



Report on the investigation into the Management of Public Servants in Terms of Prevailing Provisions who are elected as Municipal Councillors in the Limpopo and Western Cape Provinces

Public Service Commission

August 2007



Vision

The Public Service Commission is an independent and impartial body created by the Constitution, 1996, to enhance excellence in governance within the Public Service by promoting a professional and ethical environment and adding value to a public administration that is accountable, equitable, efficient, effective, corruption-free and responsive to the needs of the people of South Africa.

Mission

The Public Service Commission aims to promote the constitutionally enshrined democratic principles and values of the Public Service by investigating, monitoring, evaluating, communicating and reporting on public administration. Through research processes, it will ensure the promotion of excellence in governance and the delivery of affordable and sustainable quality services.

REPORT ON THE INVESTIGATION INTO THE MANAGEMENT OF PUBLIC SERVANTS IN TERMS OF PREVAILING PROVISIONS WHO ARE ELECTED AS MUNICIPAL COUNCILLORS IN THE LIMPOPO AND WESTERN CAPE PROVINCES



Published in the Republic of South Africa by:

THE PUBLIC SERVICE COMMISSION
Commission House
Cnr. Hamilton & Ziervogel Streets
Arcadia, 0083

Private Bag x121
Pretoria, 0001

Tel. (012) 352-1000
Fax (012) 325-8382
Website. www.psc.gov.za

National Anti-Corruption Hotline Number for the Public Service:
0800 701 701 (Toll-Free)

Compiled by Branch: Investigations and Human Resource Reviews

Distribution by: Directorate: Communication and Information Services

ISBN: 978-0-621-37314-1
RP: 152/07



Foreword



Public servants are constitutionally bound to provide impartial, fair, equitable and unbiased services to the country's citizenry. If public servants hold employment outside the Public Service, this poses very serious questions about their ability to respond to the responsibilities required of them by the *Constitution of the Republic of South Africa, 1996*.

Given concerns raised regarding the effect of dual-employment by public servants, the Public Service Commission (PSC) investigated remunerated work outside the Public Service during 2004 in the Gauteng Provincial Health Sector¹. The report pointed out serious deficiencies with remunerated work outside the Public Service.

An area not sufficiently covered by national legislation and the regulatory framework that has come to the PSC's attention is the election of public servants as councillors in the municipalities. Apart from the concerns this raises about the ability of such public servants to perform in their work environment, given the new political responsibilities, the statutory and the regulatory provisions governing remunerated work outside the Public Service may be transgressed.

In terms of section 196 of the Constitution, one of the responsibilities of the PSC is to investigate, monitor and evaluate the organization, administration and personnel practices of the Public Service. Therefore, in accordance

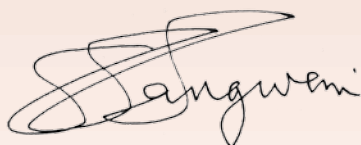
¹ Report on remunerative work outside the Public Service: An investigation undertaken by the PSC during 2004 in the Gauteng Provincial Health Sector.

with this mandate, the PSC conducted an investigation into the management of public servants who were elected as municipal councillors following the 2006 municipal elections.

Although the investigation included only those employees in the employment of the Limpopo and Western Cape Provincial Administrations, the PSC is of opinion that focusing on two provinces with such diverse profiles will provide baseline information and a good basis for comparative analysis.

Stemming from the findings contained in this report, recommendations are made that should assist departments in their efforts to ensure effective and efficient administration and resource management.

I would like to extend my gratitude to the Personnel and Salary Administration System (PERSAL), the departments, the district and local municipalities in Limpopo and the Western Cape that participated in this study. Their co-operation, participation and valuable inputs contributed to the development of this report.



PROF SS SANGWENI
CHAIRPERSON

Table of contents

LIST OF TABLES	vii
LIST OF FIGURES	vii
GLOSSARY OF ABBREVIATIONS AND DEFINITIONS	viii
EXECUTIVE SUMMARY	ix

CHAPTER 1: INTRODUCTION

1.1	Background	2
1.2	Mandate of the Public Service Commission	3
1.3	Terms of reference of the investigation	4
1.4	Methodology followed during the investigation	4
1.5	Limitations experienced	5

CHAPTER 2: REGULATORY FRAMEWORK

2.1	Introduction	8
2.2	Constitution of the Republic of South Africa, 1996	8
2.3	Public Service Act, 1994	9
2.4	Public Finance Management Act, 1999	9
2.5	Public Service Regulations	9
2.6	Handbook for the Senior Management Service	10
2.7	Circular minute, dated 7 October 2005	11
2.8	Employment of Educators Act, 1998	11
2.9	Local Government related legislation	12
2.10	Summary	12

CHAPTER 3: STATISTICAL OVERVIEW OF PUBLIC SERVANTS ELECTED AS MUNICIPAL COUNCILLORS

3.1	Introduction	14
3.2	Number of persons elected as municipal councillors	14
3.3	Geographical statistics: Municipal councillors	16
3.4	Management and salary levels of municipal councillors	19
3.5	Summary	20

CHAPTER 4: MANAGEMENT OF PUBLIC SERVANTS ELECTED AS MUNICIPAL COUNCILLORS

4.1	Introduction	22
4.2	Management of public servants elected as full-time municipal councillors	22
4.3	Management of public servants elected as part-time municipal councillors	22
4.4	Deficiencies in the management of public servants elected as part-time municipal councillors	24
4.5	Controls applied to public servants elected as part-time municipal councillors	25
4.6	Summary	26

CHAPTER 5: MANAGEMENT OF PUBLIC SERVANTS ELECTED AS MUNICIPAL COUNCILLORS: AN OVERVIEW OF INTERNATIONAL PERSPECTIVES

5.1	Introduction	28
5.2	Nigerian perspective	28
5.3	Botswana perspective	28
5.4	Indian perspective	29

5.5	Canadian perspective	29
5.6	Australian perspective	30
5.7	Summary	31

CHAPTER 6: RECOMMENDATIONS

6.1	Introduction	34
6.2	Improving the management of information and data	34
6.3	Effective record keeping	35
6.4	Determining of trends	35
6.5	Adherence to the current regulatory framework	36
6.6	Development and implementation of statutory/regulatory framework	36
6.7	Development of a Departmental or Provincial Policy	37
6.8	Summary	39

CHAPTER 7: CONCLUSION

42

LIST OF REFERENCES

43

List of Tables

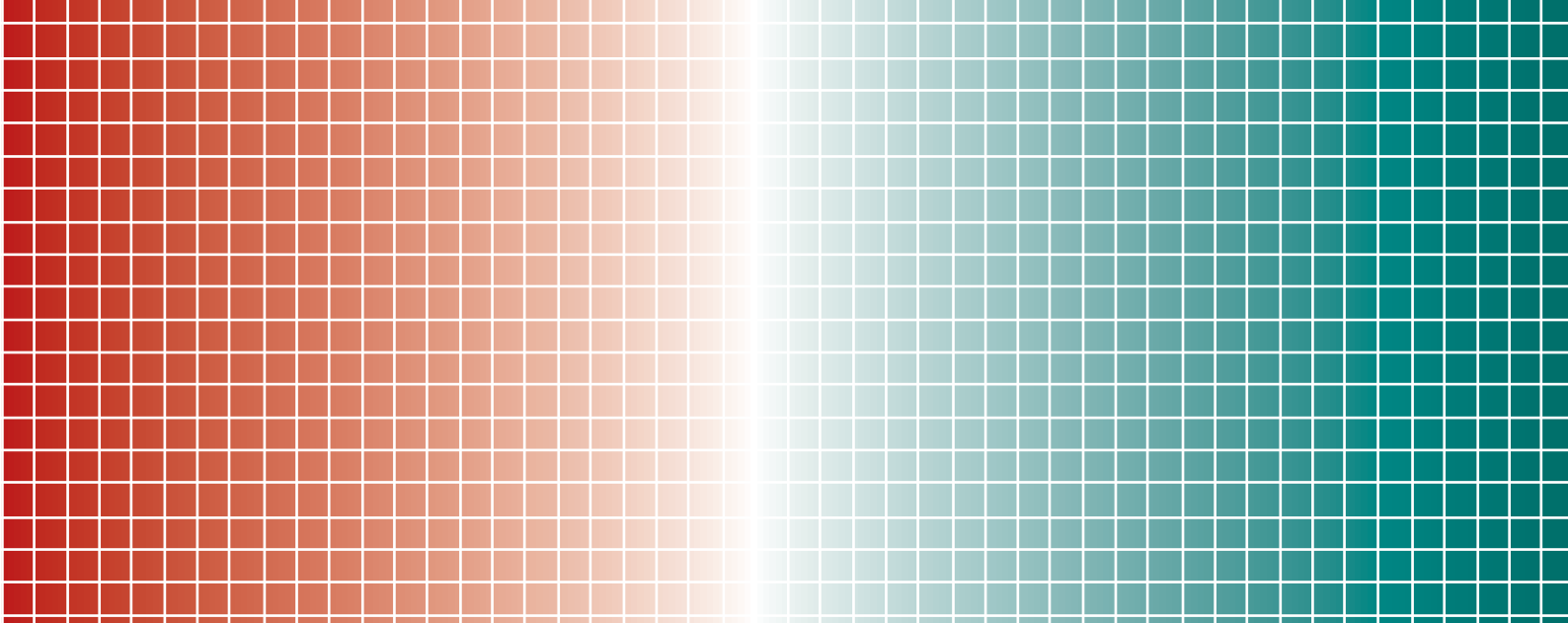
Table 1:	Provisions contained in the Code of Conduct for the Public Service	10
Table 2:	Number of persons elected as municipal councillors in Limpopo	14
Table 3:	Number of persons elected as municipal councillors in the Western Cape	15
Table 4:	Number of public servants elected as municipal councillors in Limpopo	17
Table 5:	Number of public servants elected as municipal councillors in the Western Cape	17
Table 6:	Age distribution of public servants elected as municipal councillors in Limpopo and the Western Cape	19
Table 7:	Management and salary levels of public servants elected as municipal councillors in Limpopo and the Western Cape	20
Table 8:	The capacity in which public servants are elected as municipal councillors	23
Table 9:	Number of public servants elected as municipal councillors according to departments/ PERSAL	34

List of Figures

Figure 1:	Gender distribution of public servants in Limpopo serving on municipal councils	18
Figure 2:	Gender distribution of public servants in the Western Cape serving on municipal councils	18
Figure 3:	Age distribution of public servants in Limpopo and the Western Cape serving on municipal councils	19

Glossary of abbreviations and definitions

CPSC	Canadian Public Service Commission
Constitution	Constitution of the Republic of South Africa, 1996
Council	Municipal Council
Councillor	Municipal councillor
DPSA	Department of Public Service and Administration
Executing Authority	The Minister/Member of the Executive Council responsible for the national/provincial portfolio
Guideline	Guideline on the management of benefits and allowances
HoD	Head of Department
Management level	Term used by PERSAL in reference to data per salary band
NPM	New Public Management
OPSC	Office of the Public Service Commission
PERSAL	Personnel and Salary Administration System
PSC	Public Service Commission
PSR	Public Service Regulations
SMS	Senior Management Service
SOPS Report	State of the Public Service Report, 2006



Executive summary

1. INTRODUCTION

1.1 Background

During the most recent local government elections on 1 March 2006, public servants availed themselves as candidates and were elected as either part-time or full-time members of municipal councils.

If such election of public servants as municipal councillors are not effectively monitored and managed by departments, the State as the employer could be faced with the following consequences:

- Salaries may be paid to employees who are in fact no longer working for a Department/Provincial Administration or the Public Service.
- In the case of part-time municipal councillors, the performance of the employee may be negatively affected as he/she may be utilizing official hours to attend to Municipal Council duties. There would therefore be a negative impact on service delivery.
- Since fellow employees may feel that there are officials who receive preferential treatment, it might impact negatively on the morale in departments.
- Officials serving as councillors could be performing remunerative work outside the Public Service without permission to do so.

In view of the above, the question arose as to whether public servants are serving as elected public representatives on a part-time or full-time basis and still remain employed within the Public Service. The question is also raised considering the “partisan” responsibilities that go with holding political office. The PSC is firmly of the view that the practice of continuing to employ public servants elected as councillors should be discontinued.

1.2 Mandate of the Public Service Commission

The mandate to conduct investigations is vested on the Public Service Commission (PSC) in terms of section 196(2) and (4) of the *Constitution of the Republic of South Africa, 1996*, as well as section 9 and 10 of the *Public Service Commission Act, 1997*.

1.3 Terms of reference of the investigation

The terms of reference of the investigation were to determine whether –

- there are public servants who have been elected as municipal councillors in the Limpopo and Western Cape provinces;
- public servants elected as part-time councillors are managed by departments in terms of section 30(b) of the *Public Service Act, 1994*;
- public servants elected as full-time councillors resign from the Public Service; and
- it is ethical for a public servant to serve as an elected public representative and still remain employed within the Public Service.

1.4 Methodology followed during the investigation

The investigation focused on departments in the Limpopo and Western Cape provinces. The methodology followed during the investigation is reflected in Chapter 1, paragraph 1.4, of the report.

2. REGULATORY FRAMEWORK

Since the *Public Service Act, 1994*, does not make provision for the management of public servants elected as municipal councillors, the Department of Public Service and Administration (DPSA) issued a circular minute in October 2005, stating that the election of public servants as part-time municipal councillors should be dealt with in terms of section 30(b) of the *Public Service Act, 1994*.

However, it is not only the *Public Service Act, 1994*, or the above-mentioned circular minute, that applies to the election of public servants as municipal councillors. The following relevant prescripts applicable to the management of public

servants elected as municipal councillors, either on a full or part-time capacity, are discussed in Chapter 2:

- *Constitution of the Republic of South Africa, 1996.*
- *Public Finance Management Act, 1999.*
- *Public Service Act, 1994.*
- Public Service Regulations.
- Handbook for the Senior Management Service.
- Local Government related legislation.

3. STATISTICAL OVERVIEW OF PUBLIC SERVANTS ELECTED AS MUNICIPAL COUNCILLORS

Information pertaining to all municipal councillors in the Limpopo and Western Cape provinces was requested from the respective municipalities. Subsequent to receiving the information, it was analyzed, processed and supplemented by data maintained by PERSAL. Information in this regard, reflected in Chapter 3 of the report, is summarized as follows:

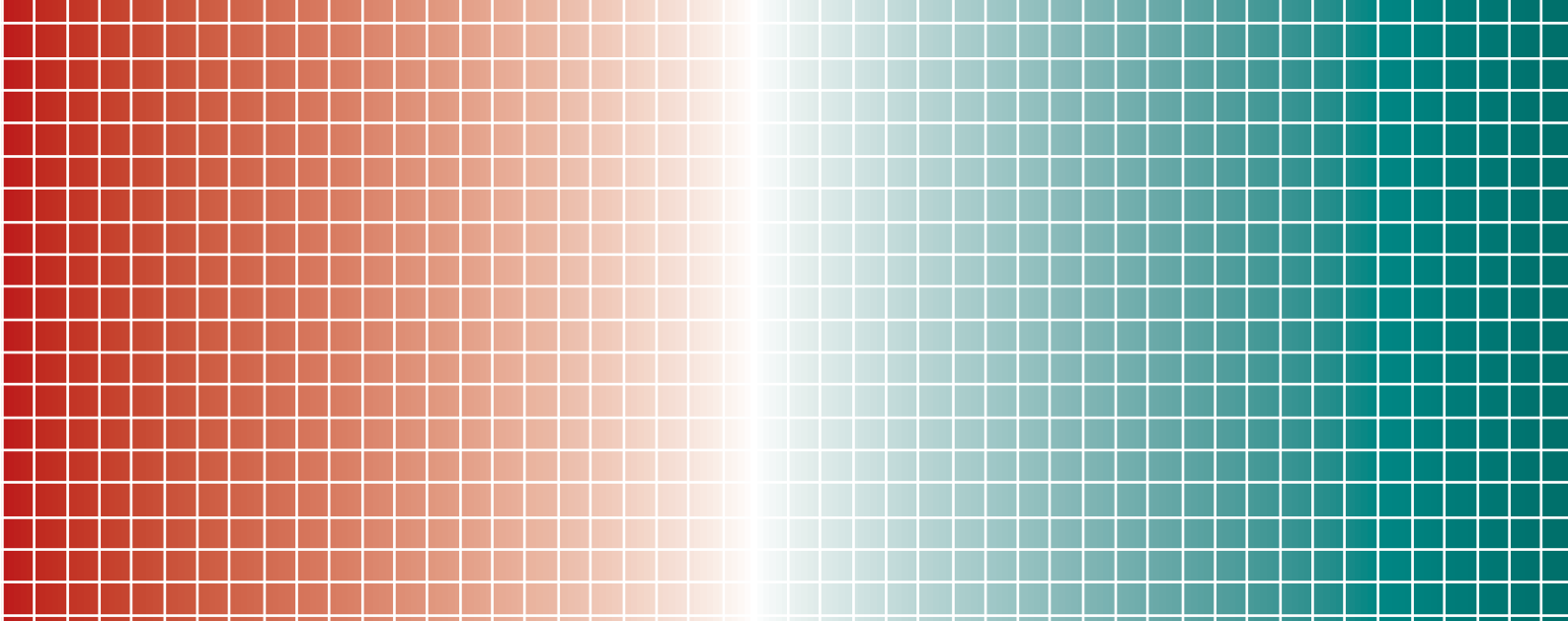
3.1 Number of persons elected as municipal councillors

According to the data obtained from the various municipalities in these two provinces, 1877 persons (public servants and non-public servants) serve on municipal councils. Of these, 1057 are in the Limpopo and 820 in the Western Cape provinces. The total number of persons elected as municipal councillors in Limpopo and the Western Cape is reflected per Province, District and Municipality in table-format in Chapter 3 of the report.

3.2 Geographical statistics: Municipal councillors

In terms of the data provided by the various municipalities, out of the 1877 persons serving on municipal councils, a disturbingly high number are public servants (606). Of these, 456 are employed in departments in the Limpopo and 150 in the Western Cape provinces.

PERSAL verified that the number of current public servants elected as municipal councillors subsequent to the municipal elections held in March 2006, is 340 (i.e. 321 in Limpopo and 19 in the Western Cape). The difference



of 266 between the data supplied by the municipalities and that verified by PERSAL could be ascribed to the transfer of public servants to other provinces, the termination of public servants' services, etc.

Of the 340 public servants elected as municipal councillors, 124 are female and 216 male, whilst the majority of these employees in both provinces fall mainly in the age group 40 – 49. The gender and age distribution of public servants serving on municipal councils is graphically illustrated in Chapter 3 of the report.

3.3 Management and salary levels of municipal councillors

The investigation revealed that in both the Limpopo and the Western Cape provinces, 85% of the public servants elected as municipal councillors are employed at the production level, i.e. salary band 1 to 8.

4. MANAGEMENT OF PUBLIC SERVANTS ELECTED AS MUNICIPAL COUNCILLORS

This Chapter examines how departments manage public servants who are elected as municipal councillors in terms of the prevailing prescripts. The information, reflected in Chapter 4 of the report, is summarized as follows:

4.1 Management of public servants elected as full-time municipal councillors

Departments that participated in the investigation verified that all the affected public servants are elected as municipal councillors in a part-time capacity. However, in some instances it was indicated that the relevant persons did not inform their departments of their election as municipal councillors. The PSC finds such responses to be questionable as the appointment capacity is not known to the Department.

Furthermore, in spite of numerous requests, information requested regarding the employment capacity of employees serving as municipal councillors was not received from the Department of Roads and Public Transport in Limpopo.

4.2 Management of public servants elected as part-time municipal councillors

Subsequent to obtaining and analyzing information from departments in this regard, the PSC found, amongst others,



the following:

- Not in all instances were public servants informed by departments' human resources components of the provisions and conditions that regulate their participation in municipal elections.
- Public servants elected as municipal councillors did not in all instances request and obtain approval from the EA/designated official to perform remunerative work outside the Public Service as is required under the *Public Service Act, 1994*.

4.3 Deficiencies in managing public servants elected as part-time municipal councillors

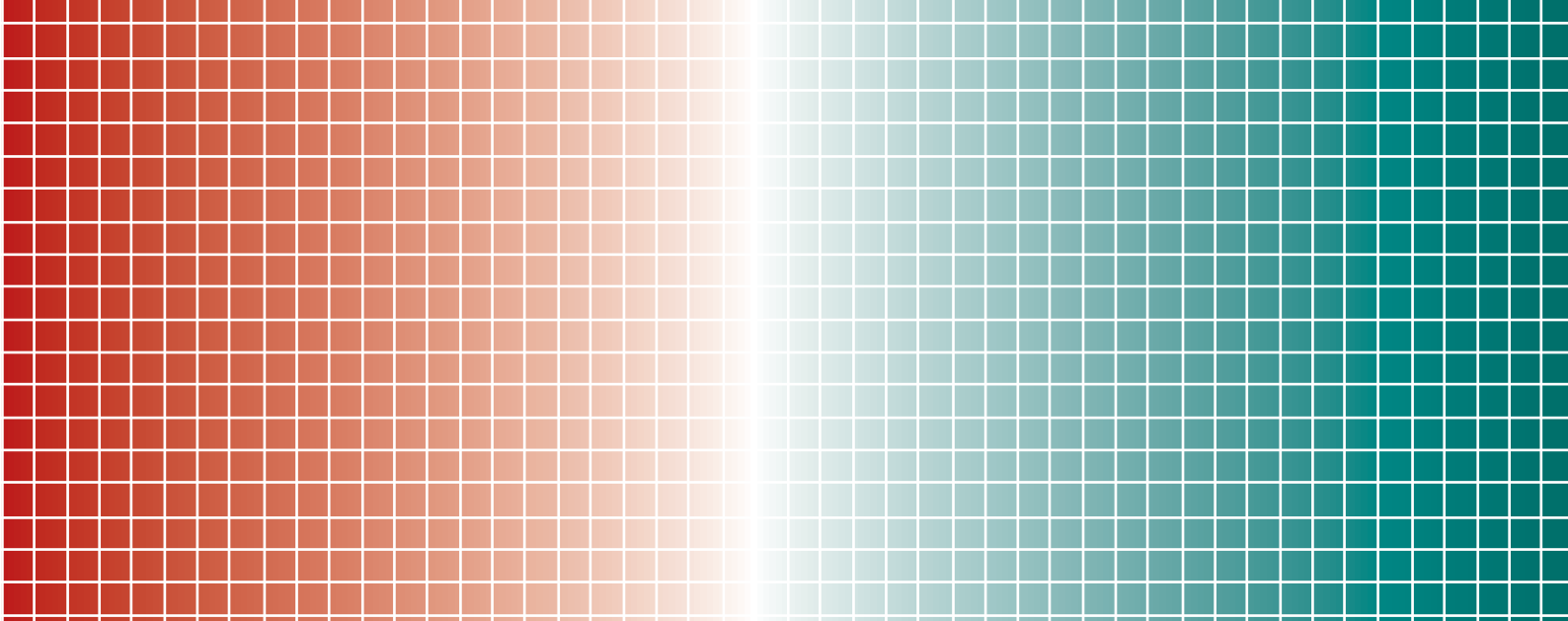
Not all departments –

- continuously monitor the nature and extent of public servants' duties and responsibilities as councillors;
- determine whether the nature and extent of public servants' duties and responsibilities as councillors are in conflict with their official duties;
- monitor the impact that public servants' duties as councillors have on their attendance and performance of work;
- ensure that public servants serving as municipal councillors perform their duties as councillors outside official hours; and
- require that vacation leave be taken in instances where employees have to perform Council-related duties during official hours of work.

4.4 Controls applied to public servants elected as part-time municipal councillors

The investigation revealed that in the Office of the Premier and the Department of Agriculture in Limpopo, as well as the departments of Agriculture and Health in the Western Cape, control measures were implemented to manage public servants elected as part-time municipal councillors.

5. MANAGEMENT OF PUBLIC SERVANTS ELECTED AS MUNICIPAL COUNCILLORS: AN OVERVIEW OF INTERNATIONAL PERSPECTIVES



This Chapter explores the various processes that are followed in the management of public servants elected to public office in terms of the prevailing provisions in Nigeria, Botswana, India, Canada and Australia. The following good practices with regard to the management of public servants who are elected as municipal councillors in these countries are reflected upon in Chapter 5 of the report:

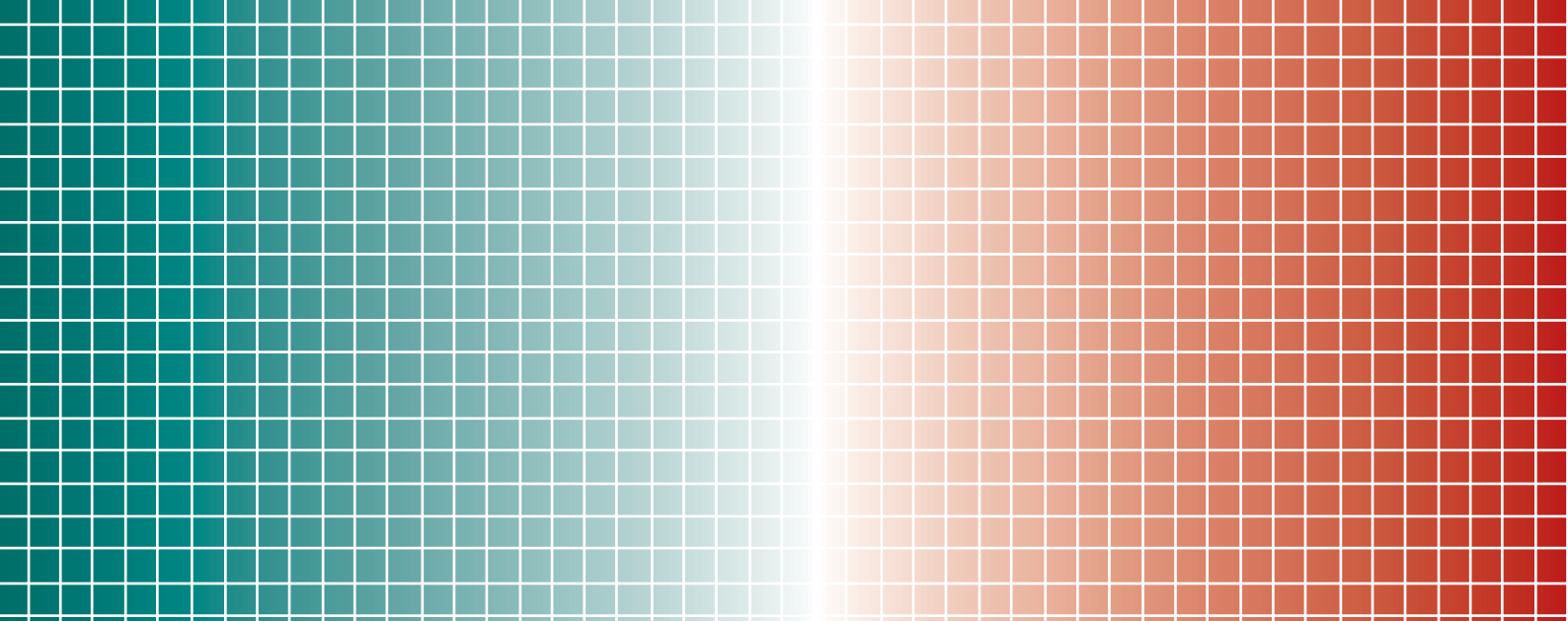
- Although the Nigerian Constitution makes provision with respect to every citizen's right and freedom of association, the Public Service has chosen to prohibit the participation of public servants in political activities.
- Botswana also subscribes to the principle that public administration and politics do not mix. If a currently serving official chooses to join politics, he or she is expected to terminate his or her services with the State completely.
- The Indian situation is more or less similar to that of Botswana and Nigeria, a civil servant can only be a civil servant or a politician.
- The Canadian Public Service has issued Political Activities Regulations. These are quite comprehensive and serve as a good point of reference for the South African Public Service with respect to the management of public servants who are candidates or become elected as municipal councillors during municipal or local government elections.
- A number of similarities could be drawn between Australia and South Africa in terms of how the process of the management of public servants who are elected as municipal councillors is managed as well as the relevant prescriptive provisions that are applicable in this regard.

What came out clear from this analysis is that the majority of countries do not allow public servants to hold political office because of the partisan responsibilities attached to political office. This supports the PSC's view that the continued employment of public servants elected as municipal councillors should be discontinued.

Furthermore, some fundamental developments and areas of advancement have been noted which have relevance in the administration of the process in South Africa. These relate to, *inter alia*, the regulation of the candidacy of public servants who wish to contest an election, the setting-up of an advice office dealing with such issues, establishment of an internal tracking system for public servants who have been elected as councillors, the provision of a mandatory "cooling-off" period where the need arises and the location for the management of public servants who are elected as councillors.

6. RECOMMENDATIONS

The PSC is firmly of the view that the practice of continuing to employ public servants elected as part-time councillors should be discontinued considering the partisan responsibilities that go with holding political office.



However, if the practice is to continue, the management of such public servants will have to be improved. Emanating from the analysis of data and information obtained from district and local municipalities, PERSAL and the respective departments, as reflected in Chapters 3 and 4 of the report, a number of potential problem areas were identified by the PSC. These shortcomings should be addressed in order to improve the effective and efficient management of public servants elected as municipal councillors.

Therefore, the following recommendations are made as elaborated upon in Chapter 6 of the report:

6.1 Improving the management of information or data, and effective record keeping

Special care must be taken by departments in ensuring that –

- the details of all public servants employed by the department in general, and those elected as municipal councillors in particular, are recorded accurately on PERSAL;
- liaison takes place between the relevant departments and municipalities to ensure that details in this regard are captured in a comprehensive manner, promptly and correctly; and
- information about public servants elected as municipal councillors is updated on PERSAL, should changes in the employment relationship occur, e.g. resignation, transfer, etc.

Furthermore, departments should, as a minimum, update and maintain accurate records of aspects such as –

- the notification of departments when public servants are elected as municipal councillors, the nature of their duties/responsibilities as councillors and details of the remuneration to be paid to them; and
- requests by public servants elected as municipal councillors to perform remunerative work outside the Public Service and approval granted.

6.2 Determining of trends

Departments should on an annual basis determine and record trends pertaining to the –

- performance of Municipal Council-duties by public servants during office hours and check whether official leave

- of absence has been applied for;
- nature and extent of public servants' duties and responsibilities as municipal councillors;
- impact that public servants' duties as municipal councillors have on their attendance and performance of work; and
- the extent to which a conflict of interest may arise between performance of public service and participation as public representative (politician).

Furthermore, the responsibility of determining and recording the above-mentioned trends should be allocated to specific officials, i.e. line managers/supervisors of employees elected as municipal councillors.

6.3 Adherence to the current regulatory framework

Special care should be taken by departments to ensure that the current prescripts regulating the performance of remunerated work outside the Public Service are adhered to.

Whilst the Internal Audit units in departments have an active role to play in this regard, Heads of Department should also take note of the fact that responsibilities in the above regard are specifically allocated to them by, amongst others, the *Public Service Act, 1994*, and the *Public Finance Management Act, 1999*.

6.4 Development and implementation of statutory/regulatory framework

It is the PSC's view that the *Public Service Act, 1994*, should be amended to make it clear that public servants elected as councillors must resign from the Public Service. If this approach is not adopted then the *Public Service Act, 1994*, should be amended to include –

- conditions for the election of public servants as municipal councillors; and
- the provisions of paragraph 5 of the circular minute of the DPSA, reflected upon in Chapter 2 of the report, dealing with the management of public servants elected to municipal councils.

6.5 Development of a Departmental or Provincial Policy

Departments should develop their own policies regulating and managing the employment of public servants elected as municipal councillors. These policies should be designed in such a manner that they accommodate each department/province's unique needs and circumstances. Care must also be taken to ensure that the following aspects are, amongst

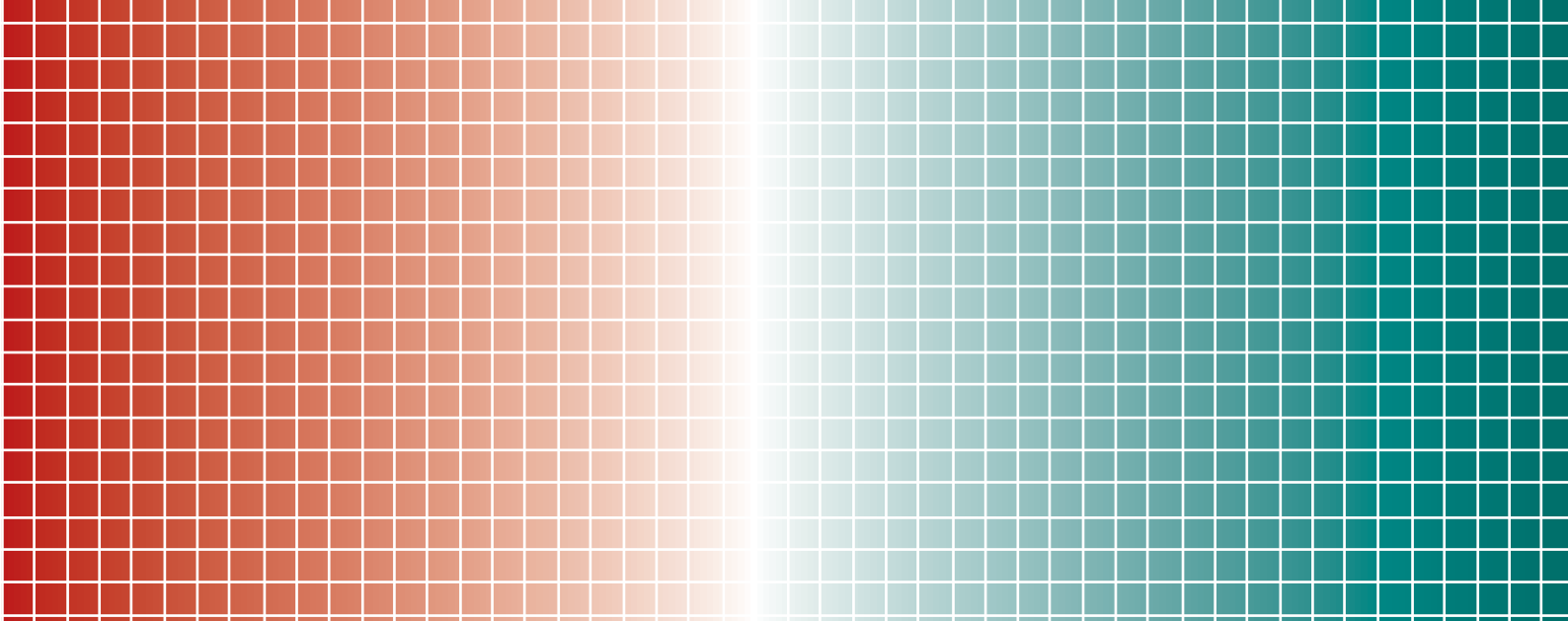
others, provided for in such departmental/provincial policies:

- The responsibility of departments to advise employees of the provisions/conditions that regulate their participation in elections.
- The responsibility that a public servant has to inform his/her Department of his/her intention to partake in forthcoming municipal elections and the anticipated impact this will have on his/her hours of attendance.
- Should an employee be elected as a full-time Municipal Councillor, he/she must be required to inform the Department accordingly and resign.
- Should an employee be elected as a part-time Municipal Councillor, he/she must be required to inform the Department in writing of his/her election, of the nature of his/her duties and responsibilities as a councillor, whether he/she will be required to perform duties during office hours and of the details of the remuneration to be paid in this regard.
- The format and manner in which approval is to be requested by an employee elected as a part-time Municipal Councillor to perform remunerative work outside the Public Service, as well as for the granting of approval.
- The responsibility of departments/supervisors to continuously monitor –
 - the nature and extent of the employee's duties and responsibilities as a councillor;
 - that it is ensured that employees perform their duties as councillors as far as possible outside official hours or apply for leave (leave policy applies);
 - the taking of vacation leave in the event that employees have to perform councillor related duties during official hours of work;
 - the impact that the employee's duties as a councillor will have on his/her attendance and performance of work; and
 - the position and activities of the employee to ensure that no conflict of interest arises that could perhaps compromise the Department.

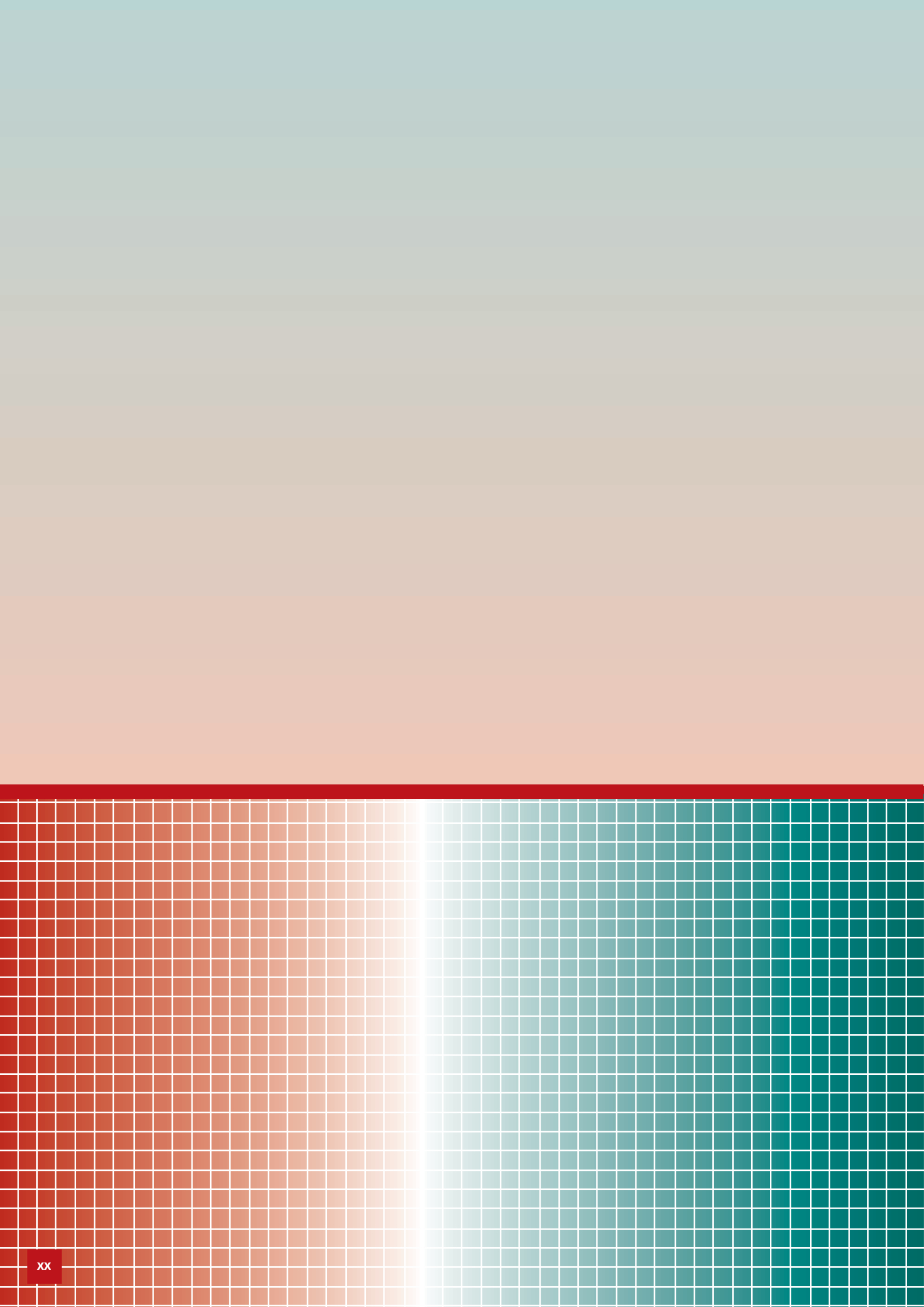
7. CONCLUSION

The PSC's position on the continued employment of public servants elected as municipal councillors is that this should not be allowed. However, if the practice is to be continued it is clear that much more detailed attention must be given to the correct management of part-time councillors.





The findings and recommendations contained in this report should assist departments in managing public servants serving as part-time municipal councillors in an efficient and effective manner. In this regard, the maintenance of accurate statistics, the institution of effective record keeping practices, as well as the determination of trends coupled with adherence to the regulatory framework, will definitely be a step in the right direction.



Chapter One

Introduction

1.1 Background

Although not a common practice, situations occur where employees hold dual-employment. Where such dual-employment exists this is normally governed by adequate control measures by one or both of the employers. These control measures are necessary to ensure that quality services are provided by such employees to their employers. Within a public service context careful attention must be given to the application of such control measures so as to ensure that its limited resources are not depleted.

The South African Public Service specifically can not afford to share its limited resources with others. The Public Service Commission (PSC) views the performance of remunerated work outside the Public Service, and its potential consequences, in a serious light. Hence, during 2004 the PSC conducted an investigation into the performance of remunerated work outside the Public Service². Problems identified during this investigation included the following:

- Disloyalty to the Employer.
- Long working hours.
- The abuse of State resources.
- The abuse of official working hours.
- Increased absenteeism from work, resulting in a loss in productivity.
- Abuse of leave.
- Remunerative work outside the Public Service without permission.

Based on the findings of the above investigation the PSC has noted that dual-employment of public servants has various detrimental implications for the State as employer:

On 1 March 2006, the most recent local government elections took place. Some employees in the Public Service availed themselves as candidates and were subsequently elected as either part-time or full-time municipal councillors. Although the regulatory framework in respect of the management of public servants elected as municipal councillors subsequent to these elections is discussed in detail in Chapter 2 of the report, it is important to note that the *Public Service Act, 1994*, does not make specific provision for the management of public servants elected as municipal councillors. The PSC is firmly of the view that the practice of continuing to employ public servants elected as municipal councillors should be discontinued given the partisan responsibilities that go with holding political office and that the *Public Service Act* should be clear in this regard.

However, given the fact that public servants who were elected as municipal councillors may still be employed, there is a risk that their employment conditions are not effectively monitored and managed, a situation which could result to the State as the employer being faced with the following consequences:

- Salaries may be paid to employees who are in fact no longer working for the Department/Provincial Administration or the Public Service.
- In the case of part-time municipal councillors, the performance of the employee may be negatively affected as he/she may be utilizing official hours to attend to Municipal Council duties. There would therefore be a negative impact on service delivery.

²Report on remunerative work outside the Public Service: An investigation undertaken by the PSC during 2004 in the Gauteng Provincial Health Sector.

- Since fellow employees may feel that there are officials who receive preferential treatment, it might impact negatively on the morale in departments.

In view of the above and in the light of the most recent local government elections that took place on 1 March 2006, the question arose as to whether public servants are serving as elected public representatives on a part-time or full-time basis and still remain employed within the Public Service.

Given the consequences of such dual-employment, the PSC has therefore deemed it prudent to investigate the extent to which public servants have been elected as councillors and the manner in which this is being managed by departments in the Limpopo and Western Cape provinces.

1.2 Mandate of the Public Service Commission

The mandate to conduct investigations is vested on the PSC in terms of the following legislation:

- Section 196(2) of the *Constitution of the Republic of South Africa, 1996*, *inter alia*, determines that the PSC must exercise its powers and functions in the interest of the maintenance of effective and efficient administration and a high standard of professional ethics in the Public Service.
- According to section 196(4) of the *Constitution of the Republic of South Africa, 1996*, the PSC is empowered –
 - “(a)
 - (b) to investigate, monitor and evaluate the organization and administration, and the personnel practices, of the public service;
 - (c)
 - (d) to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in section 195;
 - (e)
 - (f) either of its own accord or on receipt of any complaint –
 - (i) to investigate and evaluate the application of personnel and public administration practices, and to report to the relevant executive authority and legislature;
 - (ii)
 - (iii) to monitor and investigate adherence to applicable procedures in the public service; and
 - (iv) advise national and provincial organs of state regarding personnel practices in the public service, including those relating to the recruitment, appointment, transfer, discharge and other aspects of the careers of employees in the public service”.
- In pursuance of its investigative mandate, the PSC is empowered by section 9 of the *Public Service Commission Act, 1997*, to inspect departments and other organizational components in the Public Service, and to have access to such official documents or obtain such information from the Heads of Department (HoDs) or organizational components as may be necessary for the performance of the functions of the PSC under the Constitution.
- In terms of section 10 of the *Public Service Commission Act, 1997*, the PSC is further empowered to conduct an inquiry into any matter in respect of which it is authorized by the Constitution or the *Public Service Act, 1994*. Section 13(1) of the *Public Service Commission Act, 1997*, provides for the delegations of the PSC's power of investigation to (an) officer(s).

1.3 Terms of reference of the investigation

The terms of reference of the investigation were as follows:

To investigate whether –

- there are public servants who have been elected as municipal councillors in the Limpopo and Western Cape provinces and where they are located;
- public servants elected as part-time councillors are managed by departments in terms of section 30(b) of the *Public Service Act, 1994*;
- public servants elected as full-time councillors resign from the Public Service; and
- it is ethical for a public servant to serve as an elected public representative and still remain employed within the Public Service.

1.4 Methodology followed during the investigation

The investigation focused on departments in the Limpopo and Western Cape provinces. This approach was informed by the fact that the Western Cape is predominantly populated by urban municipalities, whilst Limpopo is predominantly populated by rural municipalities.

Due to time constraints, and in order to ensure the effective and efficient utilization of the PSC's resources, the methodology followed during the investigation was mapped out prior to its commencement. The methodology provided for the following six phases:

Phase 1:

Municipalities in the Limpopo and Western Cape provinces were informed by means of a letter that the PSC is embarking upon an investigation on the management of employees elected as municipal councillors. The purpose of the letter to the municipalities was two-fold: Firstly, it served to contextualize the objectives of the investigation and to explain the methodology and logistical arrangements involved. Secondly, the surnames, initials and identity numbers of all councillors elected to municipal councils, both at district and local levels, were requested from the various municipalities.

Phase 2:

Information requested was obtained from the municipalities and analyzed. In instances where the information provided was incomplete, e.g. if no identity numbers were provided, follow-ups were made with the relevant municipalities.

Phase 3:

Information supplied by municipalities was processed. This process entailed the scanning of documents into MS Word format. The scanning process involved the compiling of electronic data-lists in respect of each District/ Local Municipality.

Phase 4:

The electronic data-lists compiled during Phase 3 were submitted to PERSAL at the National Treasury in order to identify who of the listed municipal councillors were/are employed in the Public Service during the 2006/2007 financial year.

Phase 5:

Feedback was received from PERSAL, analyzed and verified. As part of the verification process departments were requested to verify the employment-status of public servants who were elected as municipal councillors. Departments were also requested in a letter to indicate to the PSC how the election of public servants as part-time municipal councillors is managed.

Furthermore, it was determined whether departments continuously monitor –

- the nature and extent of an employee's duties and responsibilities as a Municipal Councillor and whether it is not in conflict with the employee's official duties;
- the impact that the employee's duties as a Municipal Councillor has on his/her attendance and performance of work; and
- the position and activities of the employee to ensure that no conflict of interest arises that could perhaps compromise the Department.

Phase 6:

Based on the analysis of the information gathered during phases 1 to 5, highlighted above, a report containing findings and recommendations was compiled.

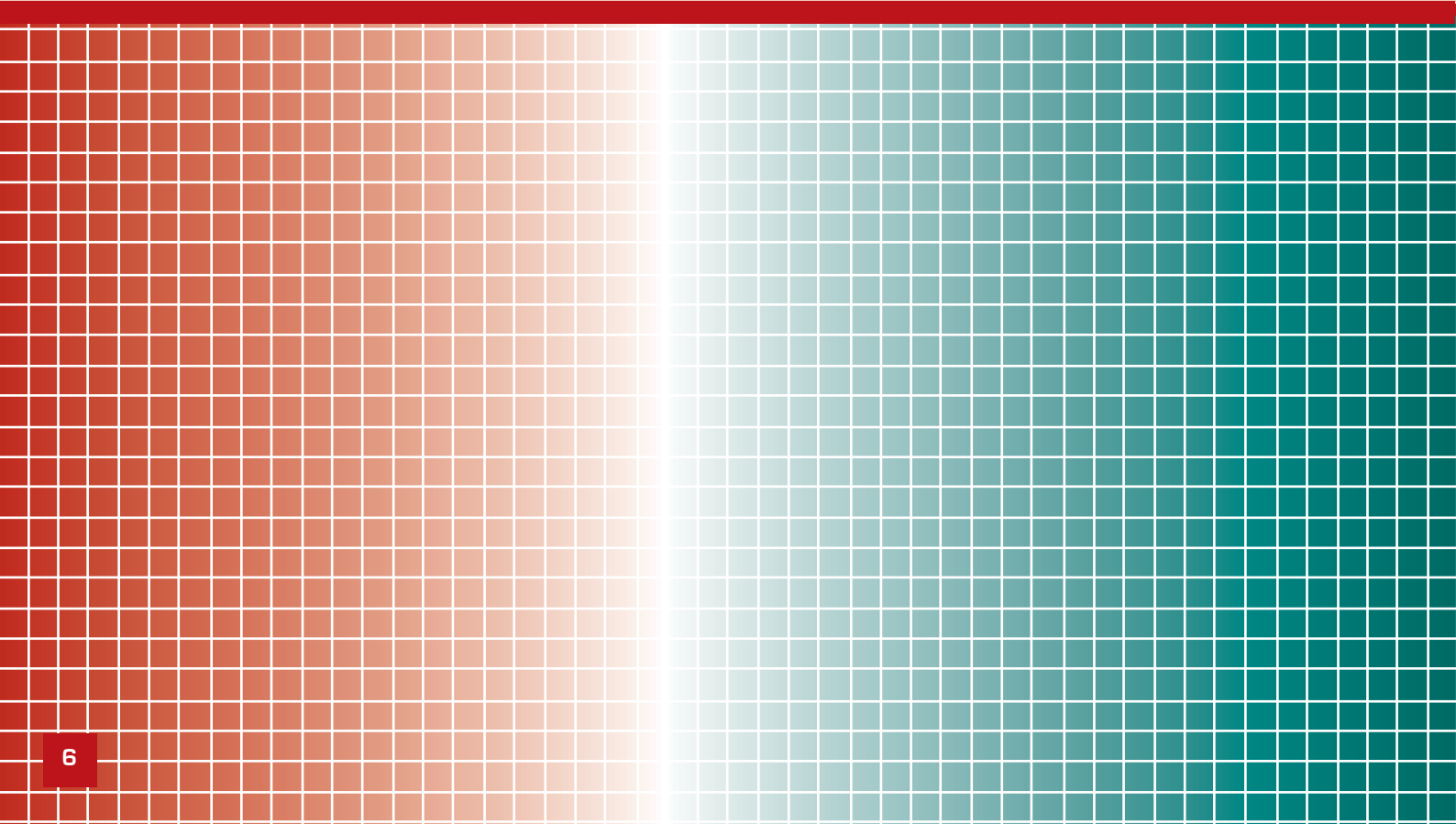
1.5 Limitations experienced

It was a lengthy process to obtain the requested information from the various district and local municipalities. Although information was requested on 14 December 2006, information was submitted to the PSC as late as mid-February 2007.

The year-end holidays in December 2006 impacted negatively on the duration of the investigation. Hence, the investigation was finalized later than originally anticipated.

Insufficient information regarding the identity numbers of municipal councillors hampered PERSAL in its endeavors to determine whether such persons are employed in the Public Service. However, this only applied in a limited number of instances.

The verification of the employment status of those public servants elected as municipal councillors (see Phase 5 above) took longer than anticipated. Since due dates elapsed without responses received from departments, the PSC had to submit reminders to the majority of departments. Subsequently, data requested during February 2007, was in some instances forwarded to the PSC only towards the middle of May 2007.



Chapter Two

Regulatory framework

2.1 Introduction

Section 158(1)(b) of the *Constitution of the Republic of South Africa, 1996*, disqualifies public servants from becoming municipal councillors if such a disqualification is prescribed by national legislation. Although no specific prohibition is prescribed by national legislation in this regard, it is clear from the provisions of section 158(1)(b) of the Constitution that it is deemed necessary and appropriate that national legislation must be enacted to address the election of public servants as municipal councillors.

Since municipal councillors serve either in full- or part-time capacities on councils and are remunerated accordingly, departments have a duty to carefully consider the duties and responsibilities of such employees *vis-à-vis* their activities as councillors. If need be, such employees may be requested by departments to either withdraw as municipal councillors, or alternatively to resign from the Public Service.

Although the *Public Service Act, 1994*, does not specifically make provision for the management of public servants elected as municipal councillors, section 30(b) of the Act addresses the issue of the performance of remunerative work outside the Public Service. Furthermore, according to a circular minute issued by the Department of Public Service and Administration (DPSA) in October 2005, the election of public servants as part-time municipal councillors should be dealt with in terms of section 30(b) of the *Public Service Act, 1994*.

However, not only the *Constitution of the Republic of South Africa, 1996*, or the *Public Service Act, 1994*, applies to the election of public servants as municipal councillors. In order to obtain a holistic view of the regulatory framework relevant to the management of public servants elected as municipal councillors, all applicable prescripts must be taken into account.

A synopsis of the prescripts applicable to the management of public servants elected as municipal councillors, either in a full- or part-time capacity, is provided as follows:

2.2 Constitution of the Republic of South Africa, 1996

According to section 151 of the *Constitution of the Republic of South Africa, 1996*, the local sphere of Government consists of municipalities. The executive and legislative authority of a Municipality is furthermore vested in its Municipal Council.

In terms of section 158(1)(b) of the Constitution, every citizen who is qualified to vote for a Municipal Council is eligible to be a member of the Council, except anyone who is appointed by, or is in the service of the State in another sphere, and receives remuneration for that appointment or service, and who has been disqualified from membership of a Municipal Council in terms of national legislation.

Furthermore, the authority to establish municipalities in provinces is vested in “provincial governments”, i.e. provincial departments of Local Government. Section 155(6) of the Constitution stipulates that such departments must –

- monitor and support local government in the Province; and
- promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.

2.3 Public Service Act, 1994

In terms of section 7(b) of the *Public Service Act, 1994*, HoD's are responsible for the efficient management and administration of departments, including the effective utilization of staff.

Section 30(a) of the Act stipulates that employees must place the whole of their time at the disposal of the State.

Although the Act does not specifically make provision for the management of public servants elected as municipal councillors, section 30(b) stipulates that no employee shall perform or engage him-/herself in remunerative work outside his/her employment in the Public Service without permission granted. Such permission can only be obtained from the relevant EA, or an officer authorized by the said authority.

Furthermore, section 36 of the Act stipulates that an employee may be a member and serve on the management of a lawful political party or may attend a public political hearing, but may not preside or speak at such a meeting. An employee may also not draw up or publish any writing or deliver a public speech to promote/prejudice the interests of any political party.

In addition, the Act addresses the issue of compensation as follows:

- Section 31(1) states that if any remuneration/reward is received by a public servant contrary to the provisions of section 30(b) of the Act, that person shall pay into revenue an amount equal to the amount of any such remuneration/reward. If the public servant refuses to pay such an amount, it shall be recovered from him/her by the HoD in which he/she is employed by means of legal proceedings. However, the relevant EA may approve that the person retain the remuneration/reward received, or a part thereof.
- Section 38 deals with “*Wrongly granted remuneration*”. In terms of this section, if a public servant receives a salary in circumstances under which it should not have been awarded, i.e. when it was not due to him/her; an amount equal to the amount of “overpayment” shall be recovered from the person.

2.4 Public Finance Management Act, 1999

Section 36(2)(a) of the *Public Finance Management Act, 1999*, stipulates that a HoD is the Accounting Officer for the Department. One of the responsibilities allocated to the Accounting Officer of a department, as specified by section 38(1)(b) of the Act, is that he/she “*is responsible for the effective, efficient, economical and transparent use of the resources of the department ...*”.

2.5 Public Service Regulations

In order to give practical effect to the provisions of Chapter 10 of the *Constitution of the Republic of South Africa, 1996* (relating to the Public Service), and to indicate to employees what conduct is expected of them from an ethical point of view, the Code of Conduct for the Public Service was introduced in the Public Service in 1999. The Code of Conduct for the Public Service is contained in Chapter 2 of the Public Service Regulations (PSR), and all employees are expected to comply with. The provisions of the Code of Conduct that are applicable to employees' relationships with the public/other employees, the performance of their duties and personal conduct and private interests, are summarized as follows:

Table 1: Provisions contained in the Code of Conduct for the Public Service

Paragraph	Provision
C.2.7	An employee may not abuse his/her position in the Public Service to promote or prejudice the interest of a political party or interest group.
C.3.7	An employee should refrain from party-political activities in the workplace.
C.4.5	An employee does not engage in any transaction or action that is in conflict with, or infringes on the execution of, his/her official duties.
C.4.9	An employee, in the performance of his/her duties, must promote sound, efficient, effective, transparent and accountable administration.
C.5.5	An employee does not without approval, undertake remunerative work outside his/her official duties or use office equipment for such work.

In addition to the relevant provisions reflected in the above table, paragraph B.2 of the Code of Conduct specifies that an employee shall be guilty of misconduct if he/she contravened or fails to comply with any provision of the Code of Conduct.

Chapter 3 of the PSR deals with the financial disclosure of members of the Senior Management Service (SMS) and other designated employees. In terms of paragraphs D(c) and E(c) of Chapter 3, financial interests that have to be disclosed annually by members of the SMS and other designated employees include details of remunerated work performed outside the Public Service and the amount of remuneration received for such work.

2.6 Handbook for the Senior Management Service

Chapter 6 of the Handbook for the SMS deals with the ethical and general conduct of managers. This Chapter supplements the Code of Conduct for the Public Service and the Financial Disclosure Framework, as contained in Chapters 2 and 3 of the PSR. In this regard, the following issues are addressed in paragraphs 10, 11 and 12 of Chapter 3 of the Handbook:

- The annual disclosure of financial and other private interests of managers.
- The conduct of managers during participation in political-related activities.
- Employment of managers outside the Public Service.

In addition, the obligation on managers to disclose their financial interests on an annual basis, as stipulated in Chapter 3 of the Code of Conduct for the Public Service and Chapter 6 of the Handbook for the SMS. The latter (disclosure of financial interests) is reiterated in Chapter 9 of the Handbook for the SMS.

2.7 Circular minute, dated 7 October 2005

In October 2005, the DPSA issued a circular minute with a view to provide guidance to departments on the management of public servants who are candidates in municipal elections and/or elected to municipal councils. The circular contained the following guidelines:

- All staff should be informed of the provisions and conditions that regulate their participation and election to municipal councils.
- Should an employee be elected to a Municipal Council, he/she should be required to inform a designated employee –
 - of such an election;
 - of the nature of his/her duties and responsibilities as a councillor;
 - whether he/she will be required to perform duties during office hours; and
 - of the details of his/her remuneration.
- Departments should continuously monitor the –
 - nature and extent of the employee's duties and responsibilities as a councillor, and whether it could be in conflict with the person's official duties;
 - impact that the employee's duties as a councillor will have on his/her attendance and performance of work; and
 - position and activities of the employee to ensure that no conflict of interest arises that could perhaps compromise the Department.
- Should an employee be elected as a full-time Municipal Councillor, he/she will have to resign from the Public Service.
- In instances where employees are elected as part-time municipal councillors, departments should ensure that such employees perform their duties as councillors as far as possible outside official hours.
- Specific approval has to be granted that an employee elected as a part-time Municipal Councillor can retain his/her remuneration (as required by section 30 of the *Public Service Act, 1994*).
- If an employee elected as a part-time Municipal Councillor has to perform duties as a councillor during his/her official hours of work, departments should require that vacation leave be taken on a basis of one day's leave for every eight hours of absence.

It should be noted that the guidance provided above applies only to employees appointed in terms of the *Public Service Act, 1994*. Members of the South African Police Service, the South African National Defence Force, the Department of Correctional Services, the South African Secret Service, the National Intelligence Agency and employees at State education institutions are managed in accordance with the applicable legislation that regulates their conditions of service.

2.8 Employment of Educators Act, 1998

As is the case with the *Public Service Act, 1994* (see paragraph 2.3 above), the *Employment of Educators Act, 1998*, also does not specifically make provision for the management of public servants (in this instance educators) elected as municipal councillors. However, section 33 of the *Employment of Educators Act, 1998*, states that unless an educator's conditions of service provide otherwise –

- an educator shall place such time as the Minister of Education may determine at the disposal of the Employer (i.e. the State); and
- no educator shall without permission of the Employer perform or undertake to perform remunerative work outside the educator's official duty, or work.

By implication, the above-mentioned means that approval has to be obtained by educators from the EA, i.e. the Minister/MEC of Education or person authorized by the said authority, in the event that remunerative work is to be undertaken outside educators' official work sphere.

2.9 Local Government related legislation

According to section 16 of the *Municipal Electoral Act, 2000*, a person may be nominated to contest an election in a ward if such a person is, amongst others, an ordinary resident in that Municipality and registered as a voter.

Furthermore, section 8 of the Code of Conduct for Councillors, contained in Schedule 1 of the *Local Government Municipal Systems Act, 2000*, stipulates that "A councillor who is a full-time councillor may not undertake any other paid work, except with the consent of a municipal council ...".

2.10 Summary

The PSC is of the view that the Constitution of the *Republic of South Africa, 1996*, provides the scope for public servants to be prohibited from retaining employment in the Public Service if they are elected as municipal councillors. This must be enforced as provided by the Constitution, through national legislation (e.g. the *Public Service Act, 1994*, etc.). Currently there is no such provision and as such the DPSA has had to come up with the circular (discussed in paragraph 2.7 above) to cover this void.

Chapter Three

Statistical overview of public servants elected as municipal councillors

3.1 Introduction

Whilst it is the PSC's view that the continued employment of public servants elected as municipal councillors should be discontinued, it was the purpose of this investigation to determine to what extent this phenomenon occurs.

The investigation focused only on departments in the Limpopo and Western Cape provinces. As was highlighted in the methodology section (see paragraph 1.4) of the report, information pertaining to all municipal councillors in these two provinces was requested from the respective municipalities. Subsequent to receiving the information, it was analyzed, processed and supplemented by data maintained by PERSAL. Departments were also approached to assist with the validation of the veracity of information received.

The statistical overview provided in this Chapter, focuses on public servants employed in the Limpopo and Western Cape provinces who were elected as municipal councillors.

3.2 Number of persons elected as municipal councillors

According to the data obtained from the various municipalities, 1877 persons serve on municipal councils. Of these, 1057 are in the Limpopo and 820 in the Western Cape provinces. The total number of persons elected as municipal councillors in the Limpopo and the Western Cape provinces are reflected as follows per Province, District and Municipality:

Table 2: *Number of persons elected as municipal councillors in Limpopo*

District	Municipality	Number of councillors
Mopani	Greater Giyani Local Municipality	53
	Greater Letaba Local Municipality	21
	Greater Tzaneen Local Municipality	67
	Ba-Phalaborwa Local Municipality	5
	Maruleng Local Municipality	24
	<i>Mopani District Municipality</i>	44
TOTAL:		214
Vhembe	Musina Local Municipality	11
	Mutale Local Municipality	22
	Thulamela Local Municipality	75
	Makhado Local Municipality	73
	<i>Vhembe District Municipality</i>	21
TOTAL:		202

District	Municipality	Number of councillors
Capricorn	Blouberg Local Municipality	27
	Aganang Local Municipality	18
	Molemole Local Municipality	25
	Polokwane Local Municipality	51
	Lepelle-Nkumpi Local Municipality	53
	Capricorn District Municipality	48
TOTAL:		222
Waterberg	Thabazimbi Local Municipality	20
	Lephalale Local Municipality	24
	Mookgophong Local Municipality	8
	Modimolle Local Municipality	16
	Bela-Bela Local Municipality	16
	Mogalakwena Local Municipality	63
	Waterberg District Municipality	32
TOTAL:		179
Greater Sekhukune	Makhudutamaga Local Municipality	62
	Fetakgomo Local Municipality	26
	Greater Marble Hall Local Municipality	26
	Greater Groblersdal Local Municipality	54
	Greater Tubatse Local Municipality	55
	Greater Sekhukune District Municipality	17
TOTAL:		240
GRAND TOTAL:		1 057

Table 3: Number of persons elected as municipal councillors in the Western Cape

District	Municipality	Number of councillors
City of Cape Town	City of Cape Town Metropolitan Municipality	210
TOTAL:		210
West Coast	Matzikama Local Municipality	13
	Cederberg Local Municipality	12
	Bergrivier Local Municipality	13
	Saldanha Bay Local Municipality	23
	Swartland Local Municipality	20
	West Coast District Municipality	23
TOTAL:		104

District	Municipality	Number of councillors
Cape Winelands	Witzenberg Local Municipality	21
	Drakenstein Local Municipality	61
	Stellenbosch Local Municipality	37
	Breede Vallei Local Municipality	39
	Breederivier Local Municipality	20
	Cape Winelands District Municipality	35
TOTAL:		213
Overberg	Theewaterskloof Local Municipality	23
	Overstrand Local Municipality	19
	Cape Agulhas Local Municipality	10
	Swellendam Local Municipality	10
	Overberg District Municipality	20
TOTAL:		82
Eden	Kannaland Local Municipality	9
	Hessequa Local Municipality	15
	Mossel Bay Local Municipality	23
	George Local Municipality	39
	Oudtshoorn Local Municipality	23
	Bitou Local Municipality	11
	Knysna Local Municipality	16
	Eden District Municipality	43
TOTAL:		179
Central Karoo	Laingsburg Local Municipality	6
	Prins Albert Local Municipality	6
	Beaufort West Local Municipality	13
	Central Karoo District Municipality	7
TOTAL:		32
GRAND TOTAL:		820

3.3 Geographical statistics: Municipal councillors

In terms of the data provided by the various municipalities, out of the 1 877 persons serving on municipal councils, reflected in tables 2 and 3 above, a disturbingly high number were public servants (606) when they were elected. Of these, 456 were/are employed in departments in the Limpopo and 150 in the Western Cape provinces. The capacity in which these public servants are elected as municipal councillors is addressed in Chapter 4 of the report.

However, details pertaining to the above-indicated 606 public servants, as provided by the municipalities, were submitted to PERSAL for verification. Subsequently, PERSAL indicated that the number of current public servants elected as municipal councillors following the municipal elections held in March 2006, is 340 (i.e. 321 in the Limpopo and 19 in the Western Cape provinces). The difference of 266 between the data supplied by the

municipalities and that provided by PERSAL could be ascribed to, amongst others, the transfer of public servants to other provinces, the termination of public servants' services, etc.

A breakdown of the 340 public servants elected as municipal councillors is provided per Province and Department, as follows:

Table 4: *Number of public servants elected as municipal councillors in the Limpopo*

Department	Total
Agriculture	3
Education	236
Health & Social Development	51
Local Government & Housing	5
Office of the Premier	8
Provincial Treasury	4
Public Works	2
Roads & Public Transport	4
Safety, Security & Liaison	2
Sport, Arts & Culture	6
Total	321

Table 5: *Number of public servants elected as municipal councillors in the Western Cape*

Department	Total
Agriculture	1
Education	15
Health	1
Social Development	2
Total	19

From tables 4 and 5 it is clear that the majority of public servants elected as municipal councillors are employed in the provincial departments of Education, i.e. 73% of employees in the case of the Limpopo and 72% in the Western Cape provinces.

In addition, educators far more frequently interact with citizens (i.e. parents of scholars). As such they have greater exposure to citizens and may be held in high esteem. Furthermore, since the official working hours of educators are between 08:00 and 14:00 hours on a daily basis, they have more time at their disposal to perform other work outside the Public Service. Understandably, this makes them ideal candidates to serve as municipal councillors.

Of the public servants elected as municipal councillors, 124 are female and 216 male, which is almost double the number of female councillors. The gender distribution of public servants serving on municipal councils is graphically illustrated as follows:

Figure 1: Gender distribution of public servants in the Limpopo serving on municipal councils

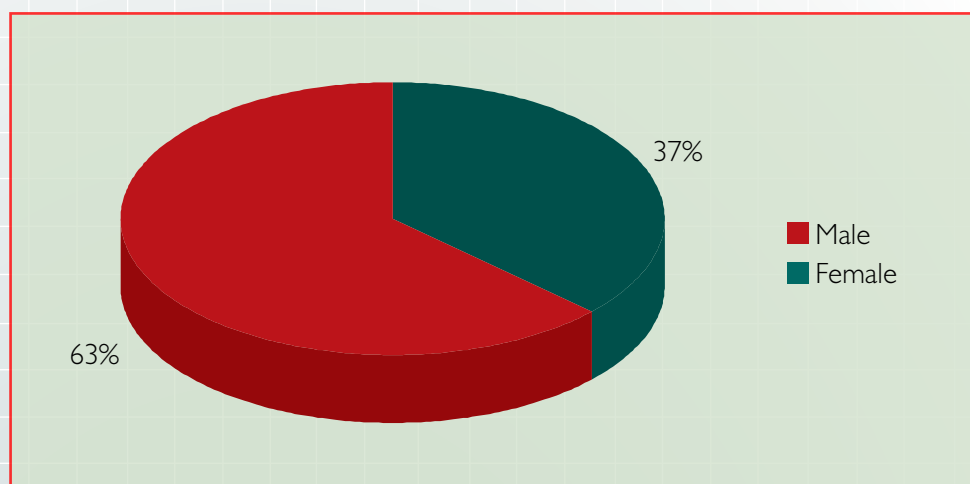
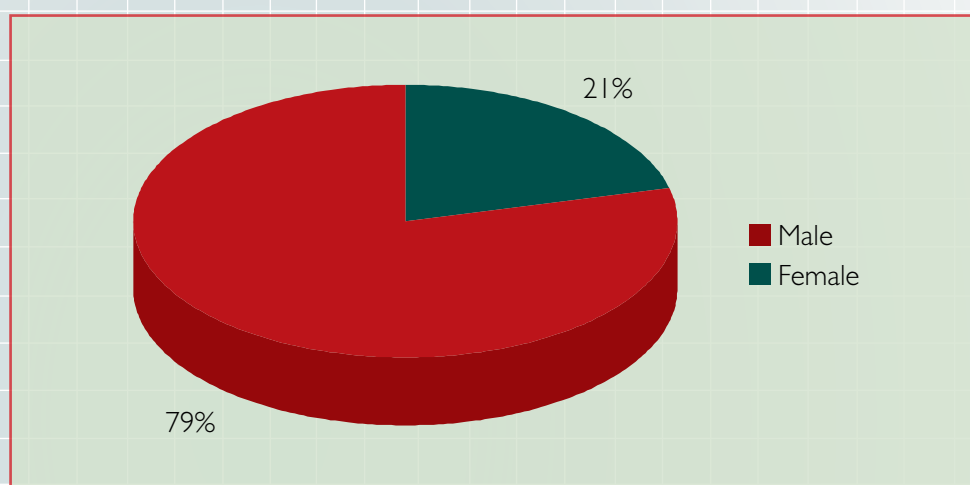


Figure 2: Gender distribution of public servants in the Western Cape serving on municipal councils



From figures 1 and 2 above a clear trend is observed whereby more male public servants are elected as municipal councillors, than females. This might be ascribed to the historic leadership role played by men which still permeates in high profile positions at political and administrative level.

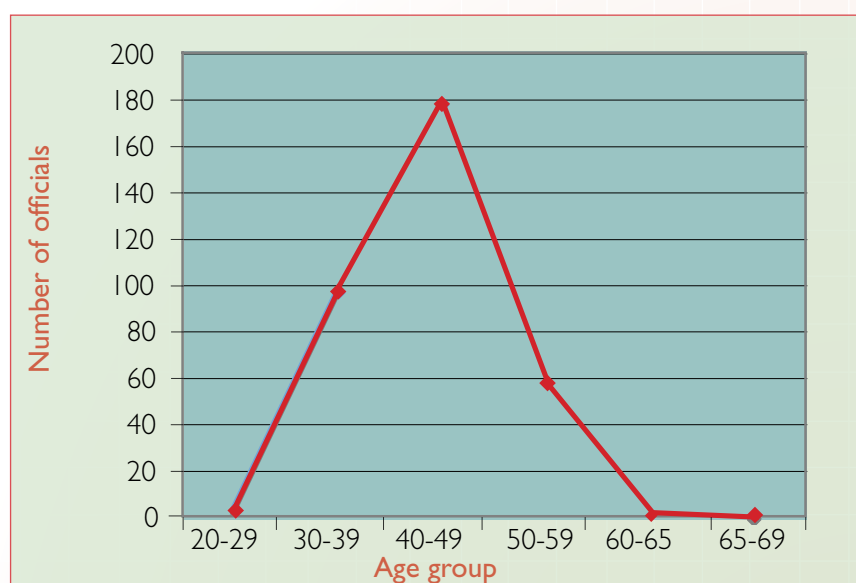
In addition to the gender distribution, data was also obtained from PERSAL with regard to the age group of public servants elected as municipal councillors. Statistics in this regard are as follows:

Table 6: Age distribution of public servants elected as municipal councillors in Limpopo and the Western Cape

Age group	Limpopo	Western Cape	Total
20 - 29	3	-	3
30 - 39	95	2	97
40 - 49	166	12	178
Age group	Limpopo	Western Cape	Total
50 - 59	53	5	58
60 - 65	3	-	3
66 - 69	1	-	1
Total	321	19	340

A further trend identified based on the statistics highlighted in Table 6 above is the fact that the majority of employees elected as municipal councillors in both provinces fall mainly in the age group 40 – 49. This trend is graphically illustrated by means of the following figure, reflecting the total number of public servants elected as municipal councillors according to the various age groups:

Figure 3: Age distribution of public servants in Limpopo and the Western Cape serving on municipal councils



From the above it could be deduced that employees falling in the age group 40 – 49 are politically the most active in the Limpopo and Western Cape provinces.

3.4 Management and salary levels of municipal councillors

The number of public servants elected as municipal councillors is reflected according to management and salary levels in the table below. It should be noted that *Management level* is the term used by PERSAL in reference to data per salary level (grouped together in salary bands as indicated in the second column of the table).

Table 7: *Management and salary levels of public servants elected as municipal councillors in Limpopo and the Western Cape*

Management level	Salary band	No of public servants		Total	Total expressed as a %
		Limpopo	Western Cape		
Chief Director	14	1	-	1	0.3%
Director	13	4	-	4	1.2%
Deputy Director	11 - 12	13	1	14	4.1%
Assistant Director	9 - 10	27	2	29	8.5%
Production	1 - 8	273	16	289	85%
Other ³	n/a	3	-	3	1%
TOTAL		321	19	340	100%

From the above table it is observed that both in the Limpopo and the Western Cape provinces, 85% of the public servants elected as municipal councillors are employed at the production level, i.e. salary band 1 to 8. Again, this correlates with statistics reflected in the SOPS Report, 2006, indicating that the majority of public servants are employed at this level, i.e. 91% of employees in the Limpopo and 87% of employees in the Western Cape provinces.

Given the above, it would seem as if such employees are viewed as leaders within their communities/municipalities, albeit they do not occupy managerial positions in the middle or senior management echelon of the Public Service. This phenomenon may also be ascribed to the fact that positions which such employees hold in the Public Service may not be so demanding and, as a result, allow them to pursue avenues outside their permanent employment.

3.5 Summary

Although the statistics relate to public servants serving on municipal councils only in the Limpopo and Western Cape provinces, the data obtained from the relevant municipalities, departments and PERSAL covered 11 districts, one metropolitan and 49 local municipalities.

In this Chapter a statistical overview was provided of, amongst others, the number of public servants in the Limpopo and the Western Cape provinces who are serving on municipal councils, their gender and age distribution as well as the management and salary levels applicable to them.

However, more important to the PSC is the capacity in which such employees serve on municipal councils, i.e. full- or part-time. The latter, as well as the manner in which the employment of employees serving on municipal councils is managed by departments, is reflected in the next Chapter.

³The management level indicated as "other" was created by PERSAL to accommodate public servants on personal salary notches.

Chapter Four

Management of public servants
elected as municipal councillors

4.1 Introduction

This chapter examines how departments manage public servants who are elected as municipal councillors in terms of the prevailing prescripts.

In addition, an overview is also provided of the findings made with regard to the deficiencies in the management of public servants elected as municipal councillors, which is complemented by an outline of corrective measures that could be employed to address such deficiencies.

4.2 Management of public servants elected as full-time municipal councillors

Since there is no clear legislative provision contained in, amongst others, the *Public Service Act, 1994*, enforcing the resignation of public servants elected as full-time councillors, the DPSA on 7 October 2005 issued guidelines as per its circular minute referred to in paragraph 2.7 of the report. The latter circular minute states that those employees elected as municipal councillors in a full-time capacity have to resign from the Public Service.

According to the statistics reflected in Table 8 below, departments that participated in the investigation verified that all the affected public servants are/were elected as municipal councillors in a part-time capacity. However, in some instances it was indicated that the relevant persons did not inform the Department of their election as a Municipal Councillor(s), e.g. the Department of Sport, Arts and Culture, Limpopo. The PSC finds such responses to be questionable as the appointment capacity (whether as a public servant or a councillor or both) of the affected public servants is not known to the Department.

Furthermore, the awarding of a severance package to an employee at the Department of Health, Western Cape, on a date after receiving notification of the conducting of this investigation by the PSC, remains a cause for concern since it could be an effort by the Department to cover “its tracks” in so far as its non-adherence to the regulatory prescripts.

A serious concern is that despite the numerous follow-ups, information requested regarding the employment capacity of public servants serving as municipal councillors was not received from the Departments of Economic Development, Environment and Tourism; Education; Local Government and Housing; and Roads and Public Transport in Limpopo (see Table 8 below). In fact, one possibility could be that the affected employees are still in the employment of the respective Departments, although they might be elected as full-time councillors. Should this be the case, then the Departments are –

- failing to adhere to the requirement of Section 30(a) of the *Public Service Act, 1994*, stipulating that employees must place the whole of their time at the disposal of the State (see paragraph 2.3 above); and
- trying to conceal such transgression.

4.3 Management of public servants elected as part-time municipal councillors

Information solicited from departments with regard to the number of public servants elected as municipal councillors is reflected per Province and Department in Table 8 below:

Table 8: The capacity in which public servants are elected as municipal councillors

Province	Department	No of public servants elected as councillors		Total
		Full-time	Part-time	
Limpopo	Agriculture ⁴	-	3 + 2	5
	Economic Development, Environment & Tourism	Not indicated in response		4
	Education	Not indicated in response		236
	Health & Social Development ⁵	-	51 - 6	45
	Local Government & Housing	Not indicated in response		5
	Office of the Premier ⁶	-	8 - 6	2
	Provincial Treasury ⁷	-	3 - 1	2
	Public Works ⁸	-	2 - 1	1
	Roads & Public Transport	No response received		4
	Safety, Security & Liaison	-	2	2
	Sport, Arts & Culture ⁹	-	6 - 1	5
Total		-	311	311
Western Cape	Agriculture	-	1	1
	Education ¹⁰	-	15 + 1	16
	Health ¹¹	-	1	-
	Social Development	-	2	2
Total		-	19	19
GRAND TOTAL		-	330	330

The above reflected statistics obtained from departments differs from that obtained from PERSAL, reflected in tables 4 and 5 above, indicating shortcomings regarding the capturing of data by departments, as well as the lack of communication between departments and PERSAL. However, recommendations aimed at addressing shortcomings of this nature are made in Chapter 6, paragraph 6.2, of the report.

The departments indicated that –

⁴two employees, in addition to those identified by PERSAL, are elected as councillors.

⁵only 45 employees are elected as councillors, six less than that identified by PERSAL.

⁶only two employees are elected as councillors, six less than that identified by PERSAL.

⁷one person resigned as a Municipal Councillor.

⁸only one employee is elected as a Councillor, one less than that identified by PERSAL.

⁹one employee resigned as a Municipal Councillor.

¹⁰there is one more person elected as a Municipal Councillor than indicated by PERSAL, bringing the total to 16.

¹¹an Employee Initiated Severance Package was granted to this person with effect from 1 March 2007.

Supplementary to the statistics reflected in the Table 8 above, and from a regulatory perspective, note should be taken of the guidance provided by the DPSA in its circular minute dated 7 October 2005, indicating that the election of public servants as part-time municipal councillors is to be dealt with by departments in terms of section 30(b) of the *Public Service Act, 1994*. According to this section, no employee shall perform or engage him-/herself in remunerative work outside his/her employment in the Public Service without permission granted by the relevant EA, or an officer duly authorized (section 30(b) of the Act is reflected upon in more detail in paragraph 2.3 of the report).

Given the above, information was solicited from departments regarding the manner in which public servants, elected as part-time municipal councillors, are managed. In this regard, the following was found:

- Not in all instances were public servants informed by departments' human resources components of the provisions and conditions that regulate their participation in municipal elections, as stipulated in the DPSA's circular minute elaborated upon in paragraph 2.7 above.
- As a result of the afore-mentioned, public servants elected as municipal councillors were not in all instances requested by departments to, and therefore did not inform, a designated official within the Department –
 - of their election as municipal councillors;
 - of the nature of their duties and responsibilities as municipal councillors;
 - whether they will be required to perform Council-related duties during office hours; and
 - of the details of their remuneration/compensation (paid by the relevant municipalities).
- Public servants elected as municipal councillors did not in all instances request and obtain approval from the EA (or an officer duly authorized) to perform remunerative work outside the Public Service (as required by section 30 of the *Public Service Act, 1994*) prior to accepting the election. The PSC obtained documentary proof in respect of three departments each in the Limpopo and the Western Cape provinces (six departments in total) where public servants elected as municipal councillors requested and obtained approval only during February/March 2007 to perform remunerative work outside the Public Service, i.e. after departments became aware of this investigation by the PSC.
- In spite of numerous requests, departments in Limpopo submitted limited documentary proof to the PSC of employees elected as municipal councillors requesting and obtaining approval from the EA/designated official to perform remunerative work outside the Public Service. Whilst proof pertaining to such requests and approvals was submitted in respect of 15 out of the 19 employees (i.e. 79%) elected as municipal councillors in the Western Cape, proof in this regard was received only in respect of eight out of the 311 employees (i.e. 3%) in Limpopo. In addition, the Department of Education in Limpopo (the Department employing the largest number of public servants elected as municipal councillors) indicated that "*Records revealed that Public Servants who are serving as councillors did not apply for permission to do remunerative work outside their normal day to day work*".

4.4 Deficiencies in the management of public servants elected as part-time municipal councillors

During the investigation, the PSC also found that in respect of the two provinces investigated, not all departments could –

- continuously monitor the nature and extent of public servants' duties and responsibilities as municipal councillors to ensure that service delivery is not compromised;

- determine whether the nature and extent of public servants' duties and responsibilities as municipal councillors are in conflict with their official duties, and *vice versa*;
- monitor the impact that public servants' duties as municipal councillors have on their attendance and performance of work;
- ensure that public servants elected as municipal councillors perform their duties as councillors as far as possible outside official hours; and/or
- require that vacation leave be taken (on a basis of one day's leave for every eight hours of absence) in instances where public servants elected as municipal councillors have to perform Council-related duties during official hours of work, e.g. attendance of meetings, etc.

An analysis of the above-mentioned deficiencies leads to the conclusion that although departments are expected to comply with the prevailing prescripts in their management of public servants who are elected as municipal councillors, they are failing to do so. It would seem that departments are in fact not well organised in tracking the whereabouts of such public servants and do not keep up to date records regarding the employment status of such employees insofar as their municipal councillor role is concerned.

The absence of a comprehensive policy framework for the management of such public servants may be a contributing factor. However, departments have a clear responsibility to ensure that their employees spend their working hours to the benefit of the State.

4.5 Controls applied to public servants elected as part-time municipal councillors

In spite of the findings reflected in paragraph 4.4 above, it was found in the Office of the Premier and the Department of Agriculture in Limpopo, as well as the departments of Agriculture and Health in the Western Cape, that control measures were implemented to manage public servants elected as part-time municipal councillors. These measures included the following:

- Leave taken that does not form part of annual leave is regarded as unpaid leave.
- Subsistence and travel claims resulting from journeys to and from Council-related activities are not paid by the Department.
- Extension of the approval to perform remunerative work outside the Public Service can only be considered/ approved/renewed if applied for timeously, and in writing.
- Confirmation by public servants elected as municipal councillors that Council-related duties performed by them will in no way interfere with their official commitments.
- Non-compliance with agreed conditions/control measures will lead to disciplinary action.
- Stipulation of the specified number of hours (per day/month/quarter, etc.) that remunerative work outside the Public Service will be undertaken by public servants elected as municipal councillors.
- Subjection of the number of hours remunerative work undertaken outside the Public Service by public servants elected as municipal councillors to audits, if required.

- The requirement to sign in and out each time employees enter and/or exit the buildings/institutions where they perform their basic and/or overtime duties.
- Withdrawal of the approval to perform remunerative work outside the Public Service in instances where the amount of time allocated to council-related activities negatively affects an employee's ability to perform his/her official work.

The above-mentioned management and control measures point to the fact that some departments are complying with good management practice in respect of the management of public servants who are elected as councillors, irrespective of the lack of a regulatory framework. It is also clear that such departments regard the election of public servants as part-time councillors in the same manner as any other remunerated work outside the Public Service and in doing so apply the same principles across the board.

4.6 Summary

During the investigation, various findings were made by the PSC relating to not only the management of public servants elected as municipal councillors, but also to the inadequacy of the regulatory framework.

The terms of reference of the investigation, reflected in paragraph 1.3 of the report, included the determination as to whether it is ethical for a public servant to serve as an elected public representative and still remain employed within the Public Service. The PSC's position in this regard is emphatically that it is not, given the partisan responsibilities attached to holding political office.

From the findings it is also clear that the current framework utilized to regulate the election of public servants as municipal councillors is not adhered to in all instances by departments. In fact, it seems if public servants elected as part-time municipal councillors are managed by the majority of departments in a haphazard manner. The PSC is of opinion that at the core of the shortcomings identified in this regard is the fact that the *Public Service Act, 1994*, does not specifically provide for the management of public servants elected as municipal councillors, e.g. stipulating/enforcing the resignation of public servants elected as full-time municipal councillors.

Furthermore, the circular minute issued by the DPSA during October 2005 contained mere guidelines, attempting to address confusion that departments might have in this regard. Enforcing adherence to these guidelines therefore remains questionable unless and until they are translated into a regulatory framework.

The fact of the matter remains that public servants are elected to serve on municipal councils, without departments having a say in this regard. In the event that the election of such public servants is not effectively monitored and managed by departments, it will have a definite negative impact both in terms of the spending of public funds on the one hand, and the effective utilization of human resources on the other hand.

With due regard to the findings reflected upon in this Chapter, and in order to make informed recommendations to address the shortcomings identified, research was undertaken by the PSC on the application of similar public administration models by the Public Service of other countries. The latter, as well as the manner in which local governments/municipal councillors are managed, are reflected upon in the next Chapter.

Chapter Five

Management of public servants
elected as municipal councillors:
An overview of international
perspectives

5.1 Introduction

Given the nature of the investigation, a decision was taken to look into what and how other countries are dealing with the issues of public servants who have been elected as municipal councillors.

There is enough evidence to show that internationally, public administration has advanced quite well from the clutches of the “classical era”, characterized by scientific management, administrative and bureaucratic theoretical foundations to the “transcendental era”, characterized by futuristic organizational systems and forms.

This advance or paradigm shift is what is commonly referred to as the New Public Management (NPM) model of public administration. When one confronts the principles of the NPM, the question remains whether it is possible for public servants to exercise political neutrality, if at all, with respect to their dual accountability both as officials in the employ of the State as well as elected representatives at municipal level. Moreover, if one takes a closer look at the NPM, it poses a lot of challenges and places more responsibility on the public servant to attend to all the aspects of service delivery in the execution of his or her day to day duties.

While on the one hand it is critical to ensure that we have a fully functional Public Service that is effective and efficient, on the other hand there is a need to consider how we are forging ahead with progressive and innovative strategies for service delivery but employing regressive service delivery approaches. Put differently, is the current dispensation regulating the management of public servants elected as municipal councillors ensuring that our resources are optimally utilized? This question is posed against the backdrop of the dual accountability with which these public servants are faced.

This Chapter explores the various processes that are followed in the management of public servants in terms of the prevailing provisions in five countries. For purposes of this Chapter, an internet search study was undertaken into the following countries, namely: Nigeria, Botswana, India, Canada, and Australia.

5.2 Nigerian perspective

In Nigeria, civil servants are prohibited from having political affiliations as they are expected to faithfully and impartially serve any government in power. Civil servants are elected permanently in their positions, for life, and their political neutrality is the justification of their permanence in these positions.

Nigeria holds the view that once a civil servant is a party member, he/she is regarded as being partisan. Further, when civil servants belong to political parties, an acute instability of tenure will arise. The country is against the creation of a “political” civil service as such a system would be contrary to the public interest and, in the future, the civil service itself (The International Journal of Not-for-Profit Law; Volume 6, Issue One, September 2003¹²).

5.2.1 Lesson for South Africa

Although the Nigerian Constitution makes provision with respect to every citizen's right and freedom of association, the Public Service has chosen to prohibit the participation of public servants in political activities. The argument is that one is either a civil servant or a politician and cannot be both as this would compromise service delivery and erode impartiality within the Public Service.

5.3 Botswana perspective

According to the Botswana Public Service Commission, the country does not make provision for public servants to participate as candidates in municipal elections. However, public servants are allowed to serve in their official

¹² Iheme, E: The Prohibition of Nigerian Civil Servants from Political Activities: A Necessary Derogation from Freedom of Association; The International Journal of Not-for-Profit Law; Volume 6, Issue One, September 2003.



capacity as officials on secondment during such elections, thereby purely providing administrative and other related assistance during the elections (Botswana Government, February 2007¹³).

5.3.1 Lessons for South Africa

Botswana also subscribes to the principle that public administration and politics do not mix. If a currently serving official chooses to join politics, he or she is expected to terminate his or her services with the State completely.

5.4 Indian perspective

Indian public servants are not expected to participate in political activity, especially elections. It is not allowed for a civil servant to act as a politician and continue to be part of the Civil Service (National Civil Service System in India¹⁴).

5.4.1 Lessons for South Africa

The Indian situation is more or less similar to that of Botswana and Nigeria, a civil servant can only be a civil servant or a politician. There is no provision for political-civil servants.

5.5 Canadian perspective

In Canada, great strides have been made to ensure the creation of a “politically neutral” Public Service, a matter that is recognized as the cornerstone of good governance in that country.

During October 2005, the Canadian Public Service Commission (CPSC) introduced a section of the Public Service Employment Act which recognizes the right of public servants to engage in political activities while maintaining the principle of political impartiality in the public service, referred to as the Political Activities Regulations.

The CPSC is charged with the authority of granting permission and leave without pay to employees who wish to become candidates at federal, provincial, territorial or municipal elections. Such authority is exclusive to the CPSC and cannot be delegated to departments. The CPSC has to satisfy itself that on becoming or being a candidate, this will not impair or be perceived as impairing the employee's ability to perform duties in a politically impartial manner. Employees who do not comply with the provisions of the Regulations risk being subjected to an investigation by the CPSC which could lead to corrective measures up to and including dismissal. Alternatively, employees may be subjected to disciplinary measures by their department.

The Regulations contain conditions for requesting permission and leave to seek nomination in federal, provincial, territorial or municipal elections such as the time limits for submitting a request, the content of a request, date of receipt of a request as well as information regarding the analysis of a request and on how the CPSC will communicate its decisions.

The benefits of such Regulations include the following:

- Give more weight to the rights and obligations of the parties involved, that is, the employee seeking permission for candidacy in federal, provincial, territorial or municipal elections and the CPSC, the body authorised by the Public Service Employment Act to consider such requests.
- Allow for more transparency of the process and a better knowledge of employee rights, due to their publication in the Canada Gazette.

¹³ Botswana Government Website, February 2007.

¹⁴ Mishra, RK: National Civil Service System in India: A critical view, 1997.

The Regulations are intended to protect the public's right to a politically impartial Public Service (Canadian Public Service Commission¹⁵).

5.5.1 Lessons for South Africa

The CPSC, unlike the South African PSC, is the employer for the Public Service and is therefore charged with the responsibility to attend to all matters relating to the conditions of service of public servants in the Canadian Public Service. As such, the Political Activities Regulations are quite comprehensive and serve as a good point of reference for the South African Public Service with respect to the management of public servants who are candidates or become elected as municipal councillors during municipal or local government elections.

Moreover, the CPSC has a section in its annual report which provides both statistical and narrative information on the aspect of the political candidacy of public servants. This covers issues such as requests for leave of absence during a specific financial year during federal, provincial and territorial or municipal elections. All leave granted is on the basis that the CPSC is convinced of the “usefulness to the Public Service of the employee in the position that the employee then occupies would not be impaired by reasons of that employee being a candidate”. The CPSC has also developed its own internal tracking system for purposes of keeping up to date information on each employee who made a request for leave of absence.

There are instances where requests are declined on the basis of an employee's current job demands but which if toned down or an employee is redeployed into a less demanding job, are reconsidered and subsequently approved. In some cases, the CPSC can impose certain conditions such as a “cooling-off period” upon the employee's return to the Public Service, whereby the employee would not return to his or her original position.

5.6 Australian perspective

In Australia, a person who holds public office or employment is eligible to be nominated under the *Australian Capital Territory's (ACT) Electoral Act, 1992*, but is not eligible to be a member of the Local Authority. Therefore, should a public servant decide to participate as a candidate for public office or employment, he or she should resign from that office or employment before the official declaration of the election result after polling day if, following the counting of votes, that candidate is to be declared elected.

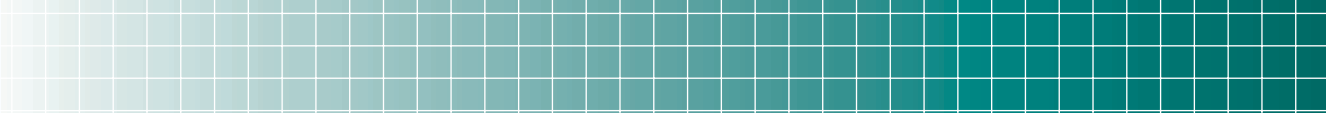
In this regard, those holding public office or public servants considering contesting an election are advised to seek their own legal advice on their particular circumstances. In addition, advice should be sought from the relevant employer or service as to whether such a potential candidate is under any obligation to take leave or to resign his or her office or employment under the relevant conditions of service.

According to the *Australian Public Service Act, 1999*, the Australian Public Service is expected to be apolitical and therefore should function impartially and professionally. The Public Service Commissioner's Direction 2.2(2) provides that “an employee must help ensure that the same high standard of policy advice and implementation, and the same high quality professional support, is provided to the elected Government, irrespective of which political party is in power and irrespective of the employee's political beliefs” (Circular No 2001/3: Supplementary information for employees contesting elections, 2007¹⁶).

In the likely event that an Australian public servant who is seeking an election, be it at a Federal, State or Territory election, or other election prescribed in Regulation 3.13 could be in a situation that is incompatible with or in contravention of the Commissioner's Direction 2.2(2), the incompatibility is resolved as follows:

¹⁵Canadian Public Service Commission Website, 2007.

¹⁶Circular No 2001/3: Supplementary information for Australian Public Service employees contesting elections, 2007.

- 
- An employee may take leave, for the duration of the election campaign, or resign.
 - The agencies, in consultation with the employee, may determine the appropriate timing of the leave or resign, taking into account the employee's current duties and level of their political activity.
 - Discretion would have to be applied to determine the extent to which the employee's impartiality is compromised by continuing to undertake their duties, while at the same time taking active steps to contest an election.

5.6.1 Lessons for South Africa

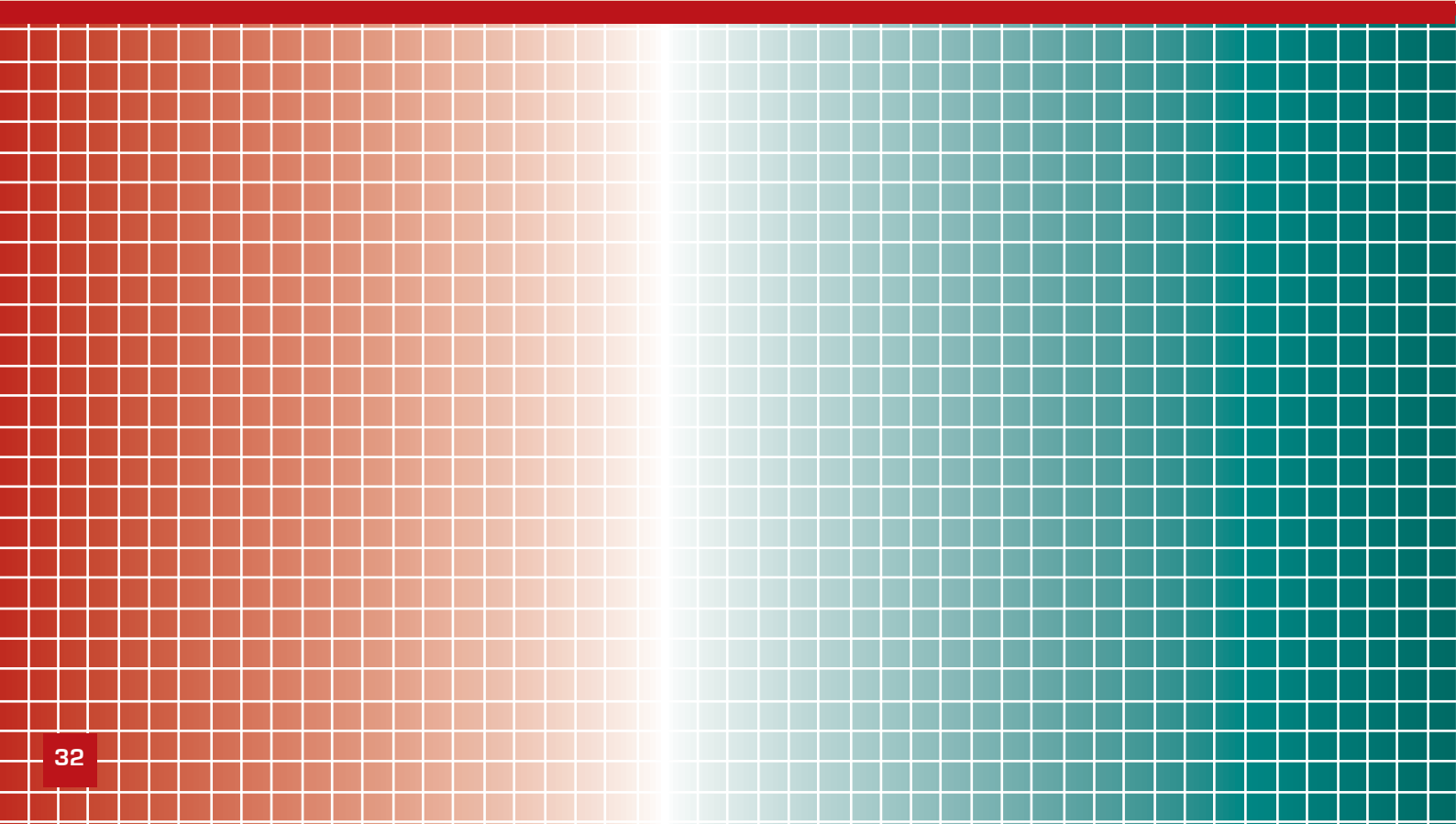
A number of similarities could be drawn between the two countries in terms of how the process of the management of public servants who are elected as municipal councillors is managed as well as the relevant prescriptive provisions that are applicable in this regard.

However, what is worth noting is the role of the Australian PSC in the whole process in ensuring that the constitutional values are not compromised to a point where a conflict of interest or incompatibility may arise.

5.7 Summary

What came out clear from this analysis is that the majority of countries do not allow public servants to hold political office because of the partisan responsibilities attached to political office. This supports the PSC's view that the continued employment of public servants elected as municipal councillors should be discontinued.

Where such participation of public servants is allowed, some fundamental developments and areas of advancement have been noted which have relevance in the administration of the process in South Africa. These relate to, *inter alia*, the regulation of the candidacy of public servants who wish to contest an election, the setting-up of an advice office dealing with such issues, establishment of an internal tracking system for public servants who have been elected as councillors, the provision of a mandatory "cooling-off" period where the need arises and the location for the management of public servants who are elected as councillors. These are critical issues that should, *inter alia*, serve as the basis when looking into various policy considerations and/or options towards the drafting of a regulatory framework for the participation of public servants in municipal elections.



Chapter Six

Recommendations

6.1 Introduction

The PSC would again like to reiterate its view that public servants elected as political office bearers should not be further employed as public servants. However, should this approach not be adopted, the employment of public servants elected as municipal councillors should be more tightly managed.

Furthermore, emanating from the analysis of data and information obtained from district and local municipalities, PERSAL and the respective departments, as reflected in Chapters 3 and 4 of the report, a number of potential problem areas were identified by the PSC. These shortcomings should be addressed in order to improve the effective and efficient management of public servants elected as municipal councillors. Therefore, the following recommendations are made:

6.2 Improving the management of information and data

According to the methodology followed during the conducting of the investigation, highlighted in Chapter 1, paragraph 1.4 above, the PSC had to rely on the completeness and accuracy of information obtained from different sources. Data was obtained from district municipalities, local municipalities, PERSAL and departments in the Limpopo and the Western Cape provinces.

However, during the processing and analyzing of the data, documents and statistics, the PSC found that information provided differed in some instances from source to source. The following serves as an example in this regard:

Table 9: Number of public servants elected as municipal councillors according to departments/PERSAL

Province	No of public servants elected as councillors according to -			Difference in statistics
	the Department		PERSAL	
Limpopo	Economic Development, Env & Tourism	4	0	4
	Health & Social Development	45	51	6
	Office of the Premier	2	8	6
Western Cape	Education	16	15	1

Although PERSAL does not have a specific function for the capturing of data relating to public servants elected as municipal councillors, PERSAL relies on data captured by departments pertaining to the transfer/promotion of public servants from one department to another. Hence, PERSAL is dependant on departments in terms of the accuracy of such data. The differences in the statistics reflected in the above table imply that PERSAL has not been updated correctly by the relevant departments.

Whilst it is appreciated that the statistics reflected in the above table was captured on different dates and on different systems, as well as the mobility of employees between departments, resulting in variances between the different sets of data, the following is recommended to ensure more accurate and reliable statistics:

Special care must be taken by departments in ensuring that –

- the details of all public servants employed by the Department in general and those elected as municipal councillors in particular, are recorded accurately on PERSAL;

- liaison takes place between the relevant departments and municipalities to ensure that details in this regard are captured in a comprehensive manner; promptly and correctly; and
- information about public servants elected as municipal councillors is updated on PERSAL, should changes in the employment relationship occur; e.g. resignation, transfer; etc.

6.3 Effective record keeping

The fact that effective record keeping of all aspects relating to the election of public servants as municipal councillors is crucial for departments in ensuring that such election are monitored and managed in an effective manner; is self-explanatory. Yet, in Chapter 4 of the report it is reflected that record keeping of information relating to the election of public servants as municipal councillors is below the required standard. This is manifested in the inability of departments in some instances to provide the Investigating Team with documentary proof of employees elected as part-time municipal councillors –

- informing their departments of such elections, the nature of their duties/responsibilities as councillors and details of the remuneration to be paid to them in this regard by the relevant municipalities;
- requested approval from their departments to perform remunerative work outside the Public Service;
- receiving approval from their departments to perform remunerative work outside the Public Service.

In view of the above, and supplementary to the recommendations aimed at improving the management of statistics (paragraph 6.2 above), it is recommended that departments, as a minimum, update and maintain accurate records of the above highlighted aspects.

6.4 Determining of trends

The importance of the effective management of human resources in any organization can not be over emphasized. Forming an integral part of human resource management, is the determining of employment trends and the taking of appropriate pro-active steps when required.

Although the purpose of this investigation did not include the determining of trends, the following came to the fore during the analyzing and processing of statistics (see Chapter 3 of the report):

- The majority of public servants elected as municipal councillors are employed in the provincial departments of Education.
- More male public servants are elected as municipal councillors, than females.
- The majority of employees elected as municipal councillors fall in the age group 40 – 49.
- 85% of the public servants elected as municipal councillors are serving at production level, i.e. salary band 1 to 8.

Since the above serves only as an example of the different types of trends that departments should monitor, it is recommended that departments, on an annual basis, also determine trends on the –

- performance of Municipal Council-duties by public servants during office hours;

- nature and extent of public servants' duties and responsibilities as municipal councillors; and
- impact that public servants' duties as municipal councillors have on their attendance and performance of work.

6.5 Adherence to the current regulatory framework

During the investigation it was found that not all departments inform public servants elected as municipal councillors to apply for approval to perform remunerative work outside the Public Service (as required by section 30 of the *Public Service Act, 1994*). Furthermore, in some instances where documentary proof was provided of departments' efforts in this regard, applications and approvals to perform remunerated work outside the Public Service occurred on dates after departments became aware of this investigation by the PSC. The latter state of affairs is contrary to the managerial purpose and intention of obtaining prior approval.

Special care should be taken by departments to ensure that the current prescripts regulating the performance of remunerated work outside the Public Service are adhered to. The non-adherence to the regulatory framework might result in qualified reports by the Auditor-General, reflecting negatively on the departments' management abilities.

Whilst the Internal Audit units in departments have an active role to play in this regard, HoDs should also take note of the fact that responsibilities in the above regard are specifically allocated to them by, amongst others, the *Public Service Act, 1994*, and the *Public Finance Management Act 1999*, as reflected upon in Chapter 2 of the report.

Given the above, as well as the findings reflected in Chapter 4 of the report, a need was identified by the PSC for the implementation and maintenance of a data base on the election of public servants as municipal councillors. In this regard, all departments are requested to submit the following on an annual basis to the PSC in order to give effect to its oversight mandate:

- Details of public servants elected as municipal councillors.
- Proof of approval requested by, and granted to the applicant, for the performance of remunerative work outside the Public Service.
- Control measures instituted by departments to manage the employment of public servants elected as municipal councillors.
- Trends identified by departments, as well as the manner in which such trends were addressed, if further action was required.

6.6 Development and implementation of statutory/ regulatory framework

It is the PSC's view that the *Public Service Act, 1994*, should be amended to make it clear that public servants elected as councillors must resign from the Public Service. If this approach is not adopted then the *Public Service Act, 1994*, should be amended to include –

- conditions for the election of public servants as municipal councillors; and
- the provisions of paragraph 5 of the circular minute of the DPSA (reflected upon in Chapter 2 of the report) dealing with the management of public servants elected to municipal councils.

The responsibility in the above regard lies with the Department responsible for administering the Act, namely the DPSA. The fact that the services of full-time councillors must be terminated should be clarified.

Part VII of Chapter 1 of the PSR, dealing with the procedures for the appointment, promotions and termination of service of public servants, as well as Chapter 4 of the PSR, dealing with, amongst others, employment practices of members of the SMS, should also be reviewed to provide for the management of public servants elected as full- or part-time municipal councillors. In addition, the Handbook for the SMS should be amended accordingly. The contents of the regulations can be modeled around the proposal for a departmental policy contained in paragraph 6.7 of these recommendations.

6.7 Development of a Departmental or Provincial Policy

In the absence of departmental policies regulating and managing the election of public servants as municipal councillors, departments merely rely on the requirements of section 30 of the *Public Service Act, 1994*, and the circular minute of the DPSA reflected upon in Chapter 2 of the report.

It is therefore recommended that departments for the interim (until a national policy has been introduced) develop their own policies regulating and managing the employment of public servants elected as municipal councillors (and subsequent performance of remunerative work outside the Public Service) as a matter of urgency. However, given departments' capacity constraints and in order to ensure uniformity and consistency, it is recommended that an interim national policy guidelines be developed by the DPSA for purposes of guidance and co-ordination. This would also facilitate a smooth transition once a fully fledged national policy framework on regulating and managing public servants elected as municipal councillors.

These policies should be designed in such a manner that they accommodate each department/province's unique needs and circumstances. Furthermore, care must be taken to ensure that, as a minimum, the following aspects are provided for in such departmental/provincial policies:

- The responsibility that a Department has to advise public servants of the provisions and conditions that regulate their participation in municipal elections and subsequent election to municipal councils.
- The responsibility that a public servant has to inform his/her Department of his/her intention to partake in forthcoming municipal elections and the anticipated impact this will have on his/her hours of attendance.
- Should a Public Servant be elected as a full-time Municipal Councillor; he/she must be required to –
 - inform the Department within 30 days of such election; and
 - resign from the Public Service.
- Should an employee be elected as a part-time Municipal Councillor; he/she must be required to inform the Department within 30 days –
 - of his/her election;
 - of the nature of his/her duties and responsibilities as a councillor;
 - whether he/she will be required to perform duties during office hours; and
 - of the details of the remuneration to be paid to him/her by the relevant Municipality.
- The format and manner in which approval is to be requested by an employee elected as a part-time Municipal Councillor to perform remunerative work outside the Public Service (as required by section 30 of the *Public Service Act, 1994*).

- Factors/issues to be considered and the manner in which approval is to be granted to an employee elected as a part-time Municipal Councillor to perform remunerative work outside the Public Service.
- The responsibility of departments/supervisors to continuously monitor –
 - the nature and extent of the employee's duties and responsibilities as a Municipal Councillor; and whether it could be in conflict with the person's official duties;
 - that it is ensured that employees perform their duties as municipal councillors as far as possible outside official hours;
 - the taking of vacation leave by employees on the basis of one day's leave for every eight hours of absence in the event that employees have to perform Council-related duties during official hours of work;
 - the impact that the employee's duties as a councillor will have on his/her attendance and performance of work; and
 - the position and activities of the employee to ensure that no conflict of interest arises that could perhaps compromise the Department.

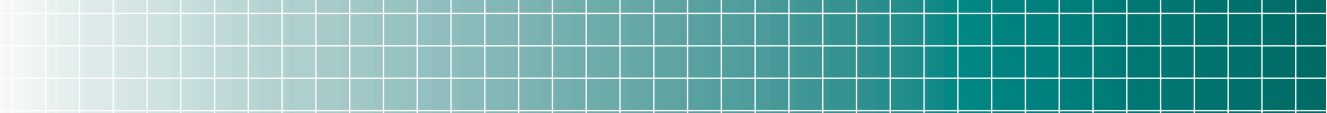
Supplementary to the above-mentioned aspects, departments should also consider requiring public servants elected as municipal councillors to enter into an agreement with the departments. Such an agreement, forming part of a Departmental/Provincial Policy, should cater for the following:

- Timeous written application for the extension of the approval to perform remunerative work outside the Public Service.
- Confirmation that Council-related duties performed will in no way interfere with official commitments, or that the Department will in no way be compromised.
- Specification of the maximum number of hours (per day/month/quarter; etc.) that remunerative work outside the Public Service will be undertaken.
- Subjection of the number of hours remunerative work undertaken outside the Public Service to an audit, if required.
- Withdrawal/termination of the approval to perform remunerative work outside the Public Service in instances where the amount of time allocated to Council-related activities negatively affects an employee's ability to perform his/her official work.
- Recording of the hours of attendance (e.g. requiring the relevant employees to sign in and out each time they enter/exit the buildings/institutions where they perform their basic and/or overtime duties).
- Non-compliance with agreed conditions/control measures will lead to disciplinary action.

Departments are also referred to the "Guideline on the management of benefits and allowances" issued by the DPSA. According to paragraph 2 of the Guideline, the following should be kept in mind when drafting the above recommended departmental/provincial policy:

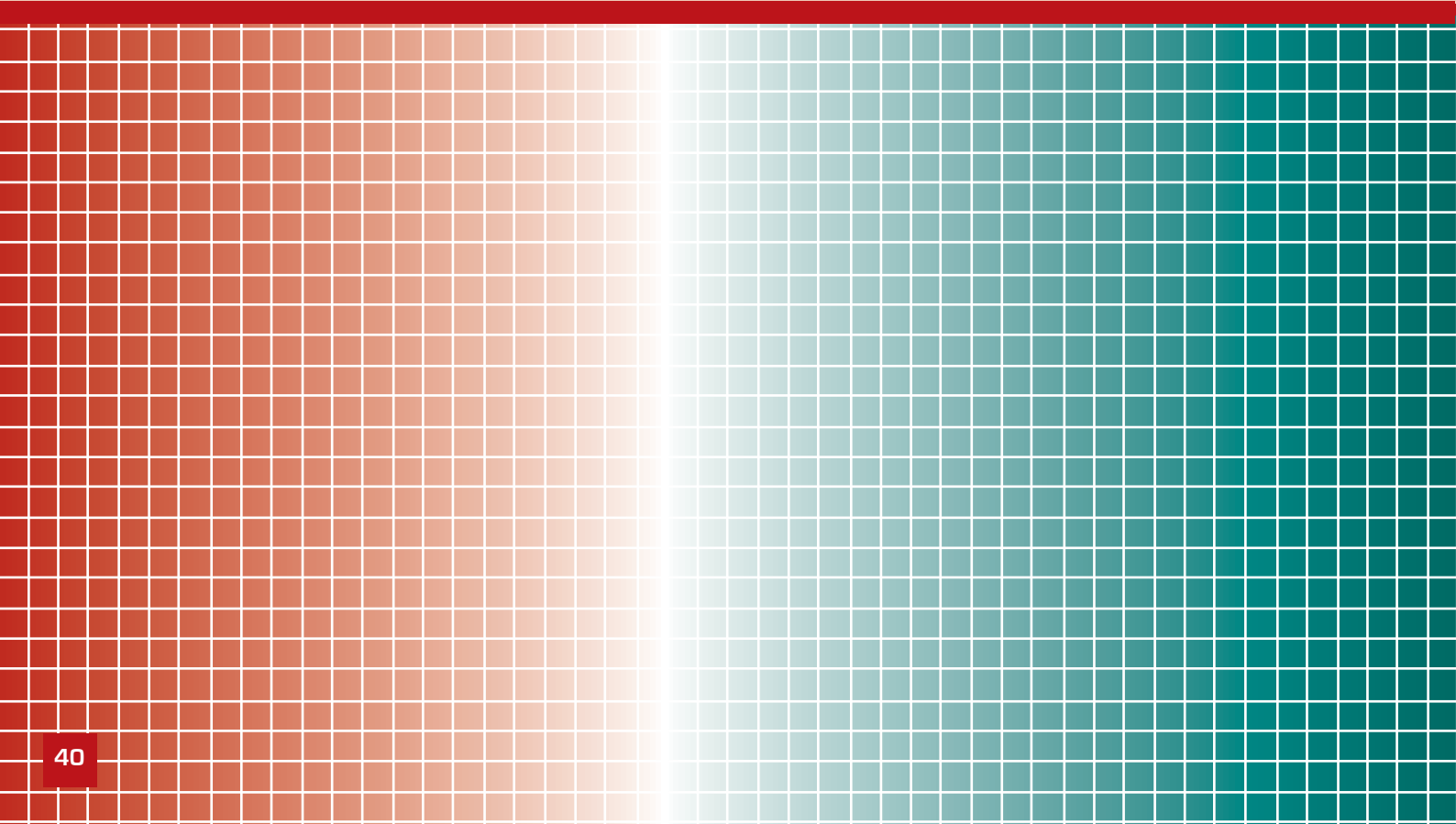
Policies and procedures –

- should be as simple as possible and written in easily understandable language. At least one version should be in English;

- 
- may not discriminate on the basis of race or gender, or treat employees in equal circumstances unequally;
 - must ensure fairness in administrative terms, in the sense that decision-makers must give reasons for their decisions and applicants must have some way to appeal against the decision.
 - may not impose unexpected or unacceptable costs, must facilitate auditing of payments, and must take tax implications into account;
 - should establish control measures to prevent corruption or nepotism in granting benefits and allowances; and
 - should establish an information system that permits review for fairness, effectiveness and expenditure, and set up a time-table for these reviews.

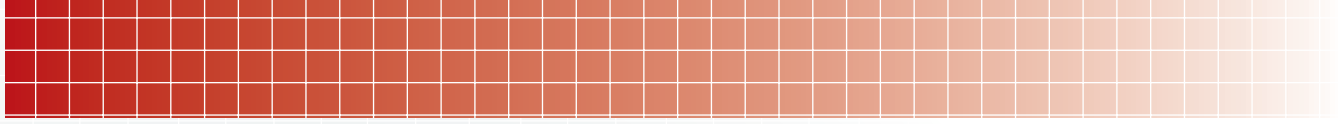
6.8 Summary

The above recommendations are aimed at enhancing the effective management of one of the most important assets/resources of any institution, namely its human capital. However, the responsibility to act in an ethical manner, and in accordance with the regulatory framework, does not only lie with departments/provinces. Public servants also need to abide by and support efforts by departments to ensure just administration.



Chapter Seven

Conclusion



The PSC's position on the continued employment of public servants elected as municipal councillors is that this should not be allowed. However, if the practice is to be continued it is clear that much more detailed attention must be given to the correct management of part-time councillors.

The findings and recommendations contained in this report should assist departments with the efficient and effective managing of public servants elected as municipal councillors. In this regard, the maintenance of accurate statistics, the institution of effective record keeping practices, as well as the determination of trends coupled with adherence to the regulatory framework, will definitely be a step in the right direction.

It is in the interest of the Public Service that the PSC, at an opportune time, monitor and evaluate the implementation of the recommendations made in this report.

List of references

Botswana Government Website, 2007.

Canadian Public Service Commission Website, 2007.

Circular No 2001/3: Supplementary information for Australian Public Service employees contesting elections, 2007.

Constitution of the Republic of South Africa, Act. No. 108 of 1996 (South Africa).

Employment of Educators Act, 1998 (South Africa).

Iheme, E: *The Prohibition of Nigerian Civil Servants from Political Activities: A Necessary Derogation from Freedom of Association*; The International Journal of Not-for-Profit Law; Volume 6, Issue One, September 2003.

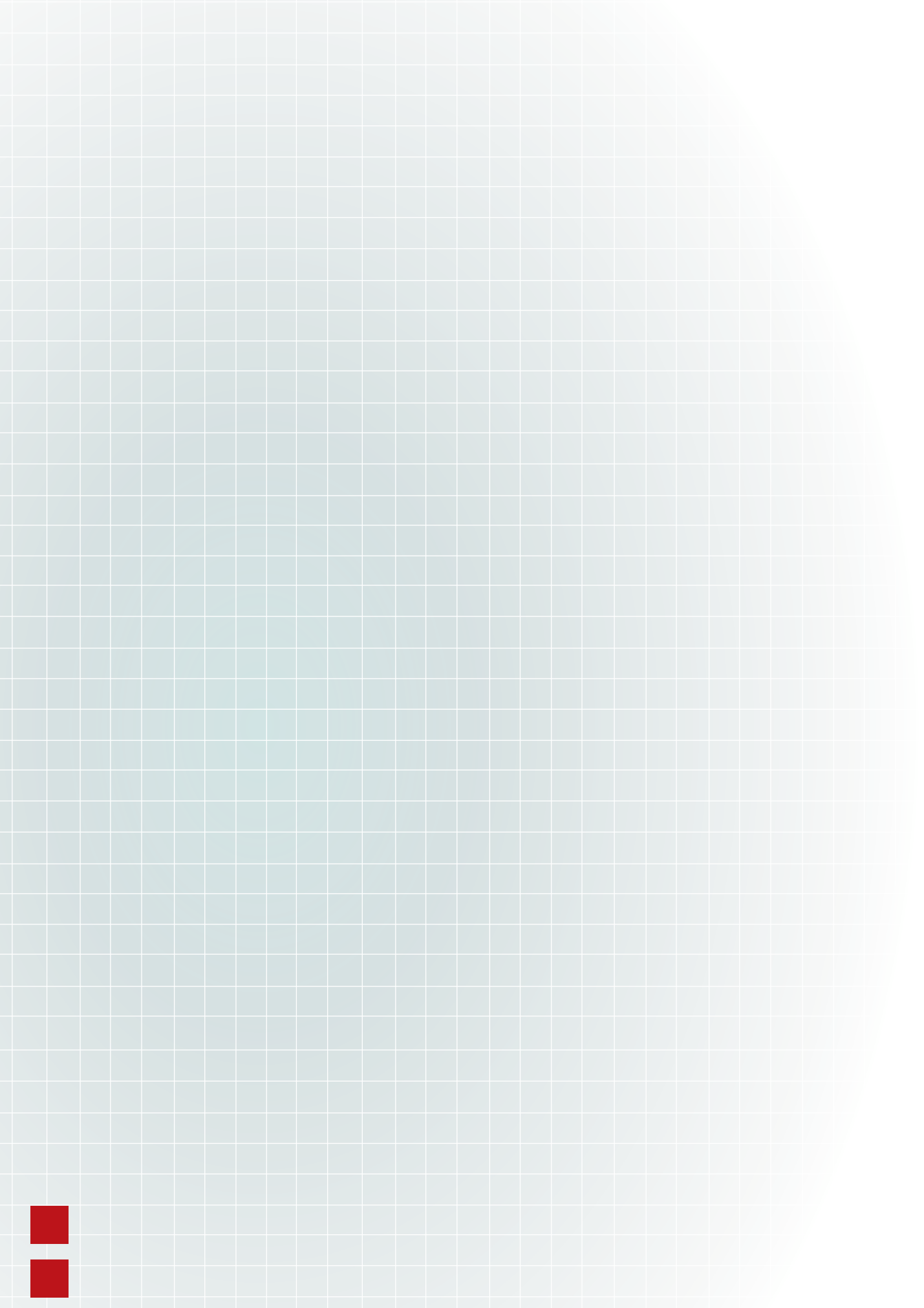
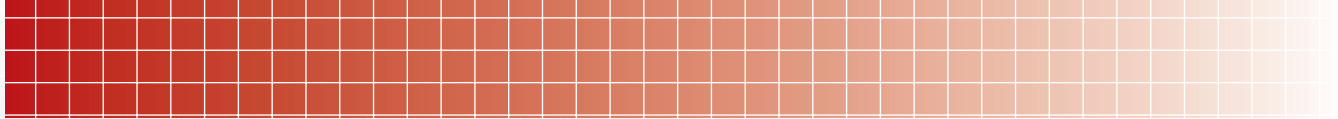
Mishra, RK: *National Civil Service System in India: A critical view*, 1997.

Public Finance Management Act, 1999 (South Africa).

Public Service Act, 1994 (South Africa).

Public Service Commission Act, 1997 (South Africa).

Public Service Regulations, 2001 (South Africa).



PUBLIC SERVICE COMMISSION OFFICES

Eastern Cape
91 Alexandra Road
King William's Town 5601

Tel: (043) 643-4704
Fax: (043) 642-1371

Northern Cape
1st Floor
Woolworths Building
c/o Lennox & Chapel streets
Kimberley 8300

Tel (053) 832-6222
Fax (053) 832-6225

Free State
62 Fedsure Building
3rd Floor, St Andrews Street
Bloemfontein, 9301

Tel: (051) 448-8696
Fax: (051) 448-4135

Limpopo
Kleingeld Trust Building
81 Biccard Street
Polokwane 6990

Tel (015) 297-6284
Fax (015) 297-6276

Gauteng
Ten Sixty-Six Building
16th Floor, 35 Pritchard Street
Johannesburg 2001

Tel: (011) 833-5721
Fax: (011) 834-1200

North-West
Mmabatho Post Office Building
Ground Floor
University Drive
Mmabatho 2735

Tel: (018) 384-1000
Fax: (018) 384-1012

KwaZulu-Natal
262 Brasford House
cnr Commercial & Longmarket Streets
Pietermaritzburg 3200

Tel: (033) 345-9998
Fax (033) 345-8505

Western Cape
Sanlam Golden Acre Building
21st Floor, Adderley Street
Cape Town
8000

Tel (021) 421 3980
Fax (021) 421 4060

Mpumalanga
19 Russel Street
Nelspruit 1200

Tel: (013) 755-4070
Fax: (013) 752-5814



Republic of South Africa

Public Service Commission

Tel: +27 12 352-1000

Fax: +27 12 325-8382

Website: www.psc.gov.za

National Anti-Corruption Hotline for the Public Service: 0800 701 701