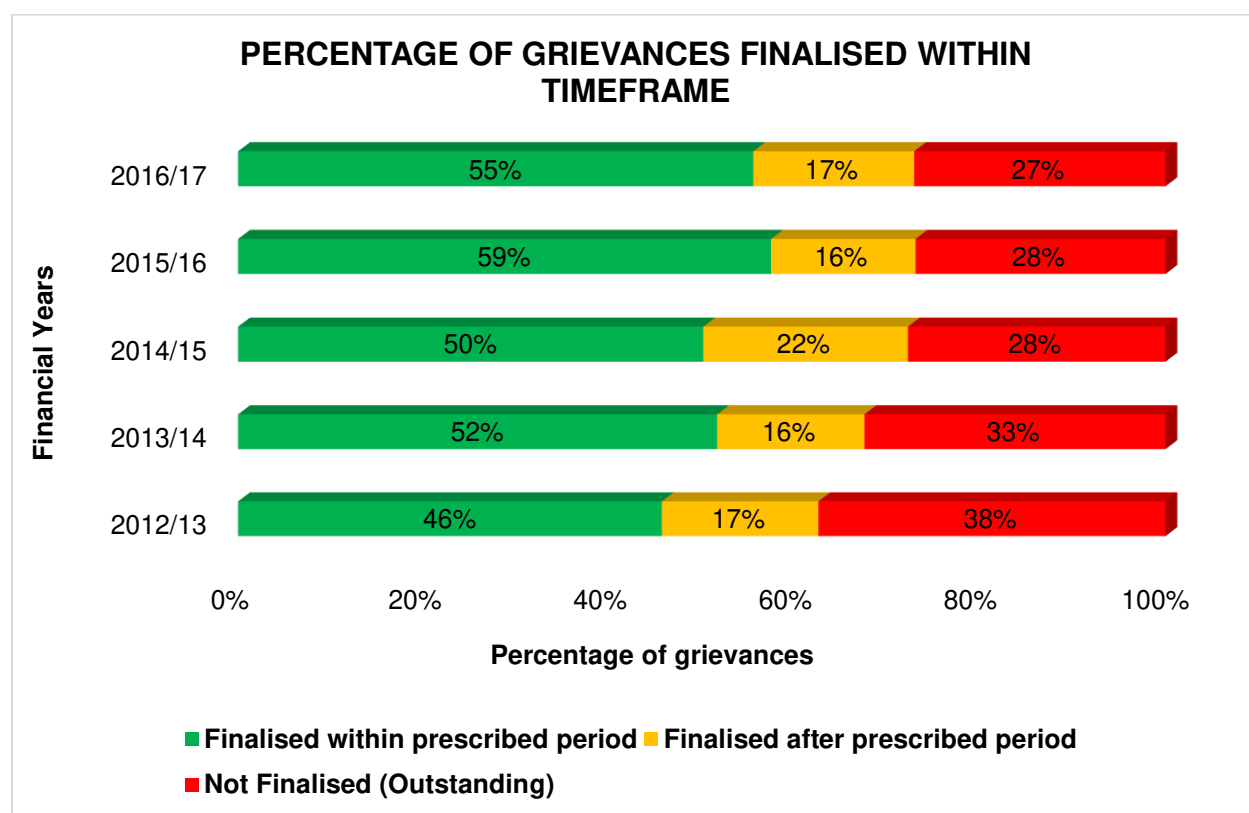


Figure 30: Percentage of grievances finalised within timeframe

²² Rules for dealing with grievances of employees in the Public Service, Government Gazette No. 7722, Vol. 457 No. 25209 on 25 July 2003, Government Gazette No. 7722, Vol. 457 No. 25209 on 25 July 2003, and SMS Handbook

²³ Rules for dealing with grievances of employees in the Public Service, Government Gazette No. 7722, Vol. 457 No. 25209 on 25 July 2003, Government Gazette No. 7722, Vol. 457 No. 25209 on 25 July 2003

²⁴ Rules for dealing with grievances of employees in the Public Service, Government Gazette No. 7722, Vol. 457 No. 25209 on 25 July 2003, Government Gazette No. 7722, Vol. 457 No. 25209 on 25 July 2003

Table 33: Number of grievances finalised within timeframe for the 2016/17 financial year

NUMBER OF GRIEVANCES FINALISED WITHIN TIMEFRAME FOR 2016/17				
Department	Finalised Within Prescribe Period	Finalised after the Prescribed Period	Not Finalised (Outstanding)	% Finalised Within Timeframe
Agriculture	6	3	8	35%
COGTA	1	5	7	8%
Community Safety	15	9	9	45%
Economic Dev	0	0	4	0%
Education	327	92	198	53%
e-Government	2	2	8	17%
Health	299	59	43	75%
Human Sett.	24	5	19	50%
Infrastructure	11	6	28	24%
Premier	0	4	1	0%
Roads	11	15	7	33%
Social Development	3	13	11	11%
Sport	10	9	5	42%
Treasury	2	0	3	40%

Figure 31, shows that Gauteng departments have never achieved a 100% compliance rate in terms of the finalising grievances within the prescribed timeframe. Meaning the departments comply partially with the grievance rules, since some of the grievances are finalised after the prescribed period.

For the 2016/17 financial year, 711 (55%) of the grievances were finalised within the prescribed timeframe whilst 222 (17%) was finalised after the prescribed timeframe; and 351 (27%) was not finalised. In terms of the compliance rate, the percentage of grievance finalised within the prescribed timeframe have decreased by 4% and percentage of grievances finalised after the prescribed timeframe by 1% compared to the percentage reported in the previous financial year.

Table 33 reveals that although the Department of Economic Development and the Office of the Premier only recorded 4 and 5 grievances respectively, these departments could not finalise a single grievance within the prescribed time frame.

It is interesting to note that the Gauteng Department of Health managed to finalise 299 out of the 401 grievances recorded within the prescribed time frame. This represents 74.6% of the grievances recorded and is the best performance in the province.

The speedy finalisation of grievances was recently considered by the PSCBC in an arbitration between the Public Servant's Association V National Prosecuting Authority of South Africa and another [2013] 11 BALR 1143 (PSCBC). The learned arbitrator in the analysis of the matter indicated that: *"There can be no doubt that this case clearly illustrates that justice delayed is justice denied. A grievance lodged in October 2008, is today five years later still being investigated. In terms of the grievance procedure, the time frame allowed to deal with a grievance is 30 days unless the parties by agreement consent in writing to a longer period. The case further illustrates how employers can flout time limits with impunity without any serious consequences."*

4.6 DISCIPLINARY HEARINGS HELD WITHIN 60 DAYS

Section 23 (1) of the Constitution of the Republic of South Africa provides that every employee has a right to fair labour practice – including to be presumed innocent.²⁵ Accordingly, the Disciplinary Code and Procedures (Resolution 2 of 1999), amongst other things, provides that suspensions should be with pay²⁶ and the Public Service Coordinating Bargaining Council (PSCBC) Resolution 1 of 2003 provides that a disciplinary hearing should be held within 60 days.²⁷

²⁵ The Republic of South Africa. Constitution of the Republic of South Africa, Act 108 of 1996

²⁶ Public Service Coordinating Bargaining Council Resolution 2 of Disciplinary Code of Procedures for the public servants (Resolution 2 of 1999). Online accessible at: <http://www.pscbc.org.za/wp-content/uploads/Resolution-2-of-1999-Adoption-of-Disciplinary-Code-and-Procedures-for-PS1.pdf>

²⁷ Public Service Coordinating Bargaining Council Resolution 1 of Disciplinary Code of Procedures for the servants (Resolution 1 OF 2003). Online Accessible at: <http://www.pscbc.org.za/wp-content/uploads/Resolution-1-of-2003.pdf>

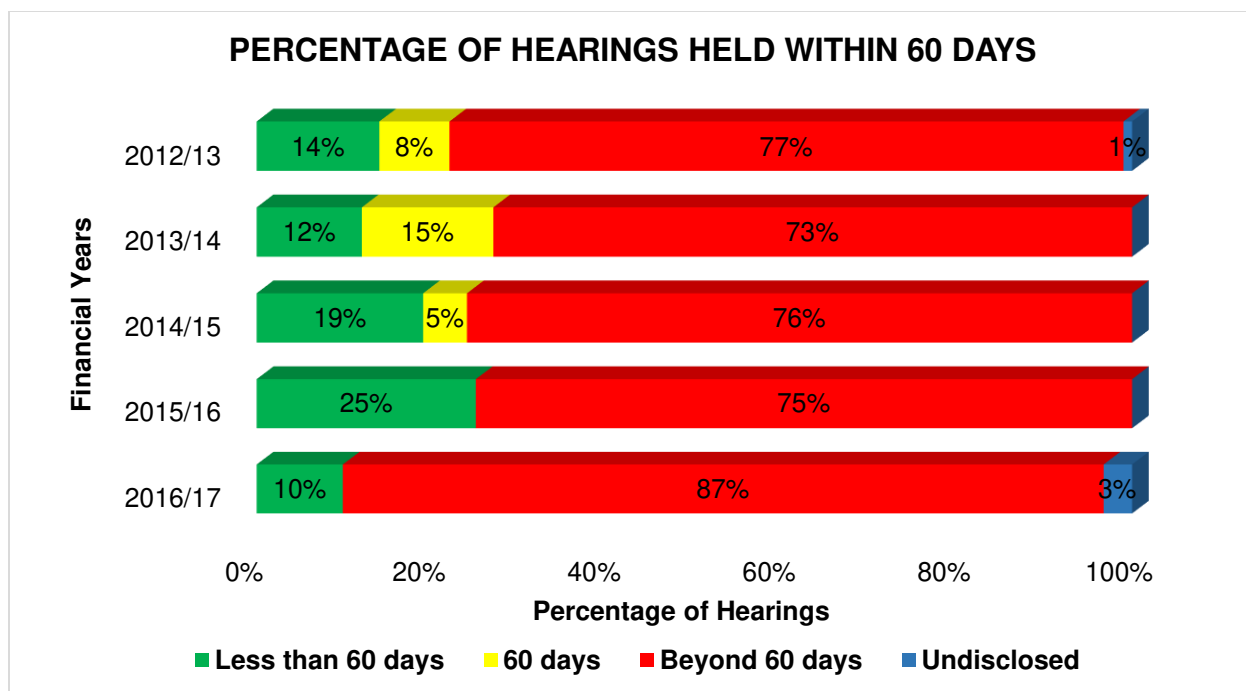


Figure 31: Percentage of disciplinary hearings held within 60 days

Figure 32 shows that the Gauteng departments are not complying with the Public Service Coordinating Bargaining Council Resolution 1 of 2003. This is due to the fact that, in the past five financial years, only 23% of the disciplinary hearings are held within the prescribed period whilst 76% are held after the prescribed period (beyond 60 days). Thus implying in every forty-one (41) officials placed on precautionary suspensions only six (6) officials were invited to attend the disciplinary hearings within 60 days (41:6).

In the 2016/17 financial year, only 10% of the officials placed on precautionary suspension attended the disciplinary hearings within 60 days, as required by the Resolution 1 of 2003. The percentage of hearing held within sixty days has decreased by 15% compared to the percentage reported in the previous financial year.

4.7 COSTS OF PRECAUTIONARY SUSPENSIONS

As noted previously, 76% of the disciplinary hearings are held after the prescribed timeframe; which is 60 days. The PSC, therefore, assessed the amount of funds expended to pay the salaries of the officials who are on precautionary suspension.

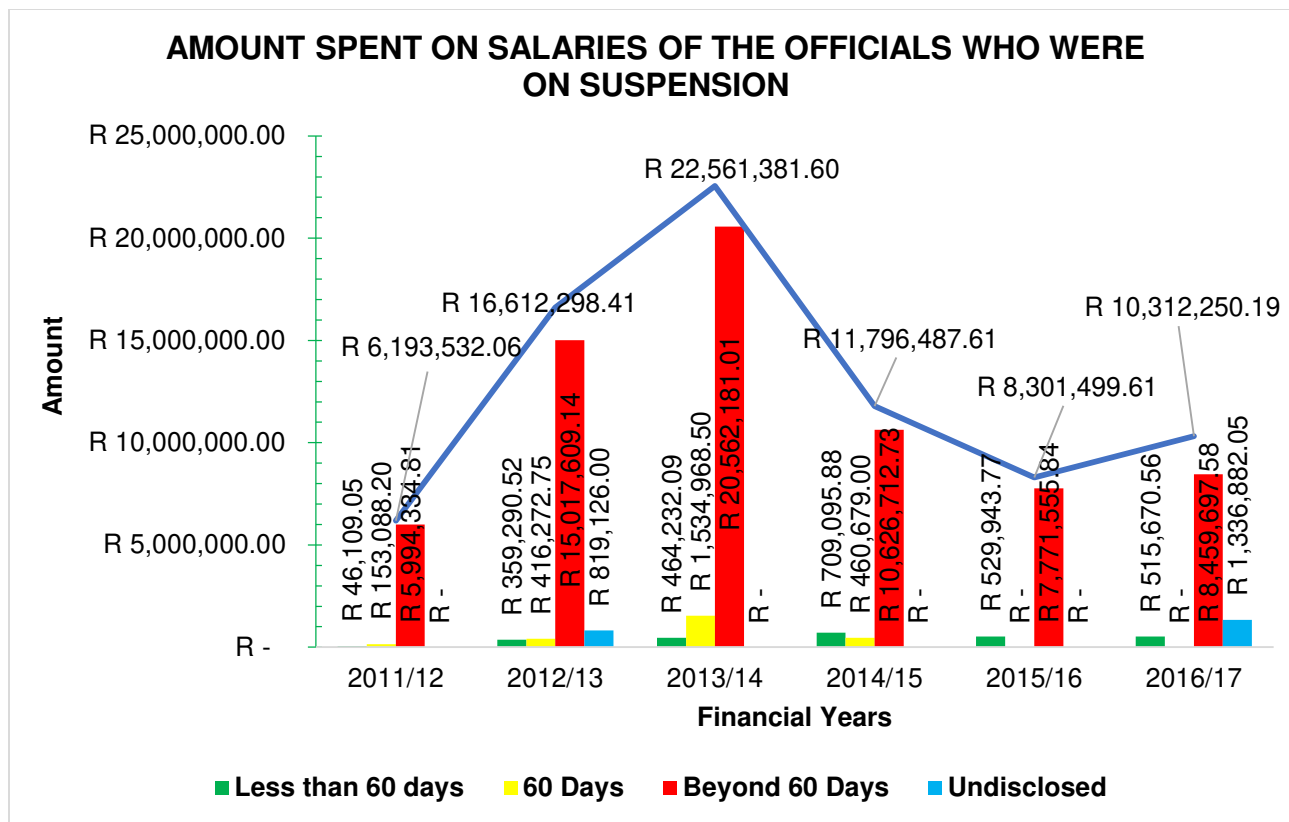


Figure 32: Amount spent paying salaries of the officials on suspension

Figure 32 shows, that in the past five years Gauteng departments have paid a total of R 75.7 million (R 75,777,449.48) on salaries of the officials that were placed on precautionary suspension. Of that amount, R 68.4 million (90%) was used to pay the salaries of the officials that were placed on precautionary suspension for a period more than required by the PSCBC Resolution 1 of 2003. Only 7% (R 5.1 million) of that amount was spent paying the salaries of the officials who were placed on precautionary suspension for a period within the prescribed 60 days.

For the 2016/17 financial year, a total of R 10.3 million was spent paying the salaries of the officials who were placed on precautionary suspension, and 82% of that amount (R 8.4 million) was paid for the officials that were placed on precautionary suspension for a period more than required by the resolution 1 of 2003. The amount of funds spent of precautionary suspension has increased by 10% compared to the previous financial year; and the amount paid to the officials who were placed on suspension for a period more than required has increased by 4%. Meanwhile the amount spent on the officials whose hearing was held within 60 days has decreased by 2%.

The departments therefore are not complying with this resolution and section 195(1)(b) of the Constitution which require - *efficient, economic, and effective use of resources and (h) on good human resource management and career development practices, to maximise human potential, must be cultivated.*

In order to ensure that sound labour relations are upheld and promoted and it is therefore recommended that:

- More accurate reporting on grievances especially when reporting on collective grievances is required. The details of each of the aggrieved employees should be provided when departments report on collective grievances.
- Departments should consider including the management of grievances as a standing point on the agenda during management meetings. This may assist to manage the speedy resolution of grievances and to determine trends to enable prompt action where required.
- Decisive action should be taken against employees who are bullying or harassing subordinates or colleagues. Where it is found that grievances are justified or there has been abuse of powers or processes, the perpetrators should be called to account for such actions.
- Employees should be trained regarding the grievance procedure to foster a clear understanding of the grievance rules and procedures, and
- Departments should study the PSC Rules on Referral and Investigation of Grievances of Employees in the Public Service to ensure that they are aware of the new rules that amongst others authorises the PSC to follow mediation procedures in resolving grievances and which stipulates specific time frames as well as documents that should be completed when a grievance is submitted to the PSC for consideration.
- The Labour Relations Units should be sufficiently capacitated in order to ensure that they deal with disciplinary matters within timeframes. All parties in labour relations dispute should strive for timely resolution of the disputes.

5.1 INTRODUCTION

The Batho Pele initiative was developed to serve as acceptable policy framework regarding service delivery in the Public Service, to get public servants to be service oriented, to strive for excellence in service delivery; and to commit to continuous service delivery improvement. In addition to that, Section 195 (1) (e) *prescribes that people's needs must be responded to, and the public must be encouraged to participate in policy-making and (g) transparency must be fostered by providing the public with timely, accessible and accurate information.* In addition, the White Paper on Transforming Public Service Delivery also prescribes methodologies on how to communicate information to the citizens such as Annual Report to the Citizens and Annual Report.

5.2 ANNUAL REPORTS ACCESSIBLE ON THE DEPARTMENTAL WEBSITE

The annual reporting framework is an important tool that assists the public in understanding the operations of the government departments, and in ensuring financial and performance accountability to Parliament and Legislature. It also assists the public sector transparency by providing both the public and parliament with performance information. However, this indicator is measuring the proportion of annual reports that are accessible on the departmental website for public accessibility.

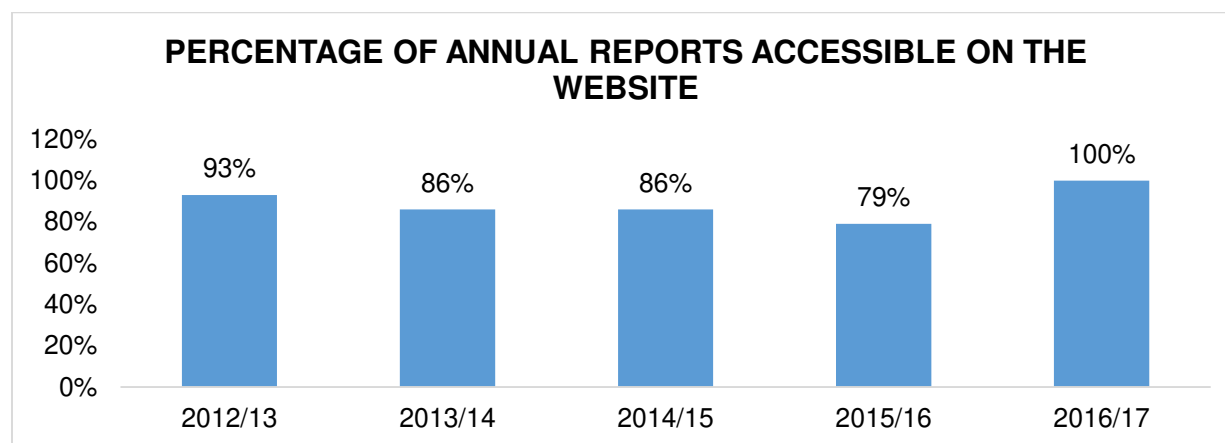


Figure 33: Percentage of annual reports accessible

Table 34: Annual report accessible on website per department

	FINANCIAL YEARS				
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	✓	✓	✓	✓	✓
COGTA	✓	✓	✓	✓	✓
Community Safety	✓	✓	✓	✓	✓
Economic Development	✓	✓	✓	✗	✓
Education	✓	✓	✓	✓	✓
e-Government	✓	✓	✓	✗	✓
Health	✓	✗	✗	✓	✓
Human Settlements	✓	✓	✓	✓	✓
Infrastructure Development	✓	✓	✓	✓	✓
Premier	✓	✓	✓	✓	✓
Roads and Transport	✓	✓	✓	✓	✓
Social Development	✗	✗	✓	✗	✓
Sports	✓	✓	✗	✓	✓
Treasury	✓	✓	✓	✓	✓

As shown in Figure 34 and Table 34, all (100%) the 2016/17 financial year annual reports of the Gauteng are accessible on the Gauteng Online (Gauteng Government Website) which is highly commendable as it promotes transparency and access to information by the citizens on the achievements of the predetermined objectives against the allocated budget as well as other ancillary matters in respect of the execution of the departmental mandates.

5.3 CITIZENS ANNUAL REPORTS ACCESSIBLE ON DEPARTMENTAL WEBSITE

In addition, citizens' annual report is not only important because it assists with public accountability but also serve as the public's record of the departmental work. Citizens' annual reports affords the community with the opportunity to find out about the department's activities, performance and what has been achieved and not achieved, in a layman's terms.

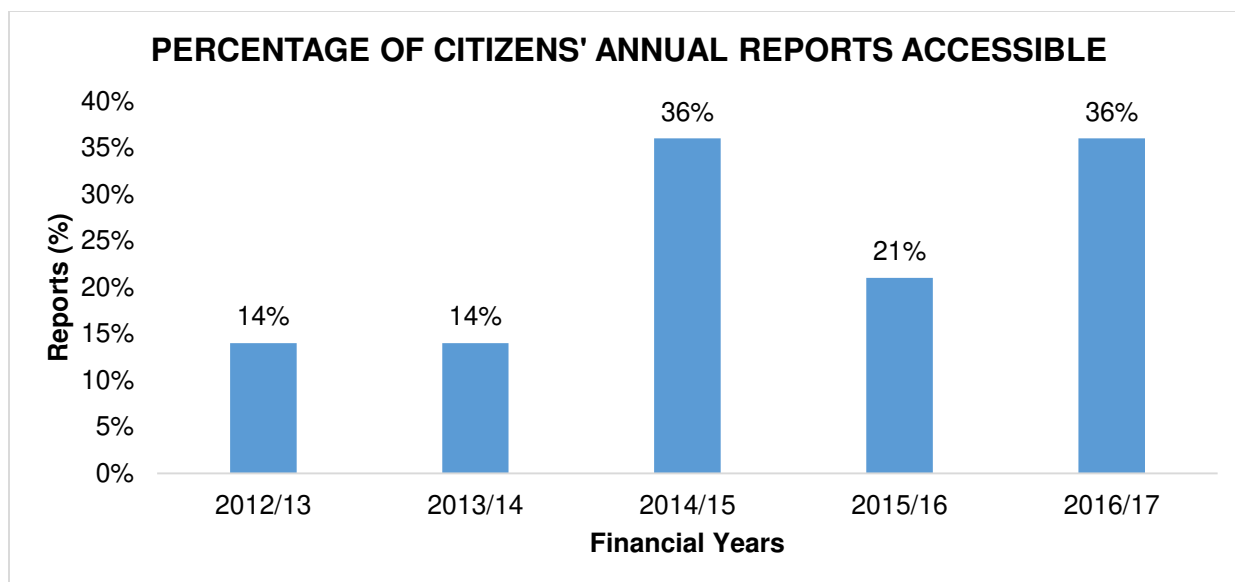


Figure 34: Percentage of citizens' annual report accessible

Table 35: Citizen's annual reports accessible per department

Department	FINANCIAL YEARS				
	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	x	x	✓	✓	x
COGTA	x	x	x	x	x
Community Safety	x	x	x	✓	x
Economic Development	✓	✓	✓	✓	✓
Education	x	x	✓	✓	x
e-Government	x	x	x	x	✓
Health	x	x	x	x	x
Human Settlements	✓	x	✓	✓	x
Infrastructure Development	x	x	✓	x	x
Premier	x	x	x	x	✓
Roads and Transport	x	x	x	x	✓
Social Development	x	x	x	x	x
Sports	x	✓	✓	x	x
Treasury	x	✓	✓	✓	✓

As shown in Figure 34 and Table 35, very few departments are publishing citizen's annual reports. In the past five financial years, only twenty-two (22) citizen's annual reports were published and are accessible on the departmental websites in Gauteng. For the 2016/17 financial year, only five departments published their citizen's report on the departmental website. Meaning the general public are not provided with departmental performance information so that they would understand what the Gauteng government is doing in terms of service delivery.

CHAPTER SIX: CONCLUSION

In conclusion the public service, specifically in this case Gauteng Provincial Departments, should strive to internalise the Constitution, laws, regulations and policy frameworks aimed at promoting sound public administration practices. The constitutional imperative expected of the departments is to uphold all the constitutional values and principles in delivering on the governments' mandate to the citizens.

The shortcomings identified by the assessment report should be taken in the spirit of improving governance, planning and performance, instilling ethical leadership. It is disparaging for the citizens to always learn of the government failures in delivering the basic services in the expeditious and dignified manner.

It cannot be that throughout the PSC's assessments of the departments, the focus is on the same recurring challenges without consequences. The PSC's report noted fundamental recurring systemic challenges in the following:

- Integrity and ethical management for example where it was found that: majority of the departments have not developed and implemented ethics management strategy to deal with unethical behaviour and corrupt activities; some senior managers are still conducting business with the organ of state despite prohibition by the PSR, 2016 and their failure to disclose all their particulars of financial interest.
- Continuous organisational restructuring with unintended results impacting negatively on the delivery of the services (irregular appointments, high number of employees additional to the staff establishment).
- Malicious human resource planning approached in a piecemeal approach using inaccurate information in forecasting the human resources' needs required to perform the functions and failure of the human resources plans to innovatively propose credible solutions to the prevailing issues such as slow economic growth, budget prioritisation; lack of scarce skills in key departments, just to name the few.

- Lack of transparency and access to information because the majority of the departments are not compiling annual reports to citizens in a simplified manner to inform citizens of the achievement and non-achievement of the planned targets.
- Grievances and disciplinary hearings not concluded within timeframes.
- Performance management and developmental needs of the employees not taken seriously leading to grievances lodged by the affected employees and lack of accountability.

The issues mentioned above undermine the main objectives of the government in striving for a capable and developmental state.

The PSC commends those departments which have made significant strides in improving governance.